

2017
BENCHMARKING EXERCISE
REPORT



DECEMBER 2017

PARTNERS



**Lead Research Partner
PRECEPTS 1, 2, 10 & 11**



PRECEPTS 3 & 4



PRECEPTS 5, 6, 7 & 8



PRECEPT 9



PRECEPT 12

PRECEPT 1	Strategy, Legal framework and Institutions	CPPA
PRECEPT 2	Transparency and accountability	CPPA
PRECEPT 3	Exploration, Licensing and Monitoring operations	CISLAC
PRECEPT 4	Taxation and other company payments	CISLAC
PRECEPT 5	Local Impacts	CSEA
PRECEPT 6	State owned enterprises	CSEA
PRECEPT 7	Investing for growth	CSEA
PRECEPT 8	Stabilizing expenditure	CSEA
PRECEPT 9	Public Spending	CSJ
PRECEPT 10	Private sector development	CPPA
PRECEPT 11	Role of Extractive companies	CPPA
PRECEPT 12	Role of International community	Social Action

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ABOUT THE NIGERIA NATURAL RESOURCE CHARTER

The Natural Resource Charter (NRC) is a set of principles intended for use by governments, societies and the international community to determine how best to manage natural resource wealth for the benefit of current and future generations of citizens. The charter's twelve precepts cover the different kinds of decisions and policies that are required to successfully govern a petroleum sector.

The Nigeria Natural resource Charter (NNRC) implements the NRC in Nigeria. It is a non-profit policy institute that promotes the effective management of natural resources for public good. It is led by an esteemed panel of experts on natural resource governance that convenes on a biannual basis to analyse the governance issues relating to the petroleum sector in the country.

What is the Natural Resource Charter?

The Charter does not prescribe specific approaches but instead identifies 12 broad 'precepts', which cover the main decisions required to transform assets under the ground into development above ground.

- **Precept 1: *Strategy, legal framework and institutions*:** Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, clear legal framework and competent institutions.
- **Precept 2: *Transparency and accountability*:**Resource governance requires decision makers to be accountable to an informed public.
- **Precept 3: *Exploration, licensing and monitoring operations*:**The government should encourage efficient exploration and production operations, and allocate rights transparently.
- **Precept 4: *Taxation and other company payments*:** Tax regimes and contractual terms should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances.
- **Precept 5: *Local impacts*:** The government should pursue opportunities for local benefits and account for, mitigate and offset the environmental and social costs of resource extraction projects.
- **Precept 6: *State-owned enterprises*:** Nationally owned companies should be accountable, with well-defined mandates and an objective of commercial efficiency.
- **Precept 7: *Investing for growth*:**The government should invest revenues to achieve optimal and equitable outcomes, for current and future generations.
- **Precept 8: *Stabilizing expenditure*:** The government should smooth domestic spending of revenues to account for revenue volatility.

- **Precept 9: *Public spending*:** The government should use revenues as an opportunity to increase the efficiency of public spending at the national and sub-national levels.
- **Precept 10: *Private sector development*:** The government should facilitate private sector investments to diversify the economy and to engage in the extractive sector.
- **Precept 11: *Role of extractive companies*:** Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.
- **Precept 12: *Role of international community*:** Governments and international organizations should promote an upward harmonization of standards to support sustainable development.

About the Benchmarking Exercise Report

This report is the third in the series of benchmarking exercise reports produced by the NNRC; carried out to provide an assessment of governance of Nigeria's petroleum wealth. The first two exercises were conducted and published in 2012 and 2014 respectively. It uses the NRC framework, developed by a diverse set of internationally renowned experts on natural resource management to conduct the assessments. In 2016, the framework was revised to aid a more contextual and detailed approach in obtaining results so as to ensure accurate analysis of the resource sector. This revised framework is the basis for the 2017 edition of the exercise. It analyses the governance of petroleum wealth in Nigeria and identifies crucial changes that have taken place in the sector since the last benchmarking exercise was conducted.

For the 2017 edition, the NNRC entered into a partnership with a consortium of Civil Society Organisations' comprised of the Centre for Public Policy Alternatives (CPPA), Civil Society Legislative and Advocacy Centre (CISLAC), the Centre for the Study of the Economies of Africa (CSEA), the Centre for Social Justice (CSJ) and Social Action (SA).

Who carried out the benchmarking exercise?

The assessment of Nigeria's performance against these principles was led by a panel of independent Nigerian experts on natural resource governance. The panel is composed of former government officials, private sector and civil society representatives as well as leading academics. This multi-stakeholder composition has been essential to ensure the integrity, balance and scope of the panel's work.

The detailed research on the petroleum sector for this 2017 benchmarking exercise was carried out by the Centre for Public Policy Alternatives (CPPA), Civil Society Legislative and Advocacy Centre (CISLAC), the Centre for the Study of the Economies of Africa (CSEA), the Centre for Social Justice (CSJ) and Social Action (SA) on behalf of the NNRC.

Oversight and coordination was provided by the local secretariat of the NNRC under the supervision of the Program Coordinator; Tengigorge-Ikoli.

Expert panel	Expertise	Expert panel	Expertise
Mr. OdeinAjumogobia	Upstream issues	Mr. Tunji Lardner	Social issues
Prof. AsisiAsobie	Social issues	Mrs. Lois Machunga	Upstream issues
Dr Otivelgbuzor	Social issues	Prof. AdeolaAdenikinju	Public finance
Mr. AdemolaAdeyemi-Bero	Upstream issues	Prof. AkpanEkpo	Public finance
Mr. OstenOlorunsola	Upstream issues	Prof. UkohaUkiwo	Public finance
Ms. RonkeOnadeko	Upstream issues	Dr. (Mrs.) ObyEzekwesili	Social issues
Mr. Sam Daibo	Upstream issues	Prof. Ode Ojowu	Public finance

How was the exercise conducted?

For each of the 12 precepts, a series of questions were developed using the guide questions provided by the benchmarking framework. The questions were categorised according to various stakeholder groups in the petroleum sector including public institutions, oil and gas companies, financial institutions, civil society organisations, research institutions and industry experts.

Responses were analysed and aggregated using a simple average method to provide an objective means of assessment in line with the traffic light system adopted for the preceding exercise. It involved applying equal weights to each question and aggregating the responses at the secondary and primary levels, to derive the scoring of each precept.

A number of the questions were answered using both survey and desktop research. In cases where the two approaches led to the same conclusion, it helped to reinforce that the initial conclusion and the proposed methodology were not affected. However, when the two yielded conflicting results; the researchers' judgments were key to reconciling the conflicting results.

Findings from the research were subjected to further scrutiny by the Expert Advisory Panel in a validation and scoring exercise. This subjected the results to additional analysis resulting in a well rounded assessment of the sector.

How can this report be used?

The findings of the report can be used to shape the policy agenda that can be taken forward by Government. This Evaluation Report provides a focal point for public engagement and civic action, and acts as a reference tool for holding government and key stakeholders accountable for their decision-making. Each red mark presents an advocacy area which can be taken up by oversight actors to work towards improved governance of the petroleum sector.

Overall Precept scores

Precept 1: Strategy, Legal Framework and Institutions

Some positive developments were recorded between 2014 and 2017. The issue of ownership has been clearly established by the Nigerian constitution and the Petroleum Act though contentions still persist. The major challenge is a lack of an appropriate mechanism for engaging stakeholders. There are also operational problems with translating resource strategy into tangible benefits. The Petroleum Industry Bill (PIB) which is awaiting full passage is envisaged to tackle these issues. The first component, the Petroleum Industry Governance Bill (PIGB), has been passed in the Senate and is awaiting third reading at the House of Representatives.



Precept 2: Transparency and Accountability

The government has taken steps to improve transparency and accountability of public institutions. Instruments to track public spending are being implemented while information management systems have been deployed in government agencies with some recording significance improvements in service delivery. The government has also taken steps to implement the principles of the open government partnership by launching the Nigeria open contracting portal. However, public institutions in the oil and gas sector are yet to prioritize proactive disclosure of information and in many cases publicly available information are limited, outdated and yet to meet internationally accepted standards. More so, oversight functions by requisite institutions are yet ineffective yielding sub-optimal outcomes while accountability mechanisms expected to serve as a deterrent against fraud are not strictly enforced. Cases of corruption are still rampant in the petroleum sector and investigations by oversight institutions have not resulted in any convictions.



Precept 3: Exploration, Licensing and Monitoring Operations

No significant change since 2014. Nigeria still does not meet the NRC benchmark. Laws, policies and practices reveal absence of strategic impact assessment and poor disclosure of exploration and licensing information. The power of discretion for licensing award still subsists and lies with the minister and the bidding rounds are still fraught with lack of transparency, open to abuse and marred by delays. Monitoring of operations across every stage of projects is ineffective as the government agencies responsible are deficient in technical capacity and not well resourced. Oversight institutions are weak, inefficient and in some cases, compromised. The proposed Petroleum legislations expected to address this have remained elusive.



Precept 4: Taxation and Other Company Payments

No significant change since 2014. Nigeria still does not meet the NRC benchmark. The Fiscal Regimes remain unfavourable to Nigeria with the International Oil Companies benefitting more. The taxes in the sector remain complex with multiple agencies saddled with the responsibilities of collecting diverse types of taxes and



streams of revenues and the ability of revenue authorities to collect what is due remains in doubt due to inadequate capacity and resources. The government continues to employ costly incentives which result in revenue loss and there are insufficient anti-tax avoidance mechanisms both in policy and in practice. Government take from PSCs for Nigeria remains among the lowest in the world and deep-water oil royalties remain at zero percent. Outdated contracts and expired MOU's are still in force resulting in under assessments and under-paymentssubsequently leading to loss of revenues to the government. The anticipated change expected through the passage of the petroleum Industry law is yet to materialize while the commitment to review existing contracts to improve taxes and other revenues has not been implemented.

Precept 5: Local Impacts

No significant change since 2014, as Nigeria still does not meet the NRC benchmark. Policies to ensure meaningful participation by the affected communities are absent and resulting benefit from resource extraction is clearly overwhelmed by the negative effect. The government agencies responsible for monitoring ESIA's lack the technical and financial capacity to enforce compliance and there are weak grievance mechanisms at the local and national levels.



Precept 6: State-Owned Enterprises

Mild changes have been observed since 2014. The Petroleum Industry Governance Bill (PIGB) was passed by the Senate; gasoline subsidy withdrawn by the Federal Government; and transparency in the NNPC operational and account information marginally improved. However, the observed muddling of the corporation's business roles with its non-commercial and auxiliary regulatory functions continues. Commercial decisions and operational activities of the corporation are still subject to political interference.



Precept 7: Investing for Growth

There has been some notable progress since 2014, especially as it relates to timely publication of monthly allocation to the various federating units. However, the share of recurrent expenditure remains disproportionately high, while capital expenditure and net financial accumulation are experiencing rapid decline. Also, medium term sector strategy (MTSS), which is expected to guide public investment and capital expenditure, has not been updated since 2011.



Precept 8: Stabilizing Expenditure

No significant change in the government management of expenditure volatility to commodity prices. The major oil price shock that started in 2014 exposes the weakness in the existing exchange rate and expansionary fiscal policy of government. The Sovereign Wealth Fund, although professionally managed, is grossly underfunded thus insufficient to mitigate expenditure shortfall.



Precept 9: Public Spending

There has been slight improvement in performance against the NRC benchmark since 2014. More MDAs have become TSA compliant since the FGN directive in September 2015 to promote financial accountability among government organs. The budget has been without any specific calendar as the timelines stipulated by the 1999 Constitution and the Fiscal Responsibility Act (FRA) have not typically been followed. There is no overarching development policy in place although the Federal government inaugurated a medium term plan (the ERGP) with which to pursue economic recovery and growth.



Precept 10: Private Sector Development

There is no appreciable improvement in the ease of doing business over the last couple of years, although the government has recently taken steps to facilitate an enabling business environment for a sustainable growth and development of the private sector through the Executive Order No 001 of 2017: ‘on the Promotion of Transparency and Efficiency in the Business Environment’. In addition, local content for projects rose considerably in the last couple of years as the implementation of the Nigerian Content Act (2010) that has sought to remove barriers to local participation in extractive continues to gain more traction.



Precept 11: Role of Extractive Companies

There have been some improvements in this regard. Multinational oil companies have taken active steps to engage with host communities and contribute to national development. Although community participation in form of public hearings is a due diligence requirement of the Environmental Impact Assessment (EIA) process, there are however challenges with community capacity to contribute given their limited knowledge and understanding. Local content promotion policies have been integrated into the oil and gas sectors as a way of maximizing benefits from the sector beyond direct revenue payments. Regulations that mandate disclosure of contract agreements between oil companies and the government are not fully adhered to. Therefore, it is difficult to correctly measure the amount of taxes and royalties that accrue to the government through contracts and licences.



Precept 12: Role of International Community

While some progress has been noted in the period under review, there have equally been some notable setbacks. In the European Union, significant traction towards increased extractive industry disclosure seems to have been eclipsed by the repeal of the Dodd Frank Act in the United States, effectively withdrawing the US from the EITI and paving the way for increased secrecy.

A key concern in the period however, is not so much the absence of frameworks to ensure the protection of human, environmental, health and social rights, but that these frameworks supported and promoted by the international community have fail to translate into substantial action in Nigeria.













PRECEPT 1: STRATEGY, LEGAL AND INSTITUTIONAL FRAMEWORK



Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, clear legal framework and competent institutions.

Overall Precept Score	
<p>Precept 1: Strategy, Legal and Institutional Framework</p> <p>Some positive developments were recorded between 2014 and 2017. The issue of ownership has been clearly established by the Nigerian constitution and the Petroleum Act though contentions still persist. The major challenge is a lack of an appropriate mechanism for engaging stakeholders. There are also operational problems with translating resource strategy into tangible benefits. The Petroleum Industry Bill (PIB) which is awaiting full passage is envisaged to tackle these issues. The first component, the Petroleum Industry Governance Bill (PIGB), has been passed in the Senate and is awaiting third reading at the House of Representatives.</p>	●

Overview of the Questions and Ratings	
1.1 FUNDAMENTALS OF THE RESOURCE ENDOWMENT	
1.1.1 Has the government clearly established who owns petroleum resources?	
1.1.2 Does the government have a well-informed understanding of the country's resource endowment?	
1.1.3 Does the government have a realistic and sound understanding of how dependent the country is on petroleum resources?	
1.1.4 Has the government seriously considered the positive and negative impacts of exploitation in making the decision whether or not to extract?	
1.2 RESOURCE STRATEGY	
1.2.1 Does the resource strategy reflect an understanding of the fundamentals of resource wealth?	
1.2.2 Does the resource strategy take a long-term approach?	
1.2.3 Does the resource strategy reflect consideration of the full range of issues in management of resource wealth?	
1.2.4 Does the government engage all relevant actors in the development, implementation and oversight of the resource strategy?	
1.2.5 Does the resource strategy guide the relevant legal framework?	
1.2.6 Does the resource strategy guide the relevant institutional framework?	

Summary of Key Findings

Fundamentals of Resource Wealth

- The Constitution of the Federal Republic of Nigeria (1999) and the Petroleum Act 1969 clearly vests ownership of natural resources with the federal government. However, the issue of ownership is a contentious one. Host communities have increasingly criticized the current arrangement as they push for more control.
- Mitigation of environmental hazards remains a serious challenge in the oil and gas sector in spite of various measures adopted to address the negative impacts of extraction. The technical capacity to enforce these measures is scarcely adequate.
- Government has an understanding of oil and gas endowments but lacks the ability to translate its understanding to positive outcomes because policies and plans are often short term oriented and lack the coordination needed to be effective

Cognizant of Reality

- Gaps existing in the institutional and legal frameworks create critical operational problems for actors in the oil and gas sector. Of particular concern is the allocation of oil wells without regard to best practices.
- The level of interagency coordination in the oil and gas sector is poor and this limits the full actualization of government policies and plans. As a result, the strategic measures to enhance the oil and gas sector's operational effectiveness are not well coordinated.
- Government's engagement with industry stakeholders leaves much to be desired. This is because the government's objectives are often at odds with the goals of private operators and consultation efforts are not adequate. In addition, there is a high level of distrust among various actors which can be attributed to the patronage system underlying oil and gas extraction.

1.1 Fundamentals of Resource Endowments

1.1.1 Has the government clearly established who owns oil and gas resources?

Extant laws guiding Nigeria's oil and gas sector have domiciled ownership and control of natural resources in the hands of the central government. Specifically, section 44(3) of the Constitution of the Federal Republic of Nigeria (1999) and the Petroleum Act of 1969 vests the ownership of all onshore and offshore revenue from petroleum resources derivable therefrom in the State and for all other matters incidental thereto, by stating that the entire ownership and control of all petroleum in, under or upon any lands shall be vested in the Government of the Federation. This position is reinforced in the component parts of the Petroleum Industry Bill (PIB) currently being considered by the National Assembly (NASS). The government's ownership right is exercised by the Department of Petroleum Resources (DPR); the industry regulator through the granting of all forms of licenses and leases to exploration and production companies.

Host communities challenge the applicability of the existing laws particularly over the revenue sharing formula. The perceived neglect and failure to address the development challenges of the oil and gas producing communities by the Federal Government to address the development challenges of the host communities contributes to their distrust and restiveness. Host communities also decry the decision to include the concentration of marginal fields – statutorily reserved for local operators and to enable indigenous participation – in the hands of Nigerians of other ethnic groups. Multinational oil companies are also implicated through the complex ownership structures they use for their contracting process which makes it difficult to uncover the real actors behind transactions. A common practice in the Nigerian oil and gas sector is the farming out/in of oil fields, a situation that enables operators to avoid direct accountability to host communities. Without improved disclosure procedures, true ownership of oil and gas resources will continue to be shrouded in secrecy and clouded by conflict.

In May 2016, the Federal Government of Nigeria committed to the Open Government Partnership (OGP) agreement which requires the establishment of a beneficial ownership register for all companies operating in Nigeria, and the Nigerian Extractive Industry Transparency Initiative (NEITI) has started discussions with the Department of Petroleum Resources in pursuance of this objective. Engagement feedback from some actors in the sector reveal that there are no official mechanisms through which Nigerians are informed about the operations of the oil and gas sector apart from the limited information published on the websites of government regulatory agencies. Important documents regarding oil and gas operations are not readily available and there are no clearly defined channels through which such documents are made available to the public. More so, the existence of legislation has not necessarily resulted in benefits from oil and gas wealth for a majority of Nigerians especially for the host communities where the upstream activities take place, as reflected in the costs and benefits of oil extraction to the host communities. Oil and gas producing states have consistently asked for a higher percentage of the revenues accruing from resource extraction owing to perceived unfairness in the allocation of the oil and gas rent which they argue is disproportionately in

favour of the federal government, and this perception is fuelled by reported cases of oil and gas wealth being used to serve personal ends rather than the public good.

Information sources:

Constitution of the Federal Republic of Nigeria (1999), http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf.

Petroleum Act (1969), <http://www.placng.org/new/laws/P10.pdf>
<http://sweetcrudereports.com/2017/02/21/kachikwu-clarifies-nigerias-100bn-loss-to-militancy-in-niger-delta/>.

Nigerian National Petroleum Corporation (NNPC) Group, Energy in Brief, July/August 2016 Edition, Vol. 6

Andangor, Z (2015). The Principle of Derivation and the Search for Distributive Justice in the Niger Delta Region of Nigeria: The Journey So Far, *Journal of Law, Policy and Globalization*, Vol. 41, pp 115.

1.1.2 Does the government have a well-informed understanding of the country's oil and gas endowments?

By the establishment of the Nigerian Extractive Industries Transparency Initiative (NEITI) Act, 2007 the Nigerian government demonstrated its resolve to transform the oil and gas operating environment in the context of its broader socioeconomic reforms thereby laying the foundation for the generation and dissemination of information on oil and gas resources. The NEITI Act, in conjunction with the Freedom of Information (FOI) Act, 2011 mandates public access to the information held by government agencies. Information sources for Nigeria's oil and gas resource endowment can be generated from official reports released by the Nigerian Extractive Industry Transparency Initiative (NEITI), the Central Bank of Nigeria (CBN), the Nigerian Bureau of Statistics (NBS), the Department of Petroleum Resources (DPR) and the Nigerian National Petroleum Corporation (NNPC) and its subsidiaries. Such reports show that the government possesses relevant information on resource availability and its distribution across the country. Although, the validity of the information may be questionable considering the disclaimers usually contained in the reports. Some of the reports are obtainable from the websites of the respective Ministries, Agencies and Departments (MDAs).

The Department of Petroleum Resources (DPR), "Nigeria Oil and Gas Industry Annual Report" published in 2015 reveals that there were 393 oil blocks available for development with 185 allocated while the remainder 208 were unallocated, implying that a considerable resource potential is still untapped.

STATUS OF OIL BLOCKS AS AT 2015

S/N	Basin/Terrain	Allocated	Open	Total No. of Blocks
1	Niger Delta & Benin (Deep Offshore)	40	54	94
2	Niger Delta (Continental Shelf)	55	6	57
3	Niger Delta (Onshore)	71	5	72
4	Anambra (Inland) Basin	7	12	19
5	Benin (Inland) Basin	3	6	9
6	Chad (Inland) Basin	7	39	46
7	Benue (Inland) Basin	2	41	43
8	Sokoto (Inland) Basin	0	28	28
9	Bida (Inland) Basin	0	17	17
	Total	185	208	385

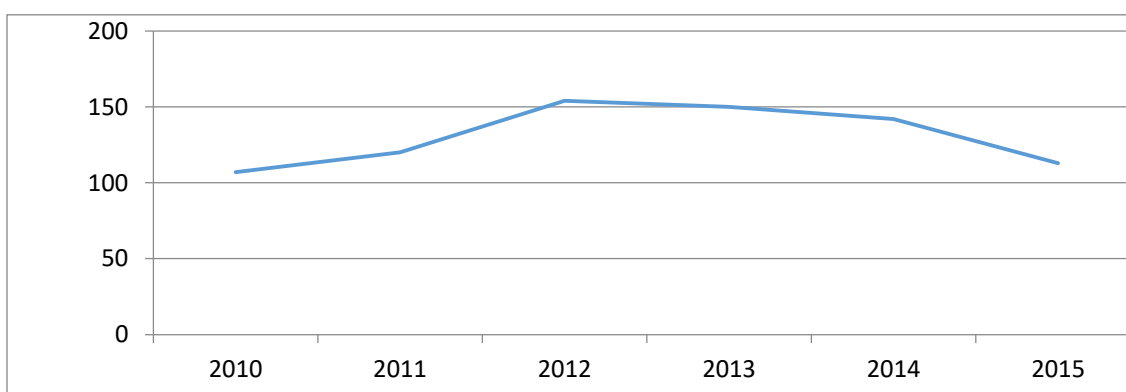
Source: Department of Petroleum Resources (DPR), 2015 Nigerian Oil and Gas Industry Annual Report

Other official information sources show that oil reserves stood at 37.4 billion barrels in 2014 and reduced to 37.1 billion barrels in 2015. Natural gas reserve was 90.094 TCF for associated gas and 97.904 TCF for non associated gas in 2014, but in 2015 the figures were 97.208 TCF for associated gas and 94.857 TCF for non associated gas. Official Nigerian Bureau of Statistics (NBS) data indicates that crude oil reserves stood at 37.5 billion barrels in 2016 while an estimate by the Nigerian Natural Petroleum Corporation (NNPC) puts the current figure at 37.2 billion barrels, and gas reserves at 197 TCF. These statistics are communicated through publicly available documents. The Government had earlier set a target to increase the country's crude oil reserve to 40 billion barrels by 2010 but the failure to achieve this over time calls into question the accuracy of government's geological surveys. A new target year, 2020, has been set by the current administration and it has demonstrated its commitment to expanding the country's crude oil reserves through recent joint venture agreements with some operators.

In June 2017, the Nigerian National Petroleum Corporation (NNPC) concluded an agreement with First Exploration and Production – an Indigenous Oil Company (IOC) and with Schlumberger for the development of the Anyala and Madu fields located 40km offshore in the Niger Delta, with the promise of additional 193 million barrels of crude oil and 800 billion cubic feet of gas into the nation's proven reserves by 2019. Similarly Exxon Mobil, a multinational oil company (MOC) announced the discovery of a potential reserve of between 500 million to 1 billion barrels of crude in October 2016. The Aje Field located at OML 113 in Lagos, and which was conceptualized in 1996 also became commercialized in May 2016. These developments

are a boost to the government’s objective of growing the reserves. They increase the potential of attaining the 40 billion barrels crude reserve targeted by the Government. Nonetheless, if the target must be achieved about 3 billion barrels of crude oil needs to be added to the nation’s reserve within the next two years requiring increased investments that will be difficult to attract in the current operating environment. Exploratory activities, backed by the NNPC, continue on the Lake Chad basin with many expressing doubts about the viability of the search considering that it has taken almost 50 years and gulped about \$3 billion without much promise of a commercial find. Results from geological surveys have been negative but government’s persistence and the failure to release official information to clarify the situation is further basis for the pessimism, leading to skepticism about the motives behind the exploration.

NUMBER OF WELLS DRILLED



Source: Department of Petroleum Resources (DPR), 2015 Nigeria Oil and Gas Industry Annual Report.

OIL AND GAS RESERVES

	Oil Reserves, MMbbls	Natural Gas Reserves (TCF)		
		Associated Gas (AG)	Non Associated Gas (NAG)	Total Gas
2010	36,532.97	92.945	89.872	182.817
2011	36,247.41	92.904	90.53	183.434
2012	37,139.10	89.729	92.529	182.258
2013	37,070.83	89.652	92.298	181.95
2014	37,448	90.094	97.904	187.998
2015	37,062.06	97.208	94.857	192.065

Source: Department of Petroleum Resources (DPR), 2015 Nigerian Oil and Gas Industry Annual Report.

The research departments at the Ministry of Petroleum Resources (MPR), the DPR and the NNPC in addition to the Petroleum Technology Development Fund (PTDF) are the principal government research bodies and through initiatives such as the annual oil and gas research grant competition and the technology knowledge sharing programme (TKSP) of the PTDF

knowledge capacity is being developed and improved upon. Information on the oil and gas sector research development budget is not publicly available which makes it difficult to evaluate the quality of the capacity building initiatives undertaken in the oil and gas sector. Many of the stakeholders interviewed raised concerns about the ability of the government to generate accurate figures because of the lack of a strong research culture within the State Oil Enterprise (SOE) and other public oil and gas agencies as government often relies on the figures reported by third parties. Research professionals interviewed decried the lack of funding for research purposes stemming from government's lackluster attitude to capacity building.

Information sources:

Nigerian National Petroleum Corporation (NNPC),
<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/811/Nigeria-Inches-Closer-to-40-billion-barrels-oil-Reserve-Target.aspx>

Federal Ministry of Petroleum Resources, National Gas Policy, 2017.

Department of Petroleum Resources (DPR) 2015 Nigerian Oil and Gas Industry Annual Report.

Central Bank of Nigeria (CBN) 2015 Annual Report.

Nigerian Bureau of Statistics (NBS) (2017), Selected Petroleum Statistics: Oil and Gas Production, Drilling and Development, 2012-2016.

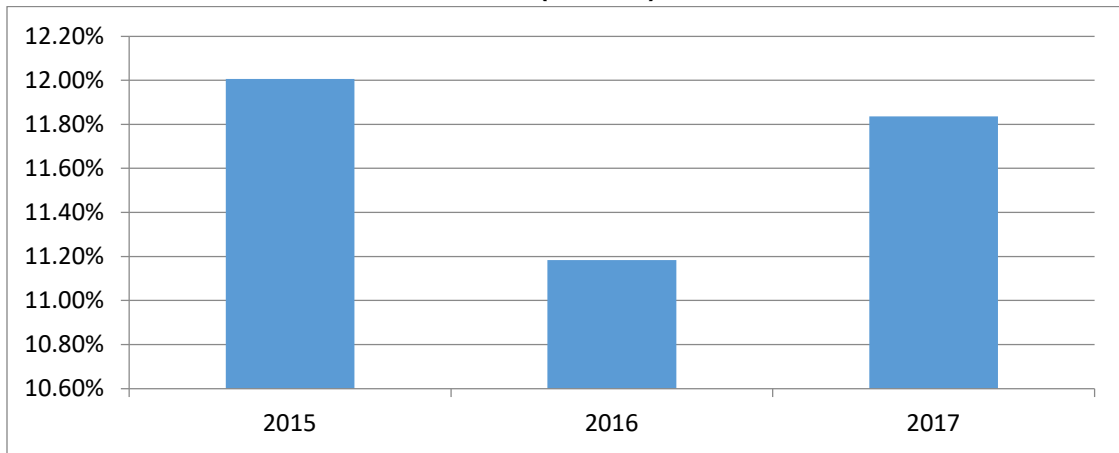
1.1.3 Does the government have a realistic and sound understanding of how dependent the country is on oil and gas resources?

Different forms of oil rents ranging from taxes, royalties, signature bonuses, revenues from Joint Ventures (JVs) and Profit Sharing Contracts (PSCs) and crude oil liftings (export earnings) are the lifeline of Nigeria's economy. Revenue from oil and gas exports provides the fund for budget allocations and imports required for Nigeria's economic progress. Officials at the Central Bank of Nigeria (CBN) and the Nigerian Bureau of Statistics (NBS) have confirmed that a process for information sharing exists between other government agencies and the Nigerian National Petroleum Corporation through which data needed for research and planning purposes can be obtained. It cannot however be said that information is proactively transmitted to other external organizations by the NNPC but upon request the required information is made available. The 2015 Central Bank of Nigeria (CBN) annual report indicates that federally-collected revenue fell by 31.3 percent between the second quarter of 2014 and 2015 largely due to the fall in oil revenue as a result of falling oil prices.

In various policy documents including the Nigerian Industrial Revolution Plan (NIRP) 2014 and the Economic Recovery and Growth Plan (ERGP) 2017 the government set some policy objectives for the oil and gas sector, the aim is to raise the economic contribution of the oil and gas sector to between \$9 billion to \$16 billion by 2020 through greenfield projects in petrochemicals, fertilizers, methanol and refining. Strategies to diversify revenue sources to

non-oil activities have failed to produce positive development outcomes. This manifested in 2014 continuing into mid-2017 when the slump in prices in the global crude market set in and accentuated the vulnerability of the Nigerian economy to fluctuations in the oil and gas sector. More so it created acute foreign exchange shortages, coupled with heightened inflationary pressure leading to macroeconomic instability. At the height of the crisis in 2016, the black market exchange rate climbed to around N400 to a dollar while the official rate jerked up to N305 to a dollar. Gross domestic product (GDP) had fallen for the second consecutive quarter officially pulling the country into a recession. Failure to take proactive steps to forestall this occurrence severely undermined the quality of information sharing between the managers of the oil and gas sector and the managers of the economy. Government’s inability to actualize the potentials of the country’s oil and gas wealth significantly undermines any claims of an appreciable understanding of the extent of resource dependence.

VAT CONTRIBUTION OF OIL AND GAS RELATED ACTIVITIES TO NON-IMPORT VAT (LOCAL)



Source: Nigeria Bureau of Statistics, Sectoral VAT Q1 2015 – Q2 2017

TOP TEN EXPORTED ITEMS

2014		2015		2016		2017 Q1	
Item	Value (in naira)	Item	Value (in naira)	Item	Value (in naira)	Item	Value (in naira)
Petroleum oils and oils obtained from bituminous minerals, crude	11,891,192,176,218	Petroleum oils and oils obtained from bituminous minerals, crude	6,809,540,283,381	Petroleum oils and oils obtained from bituminous minerals, crude	6,996,574,195,166	Petroleum oils and oils obtained from bituminous minerals, crude	2,376,696,755,994
Natural gas, liquefied	1,386,877,512,045	Natural gas, liquefied	1,058,288,192,885	Natural gas, liquefied	997,562,328,787	Natural gas, liquefied	372,441,124,530
Other Petroleum oils from Bituminous minerals containing by weight > 70% of petroleum oil	955,160,161,136	Propane, liquefied	277,439,764,601	Other petroleum gases etc in gaseous state	77,927,529,336	Other petroleum gases etc in gaseous state	30,318,085,906
Propane, liquefied	335,418,006,606	Other Light vessels, fire-floats, floating cranes, etc, nes	263,504,431,221	GOOD FERMENTED NIGERIAN COCOA BEANS - MAIN CROP 2015/2016	59,280,162,119	Other Liquefied petroleum gases and other gaseous hydrocarbons	28,564,732,743
Liquid or liquefied-gas fuels in containers, for lighters,	300,927,576,090	Partially refined oil including crude oil having undergon	142,070,076,104	Propane, liquefied	39,195,428,085	Good fermented Nigerian cocoa beans - main crop 2015/2016	28,314,844,377

NIGERIA NATURAL RESOURCE CHARTER: 2017 BENCHMARKING EXERCISE REPORT

=<300cm 3		e primary refineme nt						
Dredgers	133,993,696,863	Vessels and other floating structure s for breaking up	124,330,061,819	Other Liquefie d petroleu m gases and other gaseous hydroca rbons	32,179,021,229	Refrigerated vessels, other than those of subheading 8901.20, of a capacity > 500 tonnes	20,634,595,050	
Sacks and bags, used for packing of goos, of flexible intermedi ate bulk container	112,221,516,278	Other ships and similar vessels for the transport of goods	107,412,559,024	Cigarett es containi ng tobacco	31,080,783,737	Sesamum seeds, whether or not broken	13,034,763,235	
Other Liquefied petroleu m gases and other gaseous hydrocar bons	103,561,903,767	Helicopte rs of an unladen weight exceedin g 2000kg	71,658,722,611	Butanes , liquefied	30,646,440,335.31	Naphthalene	12,736,245,370	
Floating or submersi ble drilling or productio n platforms	90,787,558,532	Sesamu m seeds, whether or not broken	69,288,372,631	Electrica l energy (optional heading)	29,311,808,770	Other,Mediu m petroleum oils	8,534,077,920	
Sesamu m seeds, whether or not broken	87,727,605,480	Butanes, liquefied	55,221,150,409	Sesamu m seeds, whether or not broken	25,546,738,870	Electrical energy (optional heading)	8,199,565,725	

Source: Nigerian Bureau of Statistics (NBS), 2017

In the Nigerian Industrial Revolution Plan (2014); also confirmed in the Economic Recovery and Growth Plan (2017-2020), it was noted that in the period leading to the fall in crude oil prices, oil-related exports made up 90 percent of total exports, the oil and gas sector accounted for 95 percent of foreign exchange earnings, and that between 60 and 70 percent of total government revenues came from the oil and gas sector. However, it contributed only about 15 percent to the nation's GDP. Failure to diversify revenues away from oil dependence has resulted in a classic case of "resource curse" for Nigeria. As a result, the economic setback that resulted from the forex shortage arising from reduced oil revenues severely constrained the economic potentials of the country since 2014. As expressed in various policy documents, the Federal Government plans to move the country from oil and gas exports to focus primarily on manufacturing and agriculture-led economic development. This intervention is a necessity considering recent developments in the global energy landscape however the government's ability to realize this plan in the short term appears unlikely. Recent discoveries of large hydrocarbon reserves across the world (Ghana, Gabon, shale oil in the United States, and the Gulf of Mexico) have increased uncertainties for Nigeria requiring that the government implements critical action plans for Nigeria to remain competitive globally.

Information sources:

Central Bank of Nigeria (CBN) 2015, Annual Report 2015.

Nigerian National Petroleum Corporation (NNPC),
<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/811/Nigeria-Inches-Closer-to-40-billion-barrels-oil-Reserve-Target.aspx>.

Federal Ministry of Petroleum Resources, National Gas Policy, 2017

Nigerian National Petroleum Corporation (2017) Monthly Financial and Operations Report for the Month of August 2017

Nigerian Industrial Revolution Plan (2014)

Economic Recovery and Growth Plan (2017)

1.1.4 Has the government seriously considered the positive and negative impacts of exploitation in making the decision whether or not to extract?

The Department of Petroleum Resources (DPR) Environmental Guidelines and Standards for the Petroleum Industry (EGAPSIN) of 2002 is the principal document for environmental management in the oil and gas sector. In addition to this, a separate Environmental Impact Assessment (EIA) legislation, the EIA Decree 86 of 1992 mandates an Environmental Impact Assessment be carried out for upstream oil and gas projects. Other regulations such as the National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006 provide for the preparedness, detection and response to all spillages in Nigeria in accordance with the International Convention on Oil Pollution Preparedness. For this purpose there is a National Oil Spill Governing Board responsible for the formation of policies for the agency. Some of the

twenty-four environmental regulations enacted under the Nigerian Environmental Standards and Regulatory Enforcement Agency (NESREA) specifically address oil and gas related activities. In addition, the Associated Gas Re-injection Act 1979 (amended in 1985) aims to eliminate gas flaring. Oil and gas companies are by reason of these existing regulations mandated to include Environmental Impact Analysis (EIA) reports in proposed project plans to be submitted to the relevant regulatory authorities. Given the plethora of requirements; the regulatory and institutional frameworks for environmental mitigation are clearly provided for, however the implementing institutions lack the technical capacity to enforce environmental remediation standards. This in turn means that the government typically does not have the requisite information needed to guide its decision to extract or otherwise.

There is evidence that oil and gas companies undertake EIA studies as detailed in some reports found online but it is not possible to ascertain whether this is done in all cases. More so, the extent of collaboration among the responsible agencies is difficult to verify and evidence suggests that mitigation plans are often inadequately implemented. Besides the national oil spill contingency plan activated by NOSDRA in 2011, other aspects of the oil and gas sector lack well detailed strategic plans. For several years, environmental degradation associated with oil and gas sector exploration and production projects went on unabated consequently damaging livelihoods and ecosystems. If the government had adequately interrogated the effects oil exploration would have on a specific site, it would not have the level of resulting environmental degradation that has ensued since exploration activities commenced in the mid-1960s. Ogoniland in Rivers state is the classic example of a case for improved evaluation of proposed projects and the potential effects on the host communities. A significant portion of the recommendations made by the United Nations Environment Programme (UNEP) Environmental Assessment report (UNEP, 2011) has not been fully implemented. The report recommended that the environmental restoration of Ogoniland would require 25 to 30 years and an estimated 5-year restoration plan will cost approximately \$1,000,000,000 to reverse the effects on Ogoniland. As at April 2017, the government had earmarked an initial sum of \$10,000,000 for the implementation of UNEP's recommendation, and the Hydrocarbon Pollution Restoration Project (HYPREP) established by the administration of Goodluck Jonathan charged with the responsibility to oversee the implementation of the recommendations of the UNEP report.

Information sources:

United Nations Environment Programme (UNEP) 2011, Environmental Assessment of Ogoniland.

Facility for Oil Sector Transparency (FOSTER), 2013, Measurement and Implementation of Local Content in Nigeria – A Framework for Working with Stakeholders to Increase the Effectiveness of Local Content Monitoring and Development.

Federal Ministry of Environment, <http://environment.gov.ng/index.php/ogoni>.

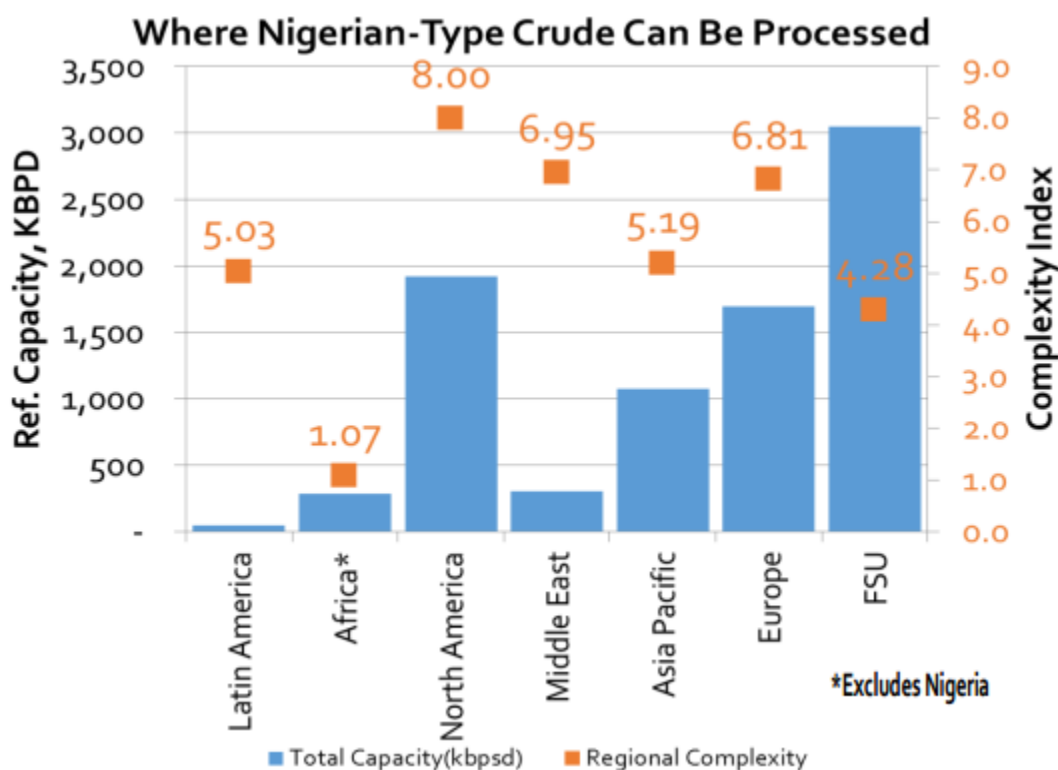
1.2 Resource Strategy

1.2.1 Does the oil and gas strategy reflect an understanding of the fundamentals of oil and gas wealth?

In various policy documents, most notably the Nigerian Economic Empowerment and Development Strategy (NEEDS), the Vision 20: 2020, and the Nigerian Industrial Revolution Plan (NIRP), the Federal Government has tried to craft a pathway for harnessing Nigeria's oil and gas wealth. With regard to oil and gas resources, the stated objective of the Vision 20:2020 policy document was "to increase crude oil production and refining capacity to stimulate local value-addition and to put the country in a position to meet its domestic demand for refined products" In addition, the government aimed "to develop the gas sector to meet domestic and industrial demand and to take advantage of global markets". However, failure to effectively coordinate the respective implementing parties and poor implementation capacity rendered these policies ineffective thereby hindering the full actualization of the government's strategic intent. The more recent Economic Recovery and Growth Plan (ERGP) is the latest addition to these policies, and from which the National Petroleum Policy and the National Gas Policy were developed. The stated objective of the ERGP is to increase the production of crude oil and gas while adding value in the downstream petroleum sector. Going by this plan, it is expected that government revenues will increase by N800 billion annually, imports of petroleum products will reduce by 60 percent by 2018, and Nigeria will become a net petroleum products exporter by 2020. The National Petroleum Policy (2017) and the National Gas Policy (2017) have been designed to achieve the policy objectives of the ERGP through the development of the downstream oil and gas value chain. Considering that Nigeria's oil and gas strategy draws from various policy documents they are not coherent, and given that policies are often linked to individual government administrations, they tend to lack a long term orientation. Successive governments have tended to implement disjointed programmes towards actualizing the national policies.

Oil and gas resources are subject to price cyclicity making it imperative that the government proactively envisages market trends and adopts measures to cushion the effect of revenue vulnerability while developing other sectors of the economy using oil and gas wealth. Nigeria's refining capacity is one of the smallest despite the country's status as one of the world's ten biggest oil and gas producers. Over the recent past, the main focus has been on the upstream arm of the sector where the extracted products are an easy guarantee for investments that have been made because the extracted crude and gas are easily exportable to earn foreign currency. This resulted from a biased system encouraged by a petroleum policy which supported rent seeking through a crude oil export for cash based business model. Of the 24 marginal oil field licenses awarded over a decade ago, only 9 are producing owing to a lack of technical expertise as well as financial incapacity of the indigenous firms that have been granted lease rights. Similarly, the previous Gas Master Plan (2008) which was targeted at developing the domestic gas market to maturity failed to achieve this objective, and the prevailing power sector issues

are largely due to the inadequate supply of gas to generating companies (GENCOS), an indication of the persistent teething problems prevalent within the gas value chain. In addition, undue concentration on the upstream sector has translated into failure to harness the potentials of the downstream sector causing Nigeria to lose out on possible revenue. Refining capacity has shrunk overtime to an abysmally low level while the petrochemicals industry is relatively non-existent. In the possible scenario of low oil prices, Nigeria is at a disadvantage owing to a significantly higher cost of production (at \$29/barrel) in comparison with other oil majors. Increased shale oil production in North America coupled with increased supply from new sources heightens the competition for market share which Nigeria’s resource strategy fails to account for. As shown in the chart below the North American market constitutes a major outlet for Nigerian crude oil which poses a significant threat for export revenues should shale production displace the demand in the North American market.



Source: National Petroleum Policy Document, 2017

Government’s current strategic intent is to position Nigeria as an attractive gas-based industrial nation while giving primary attention to meeting the local gas demand requirements of the country and developing a significant presence in international markets. Similarly, with respect to crude, the government intends to move Nigeria from a crude oil export-based economy to an attractive oil and gas-based industrial economy in appreciation of the diminishing role that crude oil will play in the emerging energy frontier.

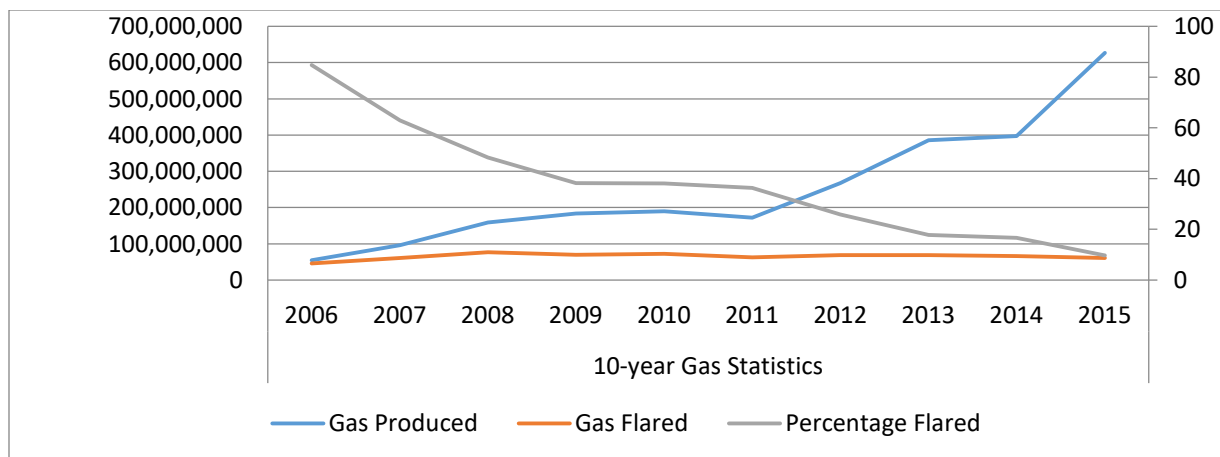
10-YEAR DOMESTIC REFINING CAPACITY

Years Refineries	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
KRPC	8.34	-	19.56	22	20.46	22.17	29.12	29.33	2.98	2.98
PHRC	50.26	24.87	17.84	15	9.17	4.66	11.95	9.18	4.66	4.66
WRPC	3.85	-	38.52	41	43.36	27.99	27.88	35.99	7.07	7.07

Source: Nigerian National Petroleum Corporation (NNPC), Annual Statistical bulletin, 2015

Fundamentally, oil and gas resources are wasting assets and need to be judiciously utilized to grow and develop the economy and not just for the purpose of generating steady cash, as has been the focus of the government in wanting to generate more revenue from the sector through taxes rather than by expanding the value chain so as to expand the income base. Nigeria’s traditional export destinations (North America and Asia) are faced with alternative supply from cheaper sources as indicated in the graph above, as well as the shift to alternative energy sources. Nigeria urgently needs to find alternative markets for its crude but most critically the domestic capacity for processing crude oil across the different levels of the value chain will need to be developed as a hedge against unfavourable global trends. Against the backdrop of low oil prices, the government is shifting attention to gas development in realization that Nigeria seems to have greater prospects with gas resources than it has with crude oil resources. At the current rate of exploitation, Nigeria’s gas reserve is projected to last for 102 years while the crude oil reserve is projected to last for about 46 years.

TEN-YEAR GAS STATISTICS



Source: Nigerian National Petroleum Corporation (NNPC), Annual Statistical Bulletin 2015

Considerable efforts have been made to monetise gas resources through various gas-to-power projects yet the full production and development of huge natural gas reserve remains constrained due to the lack of infrastructure. This is apart from the fact that the natural gas sector is affected by the same security and regulatory challenges that affect the oil sector. Gas

flaring, once a critical problem associated with the oil and gas sector, has gradually reduced due to the concerted effort made by the government through various policy instruments (including the imposition of gas flaring fine) to commercialize gas resources by deploying different technologies. In terms of capacity, Nigeria holds the eleventh largest crude oil reserve and the ninth largest gas reserve globally.

Information sources:

Federal Ministry of Budget and National Planning, Economic Recovery and Growth Plan (ERGP) 2017 - 2020

Federal Ministry of Petroleum Resources, National Gas Policy, 2017

Federal Ministry of Petroleum Resources, National Petroleum Policy 2017

Nigerian National Petroleum Corporation (2017) Annual Statistical Bulletin 2017

1.2.2 Does the oil and gas strategy take a long-term approach?

As stated in the preceding section Nigeria's oil and gas strategy derives from policies and plans contained in official documents such as the Petroleum Act of 1969, the Nigerian Gas Master Plan 2008, the Nigerian Oil and Gas Content Development Act, 2010, the National Petroleum Policy (NPP) 2017, the National Gas Policy (NGP) 2017, and the proposed Petroleum Industry Bill (PIB) (with all its component parts). These policies are however haphazardly implemented and lacking in coherence with initiatives aiming to address the fundamentals of oil and gas wealth not being properly aligned. The ERGP's stated objective is to increase crude oil production to 2.5 million barrels per day by 2020, and to use oil revenues to develop and diversify the economy, not just to drive consumption as has been the case in the past, and in accordance with the National Petroleum Policy this will be achieved through a commercially viable and significant refining sector. With the National Gas plan, the government intends to move Nigeria from a crude oil export-based economy to an attractive oil and gas-based industrial economy. Since these policies have only recently been conceived, it remains to be seen how well they are implemented. The PIB which should encompass the policies and plans is yet to be passed into law and there is no confirmation that the revisions made to the bill reflect the tenets of the policy considering that the PIB precedes the ERGP as well as the NPP and the NGP. Experts however have stated that the fiscal component of the PIB incorporates these policies to some extent.

Various measures implemented by the Federal Government indicate that proactive steps have been taken to ensure that the economy benefits from oil and gas resources over the long term. Stakeholders agree that the Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010 has produced some positive results in terms of indigenous capacity building, and the establishment of the Nigerian Content Development and Monitoring Board (NCDMB) to monitor and enforce compliance is seen as a positive development. There is evidence that the board

has recorded modest success with its training programmes and other activities geared towards the fulfillment of its mandate. Stakeholders however express their concern over the lack of updated reports on the extent to which the local content targets stipulated by the Act have been met. The level of compliance by private operators is also not in the public knowledge. Some operators in the sector lament that the Act is sometimes used as a pretext to award contracts on preferential bases without consideration for the capacity to execute.

With regards to revenue management, the Sovereign Wealth Fund (SWF) which was established in 2012 had the objective to contribute to driving the economic development through various investment strategies. As at 2016, the SWF had a total seed fund of \$1.5 billion dollars but stakeholders consider this amount to be paltry in comparison with Funds maintained by other resource rich countries. The SWF is expected to absorb the Excess Crude Account (ECA) which had a balance of \$2.309 billion as at September 2017.

Information sources:

Federal ministry of Budget and Planning, Economic Recovery and Growth Plan (2017)

Abridged Version of Vision 20:2020.

http://www.nigerianstat.gov.ng/pdfuploads/Abridged_Version_of_Nigeria%20Vision%202020.pdf

Nigerian Oil and Gas Content Development Act (2010).

<http://ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf>

1.2.3 Does the oil and gas strategy reflect consideration of the full range of issues in management of oil and gas wealth?

The Vision 20:2020 and the Economic Recovery and Growth Plan (ERGP) embody plans to integrate different sectors of the Nigerian economy and this requires coordination among different ministries, agencies and departments (MDAs) of government. Evidence suggest a lack of effective coordination among these MDAs. Failure of the government to anticipate and plan for the fall in global crude oil price that began in 2014 was a manifestation of this lack of coordination. Implementation of the Nigerian Industrial Revolution Programme (NIRP) suffered from misalignment between the Ministry of Petroleum Resources (MPR) and the Ministry of Industry Trade and Investment (MITI). A respondent at the MITI attributed the failure to achieve the policy objectives of the NIRP to this. In the same vein, coordination failure between the Ministry of Petroleum Resources and the Ministry of Environment persists. As a result, negative impacts of the sector remain a major concern in the Niger Delta threatening not only the health of local communities but also the livelihood they depend on. In other words, extreme conditions of crude oil pollution transverse the Niger Delta but are barely reported and are therefore unknown to the environment conscious world. The extent to which the Nigerian National Petroleum Corporation (NNPC) has implemented the Global Gas Flaring Reduction Partnership (GGFRP) – an initiative of the World Bank Group, leaves much to be desired as well, based on

the accusation that the oil multinationals operating in joint ventures with NNPC are under-reporting gas flare volumes in order to pay less gas flare fines. While oil companies are implementing certain measures to address the negative impacts of their operations through their corporate social responsibility activities these efforts have largely remained piecemeal and short-term in the absence of a coordinated measure implement by the government.

In 2015, the government awarded 21 licences for the construction of private refineries in order to boost the country's petrochemical processing capacity. Only Dangote refinery has started construction and is targeted to come on stream by 2019 with a planned capacity of 650,000 barrels per day. This capacity is clearly insufficient to meet the target stated in the ERGP. An industry expert believes that the Dangote refinery which ought to have been cited in the Niger Delta region for economic reasons was instead located in Lagos for security reasons due to government's inability to find lasting solutions to the militancy issues bedeviling the Niger Delta region. Interventions such as the Presidential Amnesty programme and the setting up of the Niger Delta Development Commission have not been successful in bringing about lasting peace in the region. Community engagement mechanisms are still grossly inadequate and particularly thorny in a sector where there are various layers of interest and community liaison programmes often don't get past frontline representatives who do not necessarily represent the interest of the local populations. Stakeholders believe that what is lacking is an integrated and holistic framework.

Although the Joint Operating Agreements (JOA) grants NNPC the right to assume operatorship of all aspects of all joint venture operations, NNPC has been unable to exercise this right due to its lack of technical capacity. Some respondents stated that it is not clear whether the NNPC or the National Petroleum Investment Management Services (NAPIMS) undertakes any real independent technical and economic evaluations of potential projects, or whether it relies on the operators - its joint venture partners, to provide the information it reviews. There appears to be a conflict between its role as joint venture partner on the one hand, and its position as contract manager supervisor, on the other hand. Consequently, requirements for accountability and transparency are either insufficient or not enforced to the letter. Given that project level disclosures are hardly available there is difficulty in tracking developments in the sector. More so, corruption takes place not only at the production and exports stages through secret signature bonuses and opaque financial arrangements but also through high-level and complicated investment structures at the upstream stage as well as at the downstream stage where massive resources tend to disappear through price transfers that are difficult to trace. Existing policies lack a comprehensive environmental management plan in spite of the scale of environmental challenges that the oil and gas sector faces, and the proposed Petroleum Industry Bill (PIB) which has been conceived as an all encompassing legislation does not capture environmental mitigation within its ambit.

Information sources:

Federal Ministry of Industry Trade and Investment, Nigerian Industrial Revolution Plan (NIRP) 2014

Federal Ministry of Budget and Planning, Economic Recovery and Growth Plan (ERGP) 2017

Abridged Version of Vision

20:2020. http://www.nigerianstat.gov.ng/pdfuploads/Abridged_Version_of_Nigeria%20Vision%202020.pdf

Uwem U and Enobong B A (2017) Gas Flaring in Nigeria: Problems and Prospects. *Global Journal of Politics and Law Research Vol. 5, No. 1, pp16-28*

Revenue Allocation Formula: RMAFC Adopts Draft Report.

<http://www.rmafc.gov.ng/revenue-allocation-formula-rmafc-adopts-draft-report-ready-for-submission/>.

1.2.4 Does the government engage all relevant actors in the development, implementation and oversight of the oil and gas strategy?

An absence of formal engagement mechanisms has resulted in poor relations between indigenous communities, oil and gas companies and the government. The government had no framework for engaging stakeholders in the oil and gas sector and this was not considered as a priority until the current administration's "7 Big Wins" policy objective was initiated. One of the cardinal goals pursued by the "7 Big Wins" agenda is to embrace reforms at all levels of the oil and gas sector towards effective engagement with all stakeholders. Prior measures taken include the Presidential Amnesty Programme (PAP) and community liaison efforts of oil and gas companies which lacked a collective strategic focus. A major challenge to achieving the goal of the "7 Big Wins" initiative is that the sector is deeply entrenched in a patronage system that is being protected by petro elites. And it is still unclear how the policy objectives will be pursued.

Some actors in the sector believe that the Nigerian Extractive Industry Transparency Initiative (NEITI) has achieved substantial results in driving the process of full disclosures for the purpose of making stakeholders informed and involved in the management of oil and gas wealth. The supervisory board of NEITI is made up of a National Stakeholder Working Group (NSWG) drawn from the Civil Society, the Media, Extractive Companies, and Opinion and Community Leaders, and this serves as a forum for consultation with critical actors. However, NEITI's activities are still largely limited to financial flows while other aspects of the sector such as environmental mitigation are yet to be given adequate attention.

In a general sense, there is an understanding that the government owns natural resources in trust for the benefit of Nigerians, though a large section of the Nigerian people feel disconnected from the benefits accruing from oil and gas wealth. Also, as highlighted in precept 1.1, allocation

mechanisms have been deemed unfair and this has been a source of persistent dissatisfaction among stakeholders in the oil and gas sector as the sector has suffered from poor governance over time. Oil and gas companies complain of the overbearing influence of regulatory agencies regarding the strict application of regulations without an adequate understanding of the operational factors. This, for instance, happens in cases where regulators insist on the strict enforcement of the Local Content Act even when this could compromise efficiency.

The marginalization of host communities from divestment decisions has not only been condemned, it has also been a key grievance in the struggle for resource control among people from the Niger Delta region. On account of this, conflicts have arisen in the past and there is a likelihood that this will continue. Major sources of grievance for host communities include the perceived marginalization in the allocation of oil licences, continuing environmental pollution without remediation, high poverty rate, and low socioeconomic development. It is critical that the PIB, particularly the fiscal framework, and host community components address the sources of the perceived unfairness without which the oil and gas sector will remain dogged by conflicts especially in the Niger Delta region.

In the past, Nigeria operated a regime where laws and policies were enforced without adequate engagement with stakeholders in the oil and gas sector. However, in recent times there have been increased consultations with stakeholders as demonstrated with the PIGB and the national policies. In developing the bill, the National Assembly has held various public hearings, and seeks advice from a technical committee composed of experts from the sector. The same was true of the policies with engagements made with gas experts and the Oil Producing Trade Section (OPTS) in developing the national gas and fiscal policies.

Information sources:

Nigeria – Seven Big Wins, <https://www.forbesafrica.com/brand-voice/2017/10/27/nigeria-seven-big-wins/>

Andangor Z (2015), The Principle of Derivation and the Search for Distributive Justice in the Niger Delta Region of Nigeria: The Journey So Far. *Journal of Law, Policy and Globalization*, Vol. 41, pp 115.

Shell Divestments and Local Communities Responses in the Niger Delta, <http://erafoen.org/wp-content/uploads/2016/05/SHELL-DIVESTMENT-REPORT.pdf>.

1.2.5 Does the oil and gas strategy guide the relevant legal framework?

The Petroleum Act 1969 is the fundamental legal framework governing Nigeria's oil and gas sector. Other important legal documents include; Oil Pipelines Act 1956, Nigerian Associated Gas Reinjection Act 1979, and the Minerals Oils (Safety) Regulations 1997. With the exception of the Petroleum Industry Bill which was initiated in 2008 and is still being considered in the National Assembly, the latest revision of any piece of oil and gas legislation predates the more recent strategy documents such as the Vision 20:2020 developed in 2010 and the Economic Recovery and Growth Plan (ERGP) of 2017. In comparison with these policy documents the legal framework cannot be said to have emanated from the strategy. Measures implemented to harmonise policies with the legal framework include the inauguration of a National Stakeholder Working Group (NSWG) as the governing body of the Nigerian Extractive Industry Transparency Initiative (NEITI). It serves as an engagement mechanism with the National Assembly and the regulatory agencies in the sector.

After several years of delay the government has taken active steps to hasten the passage of the Petroleum Industry Bill (PIB) into law by breaking the original Bill into component parts. Towards the end of the previous administration the House of Representatives passed the consolidated version of the PIB, in 2015. However, the Senate was unable to pass the bill necessitating that the bill considered afresh by breaking it into component parts. The first component part named the Petroleum Industry Governance Bill (PIGB) has been passed by the senate, in May 2017, while other component parts have scaled through first and second readings in the House of Representatives. The PIGB seeks to provide a comprehensive framework for the governance and regulation of the petroleum industry, and for other related matters. Among the provisions of the bill is the proposition to establish a Nigerian Petroleum Regulatory Commission as the singular regulatory agency for the sector. As stated in the National Petroleum Policy (2017), the extant petroleum regulations did not anticipate changing times and were therefore unable to engender lasting development in the sector.

Expectations are high among stakeholders in the hope that the PIB when eventually passed into law will address the regulatory inconsistencies bedeviling the petroleum sector by clarifying roles among supervising authorities, simplifying investment decision parameters, and creating an enabling environment for sustainable investments. Furthermore, the first stated policy objective of the ERGP is to accelerate the ongoing regulatory reforms through the National Petroleum Policy, the National Gas Policy, Downstream Policy, Fiscal Reform Policy and the Petroleum Industry Reform Bill, in realisation that the absence of an alignment between government's strategic intent and the existing legal framework impacts negatively on Nigeria's economy. Stakeholders in the sector believe that the continued delay in passing the PIB creates economic losses to Nigeria.

Information sources:

Petroleum Industry Governance and Institutional Framework Bill 2015,
<http://pwcnigeria.typepad.com/files/pigif-bill-2015.pdf>

Rhuks A and Eghosa OE (2016) The Civil Society and the Regulation of the Extractive Sector in Nigeria. *Journal of Sustainable Development, Law and Policy Vol 7, pp1*

1.2.6 Does the oil and gas strategy guide the relevant institutional framework?

The Federal Government's oil and gas resource policy stance is to utilize oil and gas wealth to drive the country's economic development with a focus on growing the downstream sector, and it derives from various policy documents, most recently the Economic Recovery and Growth Plan (ERGP), the National Petroleum Policy (NPP) and the National Gas Policy (NGP). The ERGP states that the strategy for achieving this is to increase oil production through:

1. Restoring production of crude oil to 2.2mbpd and reaching 2.5mbpd by 2020 to increase export earnings and Government revenues by an additional N800 billion annually
2. Revamping refineries to increase local production capacity
3. Revolutionizing gas by launching development projects and increasing production
4. Improving governance of the oil and gas sector

The institutional framework for implementing this strategy comprises the Department of Petroleum Resources (DPR) and the Nigerian National Petroleum Corporation (NNPC) (with its subsidiaries). The DPR functions as the official regulator of oil and gas operations and is charged with the responsibility of supervising the activities of all companies licensed to operate in the sector, including the Nigerian National Petroleum Corporation. DPR is also charged with the responsibility of processing all applications for licenses and leases in the oil and gas sector as well as ensuring compliance of all oil and gas operators with the applicable regulations. On the other hand, the NNPC manages the government's commercial interest in operating assets and enforces regulatory measures relating to the sector. In this regard, there appears to be an overlap of functions between DPR and NNPC which creates obstacles for private operators. Cases of delay in contract negotiations are typical as a result of the multiple lines of approval that contracting entities are subjected to. While the strategy lacks coordination and coherence at the institutional level, the institutional framework predates the ERGP implying that it is not drawn directly from the strategy. The effect is that the strategy and the institutional framework may not be in sync, one of the issues that the PIB seeks to address.

Allegations of graft and corrupt practices abound regarding the management of both DPR and NNPC consequently creating a negative perception about the institutional framework. In addition, the activities of the agencies are masked in opacity as most Nigerians do not know the terms on which oil and gas extraction takes place because contracts and licence agreements as contained in official documents are not easily accessible. Furthermore, the process through which licences and leases are granted to operators remains hazy and contentious. The lack of

clarity, transparency and public involvement in this process contributes to heightening the perception of corruption in the sector. Decisions relating to oil and gas extraction are taken in an environment lacking critical enabling factors such as rule of law, quality regulation and effective corruption controls, consequently government agencies have lacked the capacity to accomplish their given mandate.

A clear set of rules and administrative procedures are necessary to provide direction for all stakeholders in the oil and gas sector. This seems to be lacking given the duplicity of roles and functions among the regulatory agencies of government. On account of this, the Petroleum Industry Governance Bill (PIGB) seeks to create efficient and effective governing institutions with clear and separate roles. The bill provides for the creation of three separate agencies; the Nigerian Petroleum Commission (NPC), the Nigerian Petroleum Regulatory Commission (NPRC) and the Nigerian Petroleum Asset Management Company (NPAMC) so as to clearly separate the regulatory functions from the commercial functions. Conflict of interest within the State Oil Enterprise (SOE), the Nigerian National Petroleum Corporation (NNPC), in its capacity as both a regulator and an operator interferes with the efficiency of operations in the sector. A critical issue in this regard relates to the procedure for contract awards. A noteworthy example of the institutional lapses is the recent altercation between the Minister of State for Petroleum Resources and the Group Managing Director of the NNPC over the award of a \$25 billion contract in which the contention pertained to the breach of official lines for approval of contracts.

For the sustainability of the sector, the institutional framework must be capable of ensuring efficient management of financial flows, incentivizing long-term investments, redirecting the focus from rent-seeking to development and creating opportunities for domiciliation of technical capacity. Past upstream licensing rounds in Nigeria have fallen short of these objectives and failed to secure the maximum value for the country's assets. Discretionary decision-making and lack of openness reduced competitiveness and financial returns to the nation's economy. Other objectives of the PIGB aimed at addressing the foregoing issues are; to establish a framework for the creation of commercially oriented and profit driven petroleum entities that ensure value addition and internationalization of the petroleum industry, to promote transparency and accountability in the administration of petroleum resources of Nigeria, and to foster a conducive business environment for petroleum industry operations.

Information sources:

Federal Ministry of Budget and Planning, Economic Recovery and Growth Plan (ERGP) 2017

Proposed Petroleum Industry Governance Bill (PIGB) 2017,
<http://www.petroleumindustrybill.com/wp-content/uploads/2017/05/FINAL-COPY-OF-PETROLEUM-INDUSTRY-GOVERNANCE-BILL-2017-May-15.pdf>.


Kachikwu vs Baru: PENGASSAN, NUPENG vow to resist interference,
<https://www.vanguardngr.com/2017/10/kachikwu-vs-baru-pengassan-nupeng-vow-resist-interference/>














Rhuks A and Eghosa OE (2016) The Civil Society and the Regulation of the Extractive Sector in Nigeria. *Journal of Sustainable Development, Law and Policy* Vol 7, pp1

PRECEPT 2: TRANSPARENCY AND ACCOUNTABILITY



Resource governance requires decision makers to be accountable to an informed public.

<p>Overall Precept Score</p>	
<p>Precept 2: Transparency and Accountability</p> <p>The government has taken steps to improve transparency and accountability of public institutions. Instruments to track public spending are being implemented while information management systems have been deployed in government agencies with some recording significant improvements in service delivery. The government has also taken steps to implement principles of the Open Government Partnership (OGP) by launching the Nigeria open contracting portal. However, public institutions in the oil and gas industry are yet to prioritize proactive disclosure of information and in many cases publicly available information are limited, outdated and yet to meet internationally accepted standards. More so, oversight functions by requisite institutions are yet ineffective yielding sub-optimal outcomes while accountability mechanisms expected to serve as a deterrent against fraud are not strictly enforced. Cases of corruption are still rampant in the petroleum sector and investigations have not resulted in any convictions.</p>	

Overview of the Questions and Ratings	
2.1 TRANSPARENCY	
2.1.1 Does the government ensure that the full legal framework governing resource management is available to the public?	
2.1.2 Has the government established rules that enable access to information on resource management?	
2.1.3 Do government agencies have effective information management systems that support access to information?	
2.1.4 Does the government publish data according to open data standards?	
2.1.5 Does the government ensure that data is released on a comprehensive set of resource governance and management issues?	
2.2 OFFICIAL OVERSIGHT	
2.2.1 Does the legislature hold public officials to account on issues relating to resource governance?	
2.2.2 Does a supreme audit institution oversee the government's management of financial flows relating to the extractive sector, and does the government respond to its findings?	
2.2.3 Does the government take effective measures to deter, detect and prosecute corruption?	
2.3 COMMUNICATION AND PUBLIC OVERSIGHT	
2.3.1 Does the government implement a communications strategy to ensure that the public has realistic expectations of the future benefits and costs of extraction?	
2.3.2 Does the government ensure that civic and political freedoms are consistently upheld?	
2.3.3 Do the media and civil society groups effectively improve public accountability in natural resource management?	
2.3.4 Do research institutions carry out independent and high-quality research on resource governance?	
2.3.5 Do professional associations and unions actively promote and enforce professional standards of conduct and engagement among their members who are engaged in extractive industries?	

Summary of Key Findings

Transparency

- Acts, policies, regulations and guidelines governing the oil and gas sector are made available to the public through websites by the requisite agencies. However details of oil mining contracts are not made available to the public.
- Public institutions have deployed Information and communication technology systems to promote effectiveness of public sector organisations and improve services delivered to members of the public. However, only the Central Bank of Nigeria (CBN) and National Bureau of Statistics (NBS) have adopted strategies for making data available through dedicated websites in formats that comply with open data standards and enable analysis. Other public institutions, including those in the oil and gas sector are yet to do the same. Furthermore, close examination of publicly available data shows missing entries indicative of weak linkages with data sources.
- Regulatory provisions such as the Freedom of Information (FOI) Act encourage proactive disclosure of information to the public, however, implementation issues exist. Presently, it aids parties who actively seek information rather than enforce mandatory disclosure.
- Asset disclosure and beneficiary ownership information are still not available for effective scrutiny within the oil and gas sector.

Official Oversight

- Oversight functions by the National Assembly appear to be reactionary and ineffective in some cases. Although investigation committees are set up to investigate irregularities in the sector, no sanctions with far reaching implications have been recorded where inconsistencies were found.
- The functions of the office of the auditor general are impeded by poor interagency communication and collaboration as well as internal capacity challenges. This is further exacerbated by the failure of public institutions to comply with statutory audit requirements largely permitted by the lack of effective sanctions against erring officers and institutions.

- In December 2016, the government implemented the Whistle blowers policy as a measure to tackle corruption in the Country. This resulted in the recovery of approximately NGN527.6 million, US\$53.2 million, GBP21.2 million and €547,000 between December 2016 and October 2017. However, beneficiary ownership and asset declaration information are not available for scrutiny while accountability mechanisms in the public sector organizations remain weak

Communication and Public Oversight

- A communication strategy designed to ensure that the public has realistic expectations regarding the future benefits and the cost of extraction of oil and gas resources is yet to be implemented. Current programmes by the Ministry of petroleum resources are expected to translate to a communication policy which may not take effect until 2019.
- The Constitution of the Federal Republic of Nigeria upholds the freedom of speech and association and the right to peaceful assembly. Freedom of expression is also protected by Article 19 of the United Nations Universal declaration of human rights. In addition, the country has a relatively very free internet policy with no blockages of social media/ICT apps or political / social contents. There is evidence that supports engagement by government institutions in the Oil and gas sector with media and civil society although there is scope for improvement. Observers have described civic and political freedoms in the country as deteriorating due to recent harassments of journalists and activists by state actors. Although no cases of such harassments were recorded in the petroleum sector, these developments are disturbing violations of fundamental rights which are essential for democracy to thrive in any society.
- Oil and gas companies and international donors provide the greater portion of funding support to local research institutions on subjects ranging from socio economic issues to technology. However, capacity challenges exist especially for academic institutions due to poor administration of the education sector and limited access to government funding.
- Professional bodies and Unions in Nigeria's Oil and gas sector promote ethical and responsible practices among their members and hold them to required standards. Code of ethics includes rules against conflict of interests and bribery as well as punitive measures against erring members. There is however sparse evidence of instances where sanctions have been deployed with respect to erring members or companies working in the oil and gas sector.

2.1 Transparency

2.1.1 Does the government ensure that the full legal framework governing resource management is available to the public?

Respective agencies of government have published on websites; Acts, Polices, Regulations and guidelines pertaining to their area of operation. Following the approval of The National Gas Policy and National Petroleum Policy by the Federal Executive Council in June and July 2017, the Ministry of Petroleum Resources published these documents on a dedicated website created for the dissemination of information on government's short and medium term priorities for the oil and gas industry.

The Petroleum Industry Governance Bill, designed to enable key reforms of the industry was passed by the Senate in May, 2017 and although it awaits a third reading at the House of Representatives it is expected to be passed into law shortly. Other changes to legislation to strengthen sustainable management of oil and gas resources are encompassed in the Petroleum Industry Administration Bill, the Petroleum Industry Fiscal responsibility Bill and the Petroleum Industry Host Community Bill; all of which are on the verge of being passed into law. Of concern however is a potential delay to the process.

There is room for improving mechanisms for disseminating information on the pending laws and facilitating public understanding of content and implications of policies for participatory monitoring and increased accountability of sector stakeholders. A perception survey conducted by the Centre for Public Policy Alternatives (CPPA); to ascertain the level of awareness of the Nigerian petroleum Industry by citizens, revealed low levels of understanding and that 80% of the respondents believed that the government sector related content disseminated are communicated in ways that are difficult to understand. Documents and other information materials available do not reflect Nigeria's diverse population and its differing levels of literacy. At present, publicly available information can be understood only by people with technical knowledge on the subject matter.

Experts suggest that the government adopt strategies similar to those deployed for promoting elections and extra effort made to sensitize even the uneducated.

There is insufficient evidence to show steps taken by relevant government agencies to establish mechanisms for translating the legal framework into practice. For example, there are no regulations that mandate the public disclosure of details of oil and gas contracts between the federal government and operating companies. Contract listings made available on the website of the Bureau of Public Procurement (BPP) on the oil and gas sector are limited to maintenance and construction works and the DPR's latest Oil and Gas Industry Annual Report (OGIAR) 2015 only provides a list of contracts and licensees. This is not in full compliance with the principles of the Open Contracting Data Standards (OCDS) adopted in May 2016 at the London anti-corruption summit. The open contracting global principles promotes the disclosure of documents

and information related to public contracting in a manner that enables meaningful understanding, effective monitoring, efficient performance and accountability for outcomes. Nigeria committed to apply the OCDS to refinery development to implement principles of open government partnership and open data charter. Implementation has been limited to the launch in 2017 of Nigeria's Open Contracting Portal (NOCOPO), which replicates listings on the BPP's website. As at October 2017, the NOCOPO platform was yet to provide information on Oil mining contracts in Nigeria. At present, details of oil and gas sector contracts can be found only on external platforms like extractiveshub.org¹, and repository.openoil.net. In 2011, the federal government through the Nigeria Petroleum Development Company (NPDC) signed a contract (OML 30, PSA) with Atlantic Energy Drilling concepts with a Petroleum Profit Tax (PPT) rate of 65.7%. The coordinates of the contract area were not made available.

Industry experts² and observers agree that the Petroleum Industry Governance Bill (PIGB) remains the only indication of Nigeria's transition to a transparent and accountable system of oil and gas sector governance, however there is still a risk of political interference.

Information sources:

Department of Petroleum Resources, Oil and Gas Industry Annual Report (OGIAR) 2015

Bureau of Public Procurement, Open Contracting and e-procurement implementation

<http://repository.openoil.net/wiki/Nigeria>

<http://www.nigerianstat.gov.ng/pdfuploads/National%20Literacy%20Survey,%202010.pdf>

<https://beta.extractiveshub.org/profile/list#countryData>

<https://www.vanguardngr.com/2017/02/corruption-open-contracting-process-commence-march-fg/>

http://www.bpp.gov.ng/index.php?option=com_joomdoc&view=documents&path=Federal%20Executive%20Council%20Approved%20Contracts&Itemid=662

<http://nocopo.bpp.gov.ng/>

2.1.2 Has the government established rules that enable access to information on resource management?

The Freedom of Information (FOI) Act 2011 requires public institutions to make available public records, in print and machine-readable formats, to the public. The Act also stipulates a penalty of NGN 500,000 for non-compliance. Although there has been no known conviction to date, it is widely acknowledged that public institutions do not fully comply with provisions of the law and in

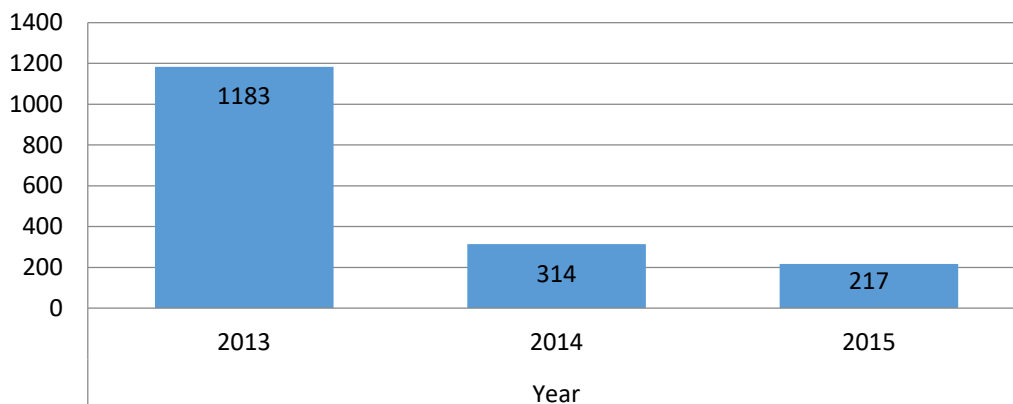
¹extractiveshub.org is a web based platform dedicated to ensuring access to quality and trustworthy information on the extractive sector in many countries across the globe.

practice may even limit its effectiveness. Reporting on the implementation of the Act in 2015³ the Attorney General of the Federation highlighted the following impediments to include:

- Bottlenecks and delays longer than the stipulated 7 days in responding to requests for information
- Senior management in some public institutions failing to cooperate with implementation due to suspicion of the provision of the Act
- High level ignorance and general apathy of officers responsible for operating the Act,

Of only 44 compliance reports submitted by public institutions for the year 2015, 29 processed requests for information. The Ministries of Petroleum Resources and Environment were not included in the report making it difficult to determine whether they had received or processed requests for information in 2015. The Attorney General reported decreasing usage of the provisions of the Act by the public with requests for information dropping from 1,183 requests in 2013 to 217 requests in 2015. This was not attributed to better information management for public access by government institutions nor were there any indications of sanctions raised against agencies and their staff for noncompliance with the provisions of the Act.

**Number of FOI Request received Fiscal year
2013 - 2015**



Source: CPPA, Ministry of Justice

As noted in the 2014 BER, information disclosure requirements which included the FOI Act, Code of Conduct Practice and the NEITI Act are conventional rather than regulatory and government enforcement and regulatory mechanisms remain weak. The FOI Act is triggered only after parties seeking information have been denied access. Despite provisions for mandatory disclosure of information in the interest of the public most government agencies treat these as voluntary, since for reasons of security and confidentiality the Act⁴ also provides that public institutions may deny application for information unless it can be demonstrated that public

³“2015 Annual report on the implementation of the Freedom of Information Act 2011”

⁴Sections 11, 12 14, 15, 16, 17 and 19 of the Freedom of Information Act

interest outweighs injury caused by the release of information that may be considered confidential or a threat to security.

Expectedly, denial of requests results in litigation between the requesting party and the government agency. According to Legal Defense and Assistance project (LEDAP), since the FOI Act came into force in 2011, the NGO has made over 152 requests for information. 46 of those requests are in various courts and 3 of them are presently on appellate courts.

Information sources:

Freedom of Information Act 2011

Federal Ministry of Justice, 2015 Annual report on the implementation of the Freedom of Information Act 2011

<http://ledapnigeria.org/ledap-casework-to-implement-foi-act/>

2.1.3 Do government agencies have effective information management systems that support access to information?

Evidence of effective management of information often lies in the deployment and use of Information and Communication Technology (ICT) to facilitate e-government procedures which according to the University of Manchester⁵ comprises three main categories which include improving government processes, connecting citizens and building external relations. The main goal of utilising ICT is to promote effectiveness of public sector organisation by improving interagency communication and collaboration which helps to improve the services delivered to members of the public while reducing the cost of governance. It also makes it easier to provide citizens with accurate and timely information about public sector activities.

The National e-Government Strategies (NeGST) established by National Information Technology Development Agency (NITDA) in March 2004, resulted in the National e-Government framework, the first tier of which led to the design and development of a secure e-Government portal for all government services. Successful deployment of this policy reflected in the United Nation's 2014 E-Government Development Index (EGDI) as Nigeria skipped 21 ranks from 162 in 2012 to 141 of 193 nations surveyed in 2014. The Extractive Industry Transparency Initiative (EITI) recommendations also suggest that Nigeria made significant strides in information management.

In the 2016 UN e-Governance Survey, Nigeria recorded an improved overall EGDI score of 0.3291 from 2014's 0.2929 which might be attributed to recent initiatives such as the Bureau of Public Enterprise's NOCOPO⁶ the Department of Petroleum Resources' ELPS⁷ and the Central

⁵"e-government for development information exchange"

⁶**NOCOPO**: Nigeria Open Contracting Portal

⁷**ELPS**: Electronic Licensing and Permit System

Bank of Nigeria's GIMFIS⁸ however, with a rank of 143 (globally) and 21 (regionally), the country still performs poorly when compared with other African countries like Morocco, South Africa, Gabon, Ghana, and Zimbabwe. Improved online presence has not translated to improved quality of information and there are challenges with efficiency of information management systems and technical and human capacity for maintenance.

Expert opinion suggests that capacity challenges limit the effectiveness of public institutions involved in the Oil and gas sector. Regulatory agencies continue to depend on oil and gas companies for collection and management of data. Apart from challenges with logistics, recruitment of staff is centrally conducted by the Federal Civil Service Commission and regulatory agencies are seldom able to independently maintain appropriate or adequate staffing for technical operations.

Information sources:

Department for Economic and Social Affairs, United Nations E-Government Survey 2016

<http://www.egov4dev.org/success/definitions.shtml>

2.1.4 Does the government publish data according to open data standards?

In line with requirements of the 2016 EITI standard, Nigerian Extractive Industry Transparency Initiative (NEITI) developed its open data policy with a set of guidelines for making all data contained in annual reports including third party data publicly available in XLS or CSV formats on a regular basis.

Although CBN and NBS have adopted strategies for implementing open data standards and make data available through dedicated websites in formats that comply with international standards and enable analysis, other public institutions have yet to do the same and none from the oil and gas sector. The Public and Private Development Centre (PPDC), a non-governmental organization started conducting a ranking for FOI compliance in 2016. Indices adopted for conducting the FOI ranking include pro-active disclosure, responsiveness to request for information and level of disclosure. In the 2017 edition of the exercise, majority of the public institutions in the oil and gas sector ranked in the bottom half scoring zero points in all three indices used for the assessment.

Information sources:

<https://eiti.org/sites/default/files/documents/neiti-odp-221216.pdf>

<http://procurementmonitor.org/foi-ranking/home/ranking>

⁸**GIMFIS:** Government Integrated Management and Financial Information System. Famously known as the Treasury Single Account (TSA)

2.1.5 Does the government ensure that data is released on a comprehensive set of resource governance and management issues?

The Nigerian National Petroleum Corporation (NNPC), the Central Bank of Nigeria (CBN) and the National Bureau of Statistics (NBS) publish periodic information on oil & gas reserves, production volumes, value of oil exports and revenue generation. Table 2.1.5 below summarises available oil and gas data through respective websites and the schedule for their release.

Production costs, investment in exploration and development, quasi-fiscal activities and disaggregated oil revenue streams remain unpublished by the National Oil Company or any government agency.

NNPC is required to report on exploration and production activities and to publish an Annual Statistical Bulletin (ASB) and a Monthly Petroleum Information (MPI) available through its website. The latest MPI available through its website was for May 2016 while the ASB for 2016 had not yet been published at the time of this report. Informal engagements with the DPR reveal that production data is regularly gathered and analysed but little emphasis is placed on proactive disclosure. By comparison the Norwegian Petroleum Directorate (NPD) releases production figures on a monthly basis and in PowerPoint, PDF, XLS and MHTML (Microsoft) formats and contains time series data from January 2016 till September, 2017.

Table 2.1.5: Oil and gas data availability and schedule

S/N	Data	Update	Frequency	Date of last update	Agency
1	Oil and Gas Reserves	37.2 billion barrels	Not available	June, 2017	NNPC
2	Production volume	1.64 mbd	Monthly	May	CBN
3	Value of exports	1.18 mbd	Monthly	May	CBN
4	Revenue	₦ 5.825 billion	Monthly	May	NBS
5	PMS	₦ 142 to ₦ 149.7 per litre	Monthly	September	NBS
6	Bonny Light Crude	\$51.20/barrel	Monthly	May	CBN
7	AGO	₦ 183.33 to ₦ 228.57 per litre	Monthly	July	NBS
8	HHK	₦ 181.59 to ₦ 285 per litre	Monthly	August	NBS

Close examination of data published by NBS showed missing entries indicative of weak linkages with data sources.

Industry stakeholders indicate a daily loss (to theft) of crude estimated at 400,000 barrels. As noted in the 2014 BER there are inconsistencies between data generated by operating companies and data generated by DPR metering systems at export terminals. According to the regulator these inconsistencies are largely the result of the activities of pipeline vandals between sending and receiving terminals. To address the intractable problem with quality and accuracy of oil production data, the Weights and Measurement bill was proposed for enactment in 2004. It was however only signed into law in 2014 by President Goodluck Jonathan after more than 10 years of agitation by stakeholders. The Act mandates installation of computerized metering systems at dedicated terminals, as a means of strengthening the accuracy of oil production data and to reduce theft. While it was reported by the press that implementation was stopped abruptly after the first quarter of 2015, informal engagements with DPR suggest that compliance continues to be enforced in addition to regular calibration of measuring instruments and daily collection of production data.

Information sources:

<https://www.cbn.gov.ng/documents/monthlycoreports.asp>

<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/811/Nigeria-Inches-Closer-to-40-billion-barrels-oil-Reserve-Target.aspx>

<http://www.nnpcgroup.com/nnpcbuisness/upstreamventures/oilproduction.aspx>

<http://nnpcgroup.com/PublicRelations/OilandGasStatistics/AnnualStatisticsBulletin/MonthlyPerformance.aspx>

<http://nigerianstat.gov.ng/elibrary>

<http://www.npd.no/en/news/Production-figures/2017/September-2017/>

<https://www.vanguardngr.com/2017/05/nigeria-lost-n2-trillion-poor-metering-oil-wells-two-years/>

2.2 Official Oversight

2.2.1 Does the legislature hold public officials to account on issues relating to resource governance?

Powers for legislative oversight are provided for in the 1999 constitution of the Federal Republic of Nigeria under sections 88, 89, 128 and 129 and include the conduct of investigations into governance issues through its committees and the monitoring of Ministries, Departments and Agencies (MDAs). Oversight of the Petroleum Sector is carried out by the Committees on Petroleum (upstream) and Petroleum (downstream) in both the upper and lower houses of the National Assembly.

Oversight functions of the national assembly are impeded by a dearth of information and non-availability of key documents such as details of oil and gas contracts, audit reports, asset disclosure information of government officials and beneficial ownership information. For instance, annual audit reports (including audited accounts) statutorily required to be submitted to the National Assembly within 90 days of the receipt of statements from the Accountant General have not yet been received for the year ended December 31st, 2016. Reports for the year ended 31st December, 2015 was received only on 31st May, 2017, more than a year behind schedule.

Inefficiencies within the National Assembly compound the problems and even when annual reports are received, they are seldom listed for plenary discussion nor recommendations transmitted to the executive arm of government for implementation⁹. In addition, investigations and sanctions by the National Assembly with regards to the petroleum industry appears to be weak. No punitive measures with far-reaching implications have been recorded. Two examples include the cases of illegal fuel subsidy claims and unremitted funds by the NNPC. A 2012 House committee investigating an oil subsidy scandal revealed that millions of dollars had been lost to illegal subsidy claims. The report of the committee which indicted key public and private individuals as well as oil and gas companies in the illegal scheme resulted in litigation which five years later has not reached judgement and no sanctions were applied. A forensic audit ordered by the Senate following allegations of unremitted funds made in 2013 by the CBN Governor resulted in a refund of \$1.48 billion by NNPC to the federation accounts. That this was a lot less than the \$20 billion alleged as missing did not erase wrong doing yet there were no sanctions applied to the Corporation or any of its officers.

Report from the 2012 investigation may have provided evidence for the removal of the fuel subsidy program which was previously resisted by various stakeholders across the country. The Senate also responded to recent allegations made against the Group Managing Director (GMD) of the NNPC Mr. Maikanti Baru about award of contracts without adhering to the principles of

⁹Former auditor General of the Federation, annual reports sent to the National Assembly during his tenure (2010 to 2016) did not make it to plenary, let alone the Executive arm of government for implementation

due process by setting up an ad-hoc committee with the objective of investigating corrupt practices in the NNPC.

Information sources:

1999 Constitution of the Federal Republic of Nigeria

Annual Report of the Auditor General for the federation on the accounts of the federation of Nigeria for the year ended 31st December, 2015 Part 2, office of the Auditor general of the federation.

Code of Conduct Bureau, public officer's handbook

<http://www.aneej.org/fuel-subsidy-malpractice-report/>

<http://nigerianrc.org/sites/default/files/NNRC%20Highlighting%20the%20Facts%20of%20Fuel%20Subsidy%20in%20Nigeria.pdf>

<http://www.nassnig.org/news/item/558>

<http://punchng.com/beyond-the-autonomy-of-auditor-generals-office/> accessed by 11:03am, 15/10/2017

2.2.2 Does a supreme audit institution oversee the government's management of financial flows relating to the extractive sector, and does the government respond to its findings?

The 1999 constitution of the Federal republic of Nigeria establishes the office of the Auditor General to conduct and oversee audits on accounts of the federation and all government parastatals. To maintain freedom from external influence, the Auditor-General's office is funded by budget appropriation from the National Assembly and appointment and removal requires confirmation by the Senate.

There are statutory requirements for submission of audit reports to the Public Accounts Committee (PAC) of the National Assembly within 90 days of the receipt of statements from the Accountant General. However, at the end of October 2017 audited accounts for the year ended December 31st, 2016 had not been submitted to the National Assembly and reports for 2015 were submitted only in May 2017. Administrative lapses reportedly¹⁰ prevented timely preparation and submission of reports. One of these was failure of the Office of the Accountant General and some MDAs to respond to queries and observations. Notably, only 26 public institutions had submitted audited financial statements by 31st of December 2015. These factors contributed to delayed submission of a final audit report that supposedly complied with requirements of the International Public Sector Accounting Standard (IPSAS) on 31st May, 2017, more than a year behind schedule. It incorporated reports on only 87 agencies of governments and had a lot of inconsistencies around remittances made by the NNPC.

¹⁰Annual Report of the Auditor General for the federation on the accounts of the federation of Nigeria for the year ended 31st December, 2015 Part 2

Information sources:

1999 Constitution of the Federal Republic of Nigeria

Office of the Auditor general of the federation, Annual Report of the Auditor General for the federation on the accounts of the federation of Nigeria for the year ended 31st December, 2015 Part 2

<https://www.iasplus.com/en/jurisdictions/africa/nigeria>

<https://www.oaugf.ng/about-oaugf/about-us>

2.2.3 Does the government take effective measures to deter, detect and prosecute corruption?

Nigeria's existing framework for the oil and gas sector allows for loopholes that expose the sector to exploitation. Licensing rounds are not open to public scrutiny and regulatory provisions aimed at promoting accountability among public sector organisations and officials such as rules covering conflict of interest, conduct of public sector officials, money laundering etc. are yet to be strictly enforced. There is also scant evidence of an effective framework for process audit, while financial audits are marred with multiple inconsistencies accompanied by ineffective sanctions. These loopholes create room for mismanagement of oil revenue at unprecedented levels which was reflected in Transparency International's Corruption Perception Index (CPI) 2016 that ranked Nigeria poorly at 136 of 176 countries, with a score of 28%.

The Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) were created specifically to tackle corruption in Nigeria. For instance, in the last two years, sums of alleged ill-gotten monies and assets worth several millions of dollars were traced to top officials in the NNPC and the Ministry of Petroleum Resources. Of concern is the fact that illegal flows of funds were not detected by accountability and oversight mechanisms embedded in institutions such as the Code of Conduct Bureau, Bureau of Public Procurement, the Office of the Auditor General of the Federation and the National Assembly. Ongoing investigations and legal proceedings have led to only the seizure or forfeiture of some of these assets without any convictions.

In December 2016, the Federal government of Nigeria implemented the whistle blowers policy as part of efforts to combat corruption. Results so far include the recovery of stolen funds which otherwise may not have been discovered. According to the Chairman of the EFCC, the policy which entitles whistle blowers to between 2.5% to 5% of recovered funds as compensation led to the recovery of approximately NGN527.6 million, US\$53.2 million, GBP21.2 million and €547,000 between December 2016 and October 2017.

Arguably, the recovery of these funds could be regarded as progress made in combating corruption, but unless fundamental defects such as opaque accountability and enforcement mechanisms exploited by public officials are addressed, the fight against corruption in Nigeria

may be far from successful. Asset declaration and beneficial ownership information are still shrouded in secrecy. NEITI, in 2016, through a multi-stakeholder workshop developed a roadmap for the implementation of beneficial ownership disclosure in Nigeria. The proposed measures, if successful, would not take effect until the year 2020.

Experts suggest that strict adherence to accountability mechanisms is required to address corruption; especially since accomplished private sector professionals have commendably been appointed to public service with the aim of improving the efficiency of the public sector organisations.

Information sources:

Transparency International, Corruption Perception Index 2016

Code of Conduct Bureau, Public Officers handbook

<https://efccnigeria.org/efcc/news/2311-how-efcc-recovered-9-8million-from-yakubu-ex-nnpc-gmd>

<https://efccnigeria.org/efcc/news/2706-diezani-alison-madueke-what-an-appetite>

<http://dailypost.ng/2017/10/13/magu-reveals-much-efcc-recovered-whistle-blowers/>

2.3 Communication and Public Oversight

2.3.1 Does the government implement a communications strategy to ensure that the public has realistic expectations of the future benefits and costs of extraction?

Government is yet to develop a well defined communication strategy with regard to the sustainable management of oil and gas resources. Recently approved economic growth plans and petroleum policies emphasize the need for the reduction of Nigeria's dependence on crude oil sales and reposition the country as a competitive player in the international energy market. The "7 big wins"; the Ministry of Petroleum's short and medium term priorities to grow Nigeria's Oil and gas sector encompasses the government's attempt to articulate a communication plan. It includes proposed activities aimed at developing a communication strategy to engage with stakeholders at various levels within and outside the country. Implementation would take effect when the Ministry's communication policy is fully developed. According to the timeline of activities for the 7 big wins, this is not likely to commence before 2019.

Poor communication in the sector has resulted in agitations, especially in oil producing regions, which on occasion disrupt oil production. For example, ownership of natural resources is vested with the Federal government of Nigeria and therefore revenue accrued to the nation is remitted through federal government channels. Oil exploration and production firms remit their financial obligations to the federal government in addition to implementing corporate social responsibility (CSR) projects that specifically cater to host community issues; however, members of these communities who do not completely agree with the framework for distribution of benefits, frequently stage protests demanding more benefits such as jobs, education, infrastructure and other social amenities. In extreme cases, oil installations are violently destroyed.

With respect to security, available evidence suggests that the Nigerian military have commenced implementation of a communication strategy targeted at improving relations with residents in communities where they operate. The National Strategy for Strategic Communication (NSSC) aims at tackling the ideology of terrorism and militancy across the country including Nigeria's Oil rich Niger Delta region. "Operation Crocodile Smile", the code name for the country's ongoing military operation in the region appears to reflect this approach with regular press briefings, disbursement of medical supplies and educational materials and provision of other social support services.

Information sources:

Ministry of Petroleum Resources, 7 big Wins

<https://www.vanguardngr.com/2015/10/fg-to-unveil-national-strategy-for-strategic-communications-approach/>

<https://www.vanguardngr.com/2017/10/bayelsa-govt-endorse-operation-crocodile-smile-ii-army-free-medical-service/>

2.3.2 Does the government ensure that civic and political freedoms are consistently upheld?

The Constitution of the Federal Republic of Nigeria upholds the freedom of speech and association and the right to peaceful assembly. The freedom of expression is also protected by article 19 of the United Nations Universal declaration of human rights. Freedom House's Freedom on the Net (FOTN) 2017 report¹¹ describes Nigeria's internet freedom as 'partly free'. There has been no blockage of social media/ICT apps or political / social contents. However; civic and political freedoms in the country in general terms appear to be deteriorating due to activities of state actors. Since the enactment of the Cybercrime Act 2015, there has been an increase in the harassment of Journalists, bloggers and internet users for comments made on social media platforms. Notably, recorded cases were not related to oil and gas activities.

Furthermore, attempted but unsuccessful legislation sought to regulate the use of social media. Internet platforms have been effective tools for rallying activists across the country; therefore it is not unexpected that the Social media regulatory bill was largely viewed as an instrument designed to restrict freedom of speech and expression.

In addition, extra judicial killings, forced evictions and other human rights violations were also recorded in various parts of the country. Notably, none were directly related to the oil and gas sector; however, these are worrying signs of violations of basic rights which are essential for democracy to thrive in any society.

While political and violent repression of anti-oil protest was very common under military rule, there is scant evidence suggesting that this has continued in recent years, although multiple protests by various parties including unions and activists were recorded. In 2016 and 2017, smooth operations were disrupted at facilities belonging to major IOCs in the country by protesting workers and members of host communities. Available reports suggest that the demonstrations ended without any violence. Oil and gas unions have also been known to go on strike on occasion in protest of perceived government policies.

Also, increased military presence has been observed in parts of the country, especially in the Niger Delta. Although their activities are aimed at curbing prevailing security challenges particularly militancy, armed robbery, kidnapping and smuggling of the country's oil resources, it has been argued that the presence of military personnel has psychological effects which could have adverse effects on expression.

¹¹ Freedom of the Net, 2017

Information sources:

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<https://www.amnesty.org/en/latest/news/2016/09/nigeria-crackdown-and-shrinking-civic-space/>

<https://techpoint.ng/2017/07/25/social-media-regulation-nigeria/>

<https://www.vanguardngr.com/2017/10/insecurity-army-launches-operation-crocodile-smile-south-swest-wednesday/>

2.3.3 Do the media and civil society groups effectively improve public accountability in natural resource management?

Governments around the world have constitutional provisions that recognize the importance of a free press and provide opportunities for media and civil society to engage on issues that may be of concern without hindering efforts. Amnesty International however describes these provisions as ‘lip service’, judging from the fact that in many countries the reality is far from free. Nigeria’s case is especially unique in this regard. Engagement by government institutions in the oil and gas sector with both stakeholders has increased although not at optimal levels. But the contrary is also true in general terms (recorded cases were not oil related). Nigerian Journalists, bloggers and activists in recent months faced increased intimidation from security forces and law enforcement agents. In some cases the victims were arrested and detained for extended periods without trial or knowledge of their whereabouts. Consequently, in its 2017 State of Civil Society report, CIVICUS stated that although civil society and media were active in demanding improved governance and accountability from the government, civic freedoms had deteriorated.

Evidence also suggests that some State actors may be uncomfortable with the latitude allowed civil society actors. A new piece of legislation known as “NGO regulatory commission bill” currently under consideration at the National Assembly raises concern for civil society groups in the country. If passed, the bill will grant the government additional powers to control NGO liberties including access to donor funding.

Information sources:

A bill for an Act to provide for the establishment of the non-governmental organizations regulatory commission for the supervision, co-ordination and monitoring of non-governmental organizations, civil society organizations, etc in Nigeria and for related matters 2017

<http://www.civicus.org/index.php/state-of-civil-society-report-2017>

2.3.4 Do research institutions carry out independent and high-quality research on resource governance?

Research by local institutions covers a broad spectrum of subjects ranging from socio economic issues to production technology. Capacity challenges however exist, especially for academic institutions due to inadequate funding and poor sector administration. Poor linkage with industry is reflected in limited market-driven research. Although government provides funding support through specialized institutions like the Federal University of Petroleum Resources (FUPRE) and through programmes like the Petroleum Technology Development Fund (PTDF), access is limited.

Experts suggest that local research is generally independent of undue external influence. Oil operating companies and international donors also provide funding for local research. Examples include Shell's Eco Marathon Challenge and specialized Centres like the Emerald Energy Institute funded by Emerald Energy Resources; Centre for Gas, Refining and Petrochemicals (CGRP) funded by the Nigerian Liquefied Natural Gas (NLNG) and the Centre for Petroleum Energy Economics and Law (CPEEL) funded by the McArthur Foundation.

There is sparse evidence to support the uptake of research by the government. Expert opinion is that government attitude towards research is one of indifference. Seeking audience with government officials could be a daunting process let alone getting them to adopt outputs and recommendations from research.

Information sources:

Extracts of interviews with research institutions at the Nigeria Oil and Gas Industry Research and Development Fair (NOG-FAIR) organised by Nigerian Content Monitoring and Development Board (NCDMB) and other stakeholders

2.3.5 Do professional associations and unions actively promote and enforce professional standards of conduct and engagement among their members who are engaged in extractive industries?

Professional bodies and unions in Nigeria promote ethical and responsible practices among their members and hold them to required standards. Some of these bodies include the Council for the Regulation of Engineers in Nigeria (COREN), the Nigerian Society of Engineers (NSE), the Society for Petroleum Engineers (SPE) and the Council for Mining Engineers and GeoScientists (COMEG). All together, they enforce standards and code of ethics among engineers and Oil and gas professionals in Nigeria. These include standards of competency, honesty, integrity and impartiality for professional members. Their Code of ethics includes rules

against conflict of interests and bribery as well as penalties ranging from suspension to permanent expulsion. However, impact of disciplinary measures may be limited to forfeiture of professional benefits offered by membership which include the eligibility to participate at levels in government or private organizations where those certifications are a requirement. More so, there is sparse evidence that suggests that sanctions have been applied to erring members or companies working in the oil and gas industry.

Unions also constitute an influential voice in Nigeria's Oil and gas industry. These bodies have proven instrumental in ensuring that government; to an extent, considers an inclusive approach to policy implementation; although there is still scope for improvement. Two major Unions are the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the National Union of Petroleum and Natural Gas Workers (NUPENG). Others include the Trade Union Congress (TUC) and the Nigerian Labour Congress (NLC). Their activities focus on job security and remuneration of industry workers. Together they have been vocal about prominent political issues such as the Petroleum Industry Bill and anti-corruption in the oil and gas sector. Nonetheless, there is sparse evidence suggesting that members have been sanctioned as a result of professional or ethical misconduct during the discharge of their duties. In addition, members of the Presidential Advisory Committee Against Corruption (PACAC) have expressed the view that trade unions are complicit in fraudulent activities carried out in the industry which consequently compromises their capacity to hold others accountable.

Information sources:

<http://coren.gov.ng/23-council>

<http://connect.spe.org/spenc/aboutus/councilofficers/codeofbusinessconduct>

http://www.comeg.gov.ng/files/downloads/comeg_code_conduct.pdf

<https://www.businessdayonline.com/pengassan-issues-21-day-nationwide-strike-notice/>


<https://www.vanguardngr.com/2017/06/nupeng-threatens-nationwide-strike-backlog-salaries/>








<http://punchng.com/youre-corrupt-pacac-attacks-labour-leaders/>

PRECEPT 3: EXPLORATION, LICENSING AND MONITORING OPERATIONS



The government should encourage efficient exploration and production operations, and allocate rights transparently.

<p>Overall Precept Score</p>	
<p>Precept 3: Exploration, licensing and monitoring operations</p> <p>No significant change since 2014. Nigeria still does not meet the NRC benchmark. Laws, policies and practices reveal absence of strategic impact assessment and poor disclosure of exploration and licensing information. The power of discretion for licensing award still subsists and lies with the minister and the bidding rounds are still fraught with lack of transparency, open to abuse and marred by delays. Monitoring of operations across every stage of projects is ineffective as the government agencies responsible are deficient in technical capacity and not well resourced. Oversight institutions are weak, inefficient and in some cases, compromised. The proposed Petroleum legislations expected to address this have remained elusive</p>	

Overview of the Questions and Ratings	
3.1 LICENCE PLANNING	
3.1.1 Does the government facilitate or fund pre-licensing surveys and make geological information available to companies?	
3.1.2 Does the government conduct and publish a strategic impact assessment before allocating licenses?	
3.1.3 Prior to allocating licenses, does the government clearly establish who holds property rights to the land being licensed and how those rights will be upheld?	
3.1.4 Does the government organize licenses to ensure that license areas do not overlap or conflict with existing rights to explore and extract resources?	
3.1.5 Does the government have an effective policy on the pace of licensing and size of license areas?	
3.2 AWARDING RESOURCE LICENCES	
3.2.1. Does the government screen license applicants before allowing applicants to enter a licensing round or negotiation?	
3.2.2 Does the government use a method of awarding licenses that accounts for the level of competitive interest and the administrative capacity of the government?	
3.2.3 Does the government limit the use of negotiable/biddable terms and resist further negotiations after the bidding process?	
3.2.4 Does the government submit license transfers to the same checks and balances as an initial license award?	
3.2.5 Does the government disclose pre- and post-license round information?	
3.2.6 Is oversight of the licensing process effective, and are conflicts of interest avoided?	
3.3 MONITORING	
3.3.1 Does the government evaluate and approve development plans with appropriate consideration for all stakeholders without undue delay?	
3.3.2 Does the government have the capacity to monitor companies during each stage of the project life cycle?	

3.3.3 Does the government collect and manage geological and operational data?



Summary of Key Findings

License Planning

- Government facilitates but does not fund pre-licensing surveys which are then made available to the public and companies upon payment of a specified mining data fee. She does not conduct and publish Strategic Impact Assessment. However she ensures that companies conduct project specific environmental impact assessment and this is only after licenses are awarded but before commencement of operations.
- Licenses expressly stipulate the sizes and coordinates of the prescribed award which prevents overlaps. However, Exploration Licenses are not exclusive thus the same areas can be awarded to more than one licensee without any conflicts arising.
- Government establishes holders of property rights over license areas especially for the purposes of compensation payments.
- Government has no clear policy governing the award of licenses. The decisions are driven by the prevailing socio-political environment. However, the 7 Big Wins policy for growing the oil sector 2015-2017 clearly sets out a strategy for increasing Nigeria's reserves and production by conducting new licensing rounds and timely lease renewals, but the pace and areas to be licensed are not stated.

Awarding Resource Licenses

- Government issues guidance Information for Prospective Bidders for every bidding round in which criteria are set for bidders to meet before entering into and progressing to different stages of the licensing round. This usually contains a section for pre-qualification.
- The government Petroleum Exploration and Development policy provides for periodic open competitive bidding for acreages to be carried out. This accounts for the level of competitive interest and the administrative capacity of the government. However, the minister possesses and still exercises discretion as prescribed by the 1969 Petroleum Act.

- The licensing processes are usually delayed sometimes for as long as 36 months. This is attributed largely to unscheduled tendering of a huge number of projects by both public and private sectors and manual evaluation of bids.
- Transfers of licenses are submitted to the same checks and balances as the initial award, as potential bidders are expected to meet the same requirements as the original license-holder to qualify for the award. The discretionary power of the Minister allows for conflict of interest, weakens the effectiveness of oversight institutions as they usually respond reactively by seeking post-licensing information to assess the process of the bid round which are then not disclosed.

Monitoring Operations

- The government evaluates and approves development plans in consideration for all stakeholders. However this is not without delay. The bureaucracy and internal workings of some stakeholders, especially ancillary MDAs, result in undue delays as the DPR works to ensure all interest are addressed. There is need to stipulate specific time lines and enable the institutions to be more effective and keep to them. There are also indications that bureaucratic inefficiencies, weak inter-agency collaboration, use of manual processes result in undue delays in the evaluation of development plans.
- There are established legal and institutional frameworks for the monitoring of operations of companies during each stage of the project life cycle. However, there is a need to resource and strengthen the institutions to become more effective. This is because they are expected to receive and verify various types of geological, geophysical and technical data periodically reported by the operating companies. There are frameworks for monitoring of operations but these are not effective.

3.1 License Planning

3.1.1 Does the government facilitate or fund pre-licensing surveys and make geological information available to companies?

This question was not the subject of enquiry in 2014 and is only introduced in the revised Natural Resource Charter Benchmarking Framework. The government through various laws such as the Petroleum Act, 1969 has made provisions for planning before licensing rounds. NNPC, through her subsidiary, the Integrated Data Services Limited, conducts surveys and acquired data which are stored in the National Data Repository, (NDR) of the Department for Petroleum Resources. .

Exploration is ongoing in the Chad Basin and Benue Trough with surveys going on, including a partnership with Schlumberger to obtain pre-licensing information.

The survey data is made available to the public upon the payment of specific fees prescribed in the Regulation and interested companies pay a mining fee and obtain it as part of the bidding process.

Although there is no known policy determining pace and areas of license awards, the government makes efforts to plan and schedule bidding rounds ahead of time publishing guidelines on how this should be conducted. The 7 Big Wins policy for growing the oil and gas sector 2015-2017 clearly sets out a strategy for increasing Nigeria's reserves and production by conducting new licensing rounds and timely lease renewals, but the pace and areas to be licensed are not stated. It appears to be influenced by a combination of political and socio-economic factors.

The proposed bidding rounds for about 30 marginal fields are viewed by Commentators to be driven by the need to generate revenue, increase indigenous private sector participation in the sector and increase production to the targeted 4 m/b/p/d and reserves of 40 million b/d. The first bidding round lasted between 2001 and 2003. In November 2013, DPR announced the commencement of the 2013 Marginal Fields Licensing Round, issued guidelines but the process was stalled and although envisaged since 2015, the process is yet to commence as at October 2017. This does not indicate any clear policy for license awards.

Information sources:

<http://nnpcgrouptest.nnpcgroup.com/Upstream/Pages/IDSL.aspx>

<http://nnpcgrouptest.nnpcgroup.com/Investor-Relations/Pages/Upstream-Opportunities.aspx>

<https://dpr.gov.ng/index/wp-content/uploads/2015/01/2015-Oil-Gas-Industry-Annual-Report.pdf>

<https://www.thisdaylive.com/index.php/2017/08/26/fg-to-open-bid-rounds-for-30-marginal-oil-fields-invites-local-players/>

<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/838/NNPC-Tasks-Indigenous-Companies-to-Bid-for-30-Marginal-Fields.aspx>

http://api.commissierner.nl/docs/mer/diversen/foluke_finalassignment2.pdf

<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/706/NNPC-Schlumberger-Collaborate-on-Frontier-Exploration.aspx>

[Extract from Questionnaire response from the Senior Manager, Manager and Audit Senior, Energy and Resources, Akintola Williams Deloitte, Lagos, Nigeria, October 2017](#)

[Extract from Questionnaire responses from Mr. Peter Ogbobine the Director, Legal, at the Nigeria Extractive Transparency Initiative, October 2017](#)

[Verbal Interview with Engr. Johnson Awoyemi, Group General Manager and Senior Technical Assistant to the Minister of State Petroleum Resources in November 2017](#)

3.1.2 Does the government conduct and publish a strategic impact assessment before allocating licenses?

There is no known Strategic Impact Assessment conducted. The established and existing practice is to conduct project-based Environmental Impact Assessment which is presently conducted after the license award has been granted, but before commencement of operations. The New Policy on the Environment proposes to conduct an Environmental and Social Impact Assessment before award of permit. The 7 Big Wins Short and Medium Term Priorities to grow Nigeria's Oil & Gas Industry 2015 – 2019 does not reflect such and the National Policy on the environment which was approved by the Federal Executive Council in February 2017, has sections for Natural Resource Conservation and specifically oil and gas. These do not however constitute a Strategic Impact Assessment but only suggests the development of one in the future.

There is a resurgence of discussions about the negative impacts of oil production on the environment. This is induced by the implementation of the UNEP report on the clean-up of Ogoniland as a tool to be used in addressing the pollution in the entire Niger Delta region as a whole. The debates highlighted the need to pay attention to the environmental impact of oil extraction, including the end of gas flaring. A roadmap to end routine gas flaring by 2020, has consequently been developed. This is a full decade ahead of the global target in the "Zero Routine Flaring by 2030" set by an initiative of the World Bank and endorsed by Nigeria in 2016. By and large, efforts have been more focused on strengthening regulation and amending

environmental laws. To this end, the House of Representatives held a National Summit on Legislative Framework for Environmental Law and Policy in October 2017 as a prelude to the formulation of a legislative framework to protect the environment.

Information sources:

http://api.commissiemer.nl/docs/mer/diversen/foluke_finalassignment2.pdf

<http://www.worldbank.org/en/news/feature/2017/03/10/nigerias-flaring-reduction-target-2020>

<http://von.gov.ng/nigeria-adopts-national-policy-environment/>

<http://www.nesrea.gov.ng/publications-downloads/policies-guidelines/>

<https://dailytimes.ng/news/reps-host-national-summit-environment/>

<https://www.dailytrust.com.ng/osinbajo-to-open-legislative-summit-on-environment.html>

Environment Impact Assessment (EIA) Act 1922

[Extract from Questionnaire response from the Senior Manager, Manager and Audit Senior, Energy and Resources, Akintola Williams Deloitte, Lagos, Nigeria, October 2017](#)

[Extract from Questionnaire responses from Mr. Peter Ogbobine the Director, Legal, at the Nigeria Extractive Transparency Initiative, October 2017.](#)

3.1.3 Prior to allocating licenses, does the government clearly establish who holds property rights to the land being licensed and how those rights will be upheld?

There are mechanisms to identify property right owners either for urban lands at federal or state levels where land registries are established or rural lands with traditional rights at local government levels. The constitution of Nigeria clearly vests the ownership of the land and resources underneath on the federation as such the rights to the land belong to the government. The states mandatorily maintain a land registry in accordance with the Land Use Act. The Local Councils also maintain a registry while lands with traditional property titles are designated as either family or community lands and held under customary practice with the traditional rulers as custodians. Hence, in most cases, the government is able to establish the property rights owner. This information is usually needed for the payment of compensations to such owners as provided for in the land laws. The laws, which are still applicable till date, relate to land possessed by government for public use. Lands earmarked for oil exploration and licensing fall within this category. The necessary compensations are usually made before oil production commences to avoid disruption of operations by aggrieved property right owners.

Information sources:

<http://tmlawreview.org/assets/uploads/2014/07/7-Aladeitan1.pdf>

The Petroleum Act, 1969

Land Use Act 1978

Oil Pipeline Act 2004

Constitution of the Federal Republic of Nigeria 1999 (As amended)

M. A. Ajomo, Ownership of Mineral Oils and the Land Use Act, NIGERIAN CURRENT L. REV. 335, 335 (1982).

[Extract from Questionnaire response from the Senior Manager, Manager and Audit Senior, Energy and Resources, Akintola Williams Deloitte, Lagos, Nigeria, October 2017](#)

[Extract from Questionnaire responses from Mr. Peter Ogbobine the Director, Legal, at the Nigeria Extractive Transparency Initiative, October 2017.](#)

3.1.4 Does the government organize licenses to ensure that license areas do not overlap or conflict with existing rights to explore and extract resources?

The document conveying an award of a license usually has an annex attached. This contains information about the area covered by the license. This includes geographical coordinates, license-holder, type and duration, etc. The records of licenses are kept with the Department of Petroleum Resources (DPR). Some of these are displayed in the Annual Report published by the NNPC and uploaded on their website. Oil Exploration and Mining Licenses have details are published and made available to interested parties right from the solicitation bidding, including survey data, up till the final award. Oil Prospecting Licenses (OPLs) however, are not exclusive and the law allows the granting of licenses to another party to prospect over part or all of a subsisting Oil Prospecting License (OPL). The fact that Oil Mining Licenses (OMLs) and Oil Exploration Licenses (OELs) are exclusive to the licensees, a register for licenses awarded is maintained and updated and for Petroleum Exploration Licences, (PELs) are not exclusive to licensees and the information of joint ownership is disclosed upfront to the beneficiaries, eliminates possible overlaps and conflicts over acreages by licensees.

Information sources:

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<https://www.premiumtimesng.com/business/business-news/217874-nnpc-doesnt-know-how-many-oil-blocks-nigeria-has-coo.html>

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[Extract from Questionnaire responses from Mr. Peter Ogbobine the Director, Legal, at the Nigeria Extractive Transparency Initiative, October 2017](#)

3.1.5 Does the government have an effective policy on the pace of licensing and size of license areas?

There is no clear, effective policy. Decisions appear driven by prevailing socio-political environment. There has been no award since 2014 and the proposed marginal field round is primarily aimed at raising revenue and promoting indigenous private sector participation. There are indications that suggest some areas will be awarded by discretion to ensure that investors from the Niger Delta acquire licenses. There is a Marginal Fields Development Programme (MFDP) established in 2001, following the enactment of subsidiary legislations to the Petroleum Act in 1990. The goal is to develop Nigerian expertise in and expand the scope of Nigerian participation in the sector. A Licensing Round planned for 2013, 12 years after that of 2003 is still yet to hold as at end of 2017. This is to allow for small concessions held by international oil companies which yielded low returns to "farm out" their licenses to local firms, thus boosting indigenous exploration and production activities. The marginal field programme is regulated by the amended Petroleum Act and the marginal field operations (fiscal regime) regulations 2005. This is usually accompanied by guidelines set by the Department for Petroleum Resources for each successive Bid round as was the case in 2001 and 2013. The Guidelines for 2017 is yet to be published. There is therefore no policy on pace of licensing and size of license areas.

Information sources:

<https://guardian.ng/news/uncertainty-over-n4-314tr-revenue-from-marginal-fields/>

<https://www.dailytrust.com.ng/daily/business/48967-one-year-after-marginal-field-bid-round-fails-to-take-off>

<http://www.mondaq.com/Nigeria/x/294762/Oil+Gas+Electricity/Marginal+Field+Bid+Round+2013>

[Extract from Questionnaire responses from Mr. Peter Ogbobine the Director, Legal, at the Nigeria Extractive Transparency Initiative, October 2017](#)

3.2 Awarding Resource Licenses

3.2.1. Does the government screen license applicants before allowing applicants to enter a licensing round or negotiation?

The Guideline requires applicants to meet certain criteria to enter into licensing rounds. The existing prequalification criteria under the 2007 Guidelines developed by the Department of Petroleum Resources (DPR) are: evidence of registration in Nigeria solely as an oil and gas exploration and production company, evidenced by the company's certificate of incorporation and articles and memorandum of association; evidence of financial capability to engage in the exploration and production business in Nigeria, which can be established through a letter from a bank showing that the company is worth a specified amount and has maintained that account balance for at least six months before the application; evidence of a company's technical capability and track record of experience and expertise in petroleum exploration, development and production; a statement of the company's environmental policies, with emphasis on environmental impact analysis; a statement of the company's local content commitments; and evidence of the company's payment of all applicable fees.

Similarly, under the guidelines for the proposed marginal fields, bidders are expected to submit a Competent Persons' Report providing details of their shareholding structure, names of their directors, track record in the oil and gas sector, audited financial statements, partnership and/or collaboration with indigenous firms, and financial resources to bid and pay for the oil acreages. This has become more important considering that the performance of the Marginal Fields policy has been very disappointing, as less than one-third of the allocated fields have reached commercial production since around 1997, when the first allocations were made. This is attributed to the inability of winning firms to develop the fields.

The 1969 Petroleum Act and the Petroleum (Drilling and Production) (Amended) Regulations, 2006 requires the bidders to provide information that demonstrates their capacity to participate in the bidding round. However, the discretionary powers of the Minister for Petroleum Resources and the dual role of the President as the Minister for Petroleum power vested in the minister by the Petroleum Act remains pervasive, undermining transparency in the process. The government; in the 7 Big Wins, proposes the enforcement of Competitive Bidding. All subsequent versions of the Petroleum Industry Bill (PIB) also expressly provide for it. These indicate that it is not currently being effectively enforced. The structure has undermined good corporate governance of the national oil company and its subsidiaries.

Information sources:

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Diagnostics Report Support to NEITI to Monitor Bid Rounds and Issuance of Petroleum Mining Licenses, 2017.

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<https://www.businessdayonline.com/discretionary-award-of-oil-blocs-ridicules-fgs-reform-claims/>

<http://businessnews.com.ng/2014/06/09/fears-delayed-bid-oil-fields/>

3.2.2 Does the government use a method of awarding licenses that accounts for the level of competitive interest and the administrative capacity of the government?

The government attempted to use the open, competitive methods which were compromised due to the oil-for-infrastructure concept and provision of Rights of first refusal to Asian companies in the bidding rounds for 2005, 2006 and 2007. Discretion prevailed in the Strategic Alliance Agreements, of the Nigerian Petroleum Development Company (NPDC), where licenses were signed under the direction of the Minister of Petroleum Resources.

The plan to enforce competitive bidding in licensing rounds in the 7 Big Wins of 2016 alludes to the fact that it is not currently being enforced. Government officials continually affirm the government's commitment to adopting a competitive bidding method. This method, if properly conducted can foster competition in the bidding process and accommodate the competitive interests of the Nigerian state.

Current bid round guidelines highlight the prevailing petroleum policy of Nigeria, this includes the encouragement of the involvement of private and public interests (both indigenous and foreign) in petroleum exploration and production in Nigeria. There is an emphasis on promoting indigenous participation and increasing the petroleum reserve base. The need to be seen as transparent in line with several international commitments such as the Extractive Industry Transparency Initiative (EITI), Open Governance Partnership (OGP), and be seen to be consistent with the anti-corruption efforts all contribute in informing the method to be adopted.

The deliberate promotions of the marginal fields to boost indigenous participation in the sector are all within the administrative capacity of the DPR which undertakes the process on behalf of the government. The proposed discretionary award of select fields to firms from the Niger Delta is unprecedented and could stoke competing interests across regional lines, aggravating the problems it hopes to solve, in the light of separatists and secessionist calls for restructuring.

However, there has been no licensing bidding round since 2015 under this administration, the President retains the position of Minister, for Petroleum Resources, and the laws vesting

discretionary powers of award on the minister is yet to be amended as the Petroleum Industry Bill (PIB) is still not passed. There has been unilateral revocation by the President in response to the recommendation of the Minister of Petroleum Resources, of licenses won in the 2007 bid round, generating controversy and re-emphasising the inevitable presence of discretion. There is therefore no appreciable progress made as no real changes have occurred in practice since 2014.

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<http://allafrica.com/stories/200812310003.html>

<http://www.businessdayonline.com/concerns-mount-nigerias-proposed-oil-licensing-rounds/>

The 7 Big Wins to Grow the Nigerian Oil & Gas Industry 2016

Report in Support to NEITI to Monitor Bid Rounds and Issuance of Petroleum Mining Licenses.

3.2.3 Does the government limit the use of negotiable/biddable terms and resist further negotiations after the bidding process?

There is a model Production Sharing Contract (PSC) which is auctioned as part of a licensing round. With a competitive process that is transparent and all information disclosed, there is little provision for post bidding negotiations. The terms are negotiable and biddable to the point of bidding and the award of the license. Thereafter, the conditions for completion of the process through the payment of a Signature Bonus are set and where the preferred winner defaults, the license is offered to the bidder in second place without further negotiation.

The structure of the NNPC and the discretionary powers of the Minister allow for decision making over some transactions without recourse to anyone except the Ministry of Petroleum Resources; a role which is currently held by the President of the Federal Republic of Nigeria. This makes it easy to avoid scrutiny from oversight institutions. Barter arrangements such as the Oil Processing Agreements (OPA) only became public knowledge after they had been signed and gone operational. These arrangements attracted public outcry. It was opaque and resulted in huge revenue losses to the nation. The National Assembly's (NASS') House Committee set up an investigation and established that the arrangements were contrary to national interest, calling for sanctions against officers who negotiated them. Eventually, it was scrapped and replaced with the Direct Sale Direct Purchase (DSDP) method. The oil-for-infrastructure element that was incorporated into the 2005, 2006 and 2007 bid round under the Obasanjo regime was also strictly a discretionary action by the President who was also the Minister for Petroleum Resources to attract investments from Asian firms. It also had not turned out well as

none of the winning firms, which were given the right of first refusal and discounted signature bonuses on selected blocks, made returns on any of the promised investment in the downstream or infrastructure projects.

Information sources:

<http://energymixreport.com/the-nigerian-production-sharing-contract-an-overview/>

<https://cms.law/.../Conducting%20Oil%20%26%20Gas%20Activities%20-%20Nigeria>

<https://www.vanguardngr.com/2017/05/fq-cancels-oil-blocs-awarded-n-deltans/>

http://www.ocnus.net/artman2/publish/Analyses_12/The_Impact_Of_Asian_National_Oil_Companies_In_Nigeria_printer.shtml

3.2 .4 Does the government submit license transfers to the same checks and as an initial license award?

Although there have been no bidding rounds since 2014, vestiges of license transfers not being subjected to the same checks as provided for in the Petroleum Act still plague the sector till date. The Guidelines and Procedures For Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Asset recognizes the use of open Bidding, selective tendering or negotiated transfer for the assignment of interest with the assignor obtaining the consent of the Minister to divest interest. The Ministry of Petroleum Resources is expected to carry out due diligence investigations to ensure technical and financial capacity and ensure that there is no revenue loss to the federation on account of the transfer. The extant laws in the sector also requires that in the event of transfer of licenses, the assignee should meet the same requirements as the original license holder and so are expected to be checked for compliance. However, events in the sector indicate that this is not being strictly adhered to. The assignor shortlists potential assignees and communicates to DPR, submitting the final decision, including a Sales Purchase Agreement to Ministerial discretion.

The manner in which the eight OMLs (4, 26, 30, 34, 38, 40, 41 and 42) divested by Shell, and four (60, 61, 62, 63) by Agip were signed off through the Strategic Alliance Agreements to a company with no industry track record. This showed lack of due diligence. This was a product of ministerial discretion and is currently a subject of multiple prosecutorial processes in domestic and foreign courts.

This predated the present administration just as did issues surrounding the eight Oil Mining Lease, OMLs assigned to the Nigerian Petroleum Development Company from Shell Joint Ventures between 2010 and 2011 which has been concluded to have fallen short of the arm's length principle for transfer of interest to third parties and shielded in secrecy. The revocation and handing over in December 2016, of OPLs 2001, 2002 and 2003 belonging to Jahcon International Limited, Hi Rev Exploration and Production Limited and Oil and Industrial Services Limited, respectively to the NPDC is a transfer that was not subject to the same process as an initial award. The blocks were won in the 2007 bid round with the DPR only giving possession after an eight-year-long litigation in 2015. The NNPC got the President and Minister of

Petroleum Resources to revoke the license and hand over the block to NPDC which had put up a bid for one of the blocks in 2007 and lost out. This is in spite of records of signature bonuses being paid as required by the bid round guidelines.

These trends reveal that, in spite of the law, discretion holds sway and there is no practical evidence that license transfers have been subjected to the same processes as initial award.

Information sources:

<http://www.sevenenergy.com/media/news-and-announcements/2015/08-10-2015>

<http://sweetcrudereports.com/2016/05/24/%E2%80%8Einvestigate-divestment-transaction-of-assets-by-nnpc-to-npdc-neiti/>

<http://punchng.com/controversy-trails-oil-block-revocation-by-buhari/>

<https://dpr.gov.ng/index/wp-content/uploads/2014/12/Giudeline-on-Asset-divestment-16-10-14.pdf>

Diagnostics Report Support to NEITI to Monitor Bid Rounds and Issuance of Petroleum Mining Licenses, 2017.

3.2.5 License disclosure. Does the government disclose pre- and post-license round information?

Pre-license round information are usually disclosed but post-license information are not. . The post-license information are made available to participants in the bidding process who could access it for verification or use for expressions of grievance and seeking redress, where necessary. Oversight authorities such as NEITI, the media or legislative committees carrying out an investigation or probe, can also access on demand it for reportage for audit and review purposes. This usually happens where there are expressions of discontent over the outcomes of bidding rounds. The guidelines for bidding provide the information needed in the pre license phase. This is usually displayed on the website of the Department for Petroleum Resources, DPR.

The power to award rests licenses with the Minister of Petroleum Resources. The DPR acts on her behalf and other institutions only serve as observers or play investigative roles when infractions are alleged as a fall out of the bidding process. These external actors observe the process and make reports to relevant authorities and the public to promote the integrity of the process, ensure compliance with set procedures and rules, as well as, ensuring all parties are treated fairly by constituting a deterrence to corruption and manipulation of the process.

Information sources:

www.dpr.gov.ng

<https://dpr.gov.ng/index/wp-content/uploads/2017/02/LP-GUIDELINES-2017.pdf>

<https://dpr.gov.ng/index/roles-of-dpr-upstream/>

3.2.6 License oversight. Is oversight of the licensing process effective, and are conflicts of interest avoided?

This question is reminiscent of 4.2.8-4.2.10 in the previous Benchmarking Framework addressing conflicts of interest and manipulation of licensing processes by public officials. The governance structure of the sector remains unchanged since then. The strong impact of the executive arm of government is even more entrenched. Not only does the President double as the Minister for Petroleum Resources, his Chief of Staff also sits on the Board of the NNPC. The DPR remains under the control of the Ministry.

The Resource Governance Index for 2017 identified licensing as the weakest link in Nigeria's oil governance scoring 17 out of 100. It highlighted significant levels of opacity in key areas of decision making. Nigeria committed to disclosure of information along the entire value chain of the extractive sector in the OGP National Action Plan 2017-2019. There is also a commitment to contract transparency and disclosure beneficial ownership as a means of addressing conflicts of interest.

The proposed PIB aimed at unbundling the NNPC to strengthen the regulatory frameworks and eliminate discretion remains elusive. Oversight agencies only act reactively after infractions are committed.

There have been instances where oversight institutions such as the National Extractive Industry Transparency Index (NEITI) and the Legislature discovered poor practices in the process that resulted in the loss of revenues to government but all they could do was recommend action which may not be enforced and deter recurrence in future processes.

Information sources:

<http://www.resourcegovernanceindex.org/country-profiles/NGA/oil-gas>

3.3 Monitoring Operations

3.3.1 Does the government evaluate and approve development plans with appropriate consideration for all stakeholders without undue delay?

The multiplicity of agencies and stakeholders and the tendency for inter-agency rivalry, inefficient bureaucracy results in the delays in the evaluation and approval of development plans. The Department for Petroleum Resources as lead agency focuses on evaluating the technical component; relies on other agencies and stakeholders to evaluate other aspect of development plans. The EIA by the ministry of environment, local content by the Nigerian Content Development and Monitoring Board which ought to conclude in 30 days, and where it is off-shore and in deep waters, the Nigerian Maritime and Safety Authority, responsible for addressing Marine Pollution Prevention and Control. All these cause undue delays. There are general efforts to increase the efficiency of government agencies, especially regulatory agencies, to facilitate the ease of doing business to attract and retain investments. Although Nigeria has moved up 24 points in the World Bank ease of doing business index for 2018¹² indicating that the regulatory environment is more conducive to the starting and operation of business, the non issuance of new license since 2014 makes it difficult to determine if the undue delays in the oil an sector has benefitted from this improvement.

Information sources:

<https://guardian.ng/business-services/long-contract-cycles-threaten-n18tr-investment-in-oil-sector/>

3.3.2 Does the government have the capacity to monitor companies during each stage of the project life cycle?

The National Nigerian Petroleum Corporation (NNPC) and the Department of Petroleum Resources (DPR) have shown their ability to monitor companies in terms of capacity, skills and human expertise. However, there are limited resources in terms of equipment and logistic support that hinders effective monitoring of some stages of the operations and stages of projects. Monitoring of operation in deep off-shore requires the possession of expensive modes of transportation, usually for flying. The DPR does not have adequate facility for effective monitoring of measurement of crude across the value chain of the production process also presents a challenge due to the absence of effective independent metering facilities at the well head and across flow terminals to the point of custody exchange. Some stages of operations require the staff of regulatory agencies to rely on the companies which could affect their

¹²<https://www.vanguardngr.com/2017/10/nigeria-moves-24-points-world-bank-ease-business/>

objectivity. Information related to seismic and geological data are meant to be updated by the Director of Geological Survey based on submissions from the license holders. There is a challenge with keeping up with the conduct of environmental impact audit in the course of operations to ensure compliance with risk mitigation measures. This explains why oil production has polluted the environment in many oil producing communities. Indeed the National Environmental Standards and Regulations Enforcement Agency (NESREA) is considered weak and ineffective in monitoring and enforcing environmental standards. The level of damage that oil spills have caused by the complex nature of pipelines and inadequate human and material resources affects the capacity of the National Oil Spill Detection and Response Agency (NOSDRA) to monitor pipeline activities effectively.

Information sources:

<https://www.vanguardngr.com/2017/05/nigeria-lost-n2-trillion-poor-metering-oil-wells-two-years/>

<https://www.premiumtimesng.com/news/240968-analysis-digitalising-nigerias-oil-operations-maximum-efficiency.html>

<http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/17493/17546>

3.3.3 Does the government collect and manage geological and operational data?

The law requires that license holders submit a Progress Report within 21 days after the end of each month, to the Director Petroleum Resources and Director of Geological Survey, in a form approved by the Director of Petroleum Resources. Another report is due every quarter and yet another 2 months after the end of each calendar year. These provide the government ample information for monitoring operations. The reports envisaged in the laws mandatorily include geological and operational data, explaining why they are directed to both Directors of Petroleum Resources and Geological Surveys. Such information is meant to be used to update the data in the DPR's National Data Repository, NDR responsible for maintaining data as provided for in the NDR Regulations 2007.

Information sources:


Petroleum (Drilling and Production) (Amendment) Regulations 2006














<http://www.nigerianlawguru.com/legislations/STATUTES/PETROLEUM%20ACT%20CAP.%20350%20L.F.N.%201990%20ACT%20CAP.%20P10%20L.F.N.%202004.htm>




PRECEPT 4: TAXATION AND OTHER COMPANY PAYMENTS



Tax regimes and contractual terms should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances.

<p>Overall Precept Score</p>	
<p>Precept 4: Taxation and Other Company Payments</p> <p>No significant change since 2014. Nigeria still does not meet the NRC benchmark. The Fiscal Regimes remain unfavourable to Nigeria with the International Oil Companies benefitting more. The taxes in the sector remain complex with multiple agencies saddled with the responsibilities of collecting diverse types of taxes and streams of revenues and the ability of revenue authorities to collect what is due remains in doubt due to inadequate capacity and resources. The government continues to employ costly incentives which result in revenue loss and there are insufficient anti-tax avoidance mechanisms both in policy and in practice. Government take from PSCs for Nigeria remains among the lowest in the world and deep-water oil royalties remain at zero percent. Outdated contracts and expired MOU's are still in force resulting in under assessments and under-payments subsequently leading to loss of revenues to the government. The anticipated change expected through the passage of the petroleum Industry law is yet to materialize while the commitment to review existing contracts to improve taxes and other revenues has not been implemented.</p>	

Overview of the Questions and Ratings	
4.1 SETTING FISCAL TERMS	
4.1.1 Does the fiscal regime include a tax on gross sales (a royalty or equivalent) to ensure that the country receives some payments irrespective of level of profitability?	
4.1.2 Does the fiscal regime include a variable rate tax (rent tax or excess profit tax) targeted explicitly at rents?	
4.1.3 Does the extractive sector fiscal regime include the generally applicable corporate income tax in the country?	
4.1.4 Has the government avoided the use of costly or non essential investment incentives?	
4.1.5 If the country holds equity shares in resource companies, are the expected fiscal and non-fiscal benefits of the equity greater than the costs of acquiring it?	
4.1.6 Do government officials have the expertise and information to evaluate and design fiscal regimes?	
4.2 LEGAL FRAMEWORK OF FISCAL TERMS	
4.2.1 Does the government set all fiscal terms using legislation or model contracts, with a minimum number and defined scope for bidding or negotiation terms?	
4.2.1 If there are legal clauses that stabilize legal terms governing an extractive project do these clauses limit stabilization to key fiscal terms; and are stabilization limited in duration?	
4.3 TAX ADMINISTRATION	
4.3.1 Are the definitions of tax bases similar to one another, and is there a reasonable limit on the number of tax types?	
4.3.1 Does the fiscal regime include a set of provisions to limit tax avoidance practices	
4.3.3 Is the number of collecting organizations minimized, and do tax administrators coordinate with other government agencies?	
4.3.4 Are tax administration procedures simple, effective and harmonized, reflecting principles of self assessment, with a risk-based compliance strategy	
4.3.5 Are tax administrators competent and well-sourced?	

4.4 ACCOUNTABILITY AND TRANSPARENCY OF FISCAL REGIMES	
4.4.1 Does the government disclose fiscal terms and company data to inform oversight?	
4.4.2 Does the government consult with businesses and civil society before reforming the fiscal regime?	
4.4.3 Do official agencies perform strong oversight functions of the fiscal regime?	

Summary of Key Findings

Setting Fiscal Terms

- Although a fiscal framework exists for the oil and gas sector, its ability to generate the required revenues has proven inadequate.
- There are several ongoing reforms and initiatives by the FGN to improve the sector and make it more attractive to both domestic and foreign investors e.g. Seven Big Wins, the new oil and gas policy, and concerted efforts made to pass the Petroleum Industry Bills; including policy exiting the FGB from cash calls.
- FGN formally exited the Joint Ventures in December 2016 after accumulating debts from unpaid cash calls amounting to about \$6.8 billion. This was to put an end to cash call payments and allow the JVs to grow without the constraints of government inability to pay.
- The regime is not strong enough to attract investors, as compared with other African countries especially in the area of deep sea exploration. The fiscal regime in the sector is not flexible enough to respond to dynamic levels of production and profitability. The proposed PIB seeks to “establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimizing revenue accruing to the Government.”
- There has been repeated commitment by the NNPC and Minister of Petroleum Resources to re-negotiate and review contracts such as the deep off-shore agreements with oil companies. These are however yet to be seen.

Legal Frameworks of Fiscal Terms

- The terms are contained in legislations but several are negotiated separately into contracts with incentives that are a deviation from the overriding legislations. For example, Petroleum Profit Tax Act, Deep Offshore and Inland Basin Production Sharing Contract Act 1999 are examples of legislations that set fiscal terms. Others are set in model contracts, such as the PSC and which could contain terms different from the legislation but a product of the negotiation between and guided by the bidding process. The PPTA has provisions to minimize tax avoidance practices, especially sections 51-53, but companies may actively evade taxes or avoid paying the full taxes they are legally obligated to pay by legally acting in a way to minimize their tax bill.
- The legal frameworks and fiscal terms provide an opportunity for accountability to citizens but this is limited. They provide greater accountability to investors. Flexibility to changing circumstances are also limited as the time and efforts that go into amending a law or re-negotiating contracts are extensive.

Tax Administration

- The fiscal framework of the oil and gas sector is complex. Its complexity limits the government's ability to collect all revenues due. Although terms appear clear legally, it proves too complicated to administer effectively.
- The provisions to limit tax avoidance exists in the fiscal regime however, they are not properly implemented. The fiscal component of the PIB is expected to rectify some of these inadequacies.
- The multiplicities of taxes under which extractive companies are taxed hinder effective tax administration.
- Capacity gaps remain amongst tax administrators.

Accountability and Transparency of Fiscal Regimes

- Information is rarely disclosed thus limiting access to key fiscal terms by the wider public. The NEITI Audit reports provide the public indirect access to key fiscal terms and companies' payments.

- Fiscal terms are not generally disclosed thereby restricting effective oversight and impeding the ability of the legislature and other oversight agencies of government to carry out their functions.
- The Ministry of Finance consulted with relevant stakeholders including civil society in the development of the revised National Tax Policy.
- Oversight of the fiscal regime is weak. The administration is routine and oversight by any external body is conducted only where an infraction is highlighted and huge revenue losses are reported.
- It is necessary to make the fiscal regime simpler and publicly accessible online to improve disclosure procedures; thus transparency.

4.1 Setting Fiscal Terms

4.1.1 Does the fiscal regime include a tax on gross sales (a royalty or equivalent) to ensure that the country receives some payments irrespective of level of profitability?

The extant fiscal regime in Nigeria is characterized by hybrid systems covering elements from Joint Ventures (JVs), Production Sharing Contracts (PSCs), etc. All these fiscal arrangements reflect terms such as payment of royalties, signature bonuses, etc that are equivalent to gross sales tax. According to the 2015 Department of Petroleum Resources (DPR) Annual Report, the distribution of Nigerian concessions by Lease Contract Type is as follows: PSC (42%), JV (34%), SR (23%) and SC (1%). For example, “the Petroleum Act (1969) requires the holder of an Oil Prospecting License (OPL) or an Oil Mining Lease (OML), to pay royalties to the FGN as soon as production starts”; in most PSCs, ‘royalty oil’ is allocated to NNPC. Royalty is paid as long as production takes place irrespective of profitability.

4.1.2 Does the fiscal regime include a variable rate tax (rent tax or excess profit tax) targeted explicitly at rents?

The royalty rates currently applicable to the on-shore is production is 20%. The Royalty rates for offshore production vary with depth and as follows:

Depths	Royalty Rate %
On-shore	20%
100 Meters	18.5%
100-200 Meters	16.67%
201-500 Meters	12%
501-800	8%
801-1,000 Meters	4%
1,000 and above	0%

Source: the Nigeria’s Oil and Gas Industry Brief, A Report by the KPMG (2014)

These rates remain till date. The proposed petroleum Industry Bill seeks to “establish a progressive fiscal framework that encourages further investment in the petroleum industry while

optimising revenue accruing to the Government”¹³. PPT rate is 85% of profit oil and 65.75% for companies yet to recoup their cost. It is however it is at a flat rate of 50% for the

Deep offshore production Sharing Contract Act, throughout the duration of the Production Sharing Contract. The Minister of Petroleum has expressed intentions to re-negotiate these terms.

Royalty is a mechanism by which mineral owners – usually host governments – obtain upfront revenue as soon as production begins from a petroleum lease or block. It can be received in cash or in kind and represents a part of front-loaded cost of doing business; it is tax deductible in oil and gas tax calculations. Economic rents extracted through royalty payments are usually not based on profits. This dampens the progressiveness of a fiscal regime that would normally have negative effects on investments and resource development economics.¹⁴ There are proposals from the NNPC for an increase in royalty rates across all categories for Production Sharing Contracts (PSCs). The idea of price based royalties to replace the current volume base is also being muted by the Corporation. In the alternative, there is a proposal to scrap the current regime and intermittently set royalties payable for acreages located in deep offshore and inland basin production sharing contracts through regulations based on established economic parameters¹⁵. These, as also supported by the proposal in the PIB are in acknowledgment of the need to increase government take by increasing revenues. The resistance to the fiscal component of the PIB that has delayed its passage thusfar raisesconcernsamngst investors that could affect profitability negatively. In line with the objectives of the 7 Big Wins, the Ministry of Petroleum Resources released a National Draft Petroleum Fiscal Policy, NPFP, in 2017 to address the fiscal regime of the oil and gas sector exclusively and later form the basis of a subsequent Bill which proposedthe introduction of a National Hydro carbon Tax, Corporate Income Tax for all companies in the sector.

Information sources:

<http://www.mondaq.com/Nigeria/x/294726/Oil+Gas+Electricity/Highlights+Of+Nigeria+Hydro+carbon+Tax+And+Allowances+Under+The+Petroleum+Industry+Bill>

<http://nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/593/NNPC-to-Review-Deep-Offshore-Production-Agreements-with-Oil-Companies--Kachikwu-Says-President-Buharis-Oil-and-Gas-Reform-Agenda-on-Track.aspx>

¹³Nigeria’s Oil and Gas Industry Brief. Lagos: KPMG Provisional Services, 2014

¹⁴<https://www.onepetro.org/conference-paper/SPE-174846-MS>

¹⁵<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/705/NPC-Proposes-Increase-in-Oil-Royalty-Scraping-of-Investment-Tax-Credit-in-PSC.aspx>

4.1.3 Does the oil and gas sector fiscal regime include the generally applicable corporate income tax in the country?

The income of companies engaged in Upstream activities are subject to tax under the Petroleum Profits Tax Act, 2004 (PPTA), as amended. Their income is subject to tax at 85% (subject to the incentives contained in the Memorandum of Understanding (MOU) as relevant), or 65.75% within the first five years of operation during which they recover their capitalized preproduction expenditure. However, for petroleum companies operating under PSC terms, the applicable PPT rate is 50% throughout the contract period.

Companies operating in all other segments (Downstream) of the oil and gas sector are assessed to Corporate Income Tax (CIT) at 30% of taxable profits under Companies Income Tax Act (CITA). Also, non crude oil related income / profits earned by petroleum companies are liable to CIT, separately. According to David-West (2013), all downstream activities are subject to tax under CITA as against PPTA. Put plainly, PPT is levied on the income of companies engaged in upstream (and CIT on downstream) petroleum operations. The draft NPPF proposes an imposition of CIT for all companies in the sector.

4.1.4 Has the government avoided the use of costly or non-essential investment incentives?

The Federal Inland Revenue Service (FIRS) continues to award non-essential incentives and the effectiveness of this policy remains debatable. The Production Sharing Contracts (PSCs) provides for Investment Tax Credit (ITC). According to tax experts, Accelerated Capital Allowance (ACA) of 95% is granted on Qualifying Capital Expenditure incurred in the year in which the investment is incurred: (a) all certified exploration, development and processing expenditure, including feasibility study and sample assaying costs; and (b) all infrastructure costs incurred regardless of ownership and replacement. Loss from a previous year is deductible for a maximum period of 4 years after which all un-relieved losses will lapse (David-West, *ibid*). Accelerated Capital Allowance of 20% for 5 Years or 60 Months at 20, 20, 20, 20, 19 on Straight-line Depreciation. NNPC is proposing and advocating for the scrapping of the investment tax credit, investment tax allowance and associated cost uplift and capital allowances to PSC contractors, the NNPC proposed an outright scrapping of the incentives. But this is yet to be implemented. It could contribute to the shaping of the fiscal terms of the PIB.

According to Nigeria Extractive Industries Transparency Initiative (NEITI); the Federal Government lost about N475.8 billion by granting tax waivers under the pioneer status scheme to oil and gas companies in the upstream sector between 2009 and 2016. The Industrial Development Income Tax Relief Act (IDTRA) is the enabling Act for granting pioneer status in Nigeria, while the NIPC regulates and monitors the process. Based on IDTRA, applicants conferred with pioneer status enjoy income tax holiday for an initial period of 3 years with a possibility of an extension for another 2-year period, with the aim of encouraging investment in

selected industries¹⁶but the Nigerian Investment Promotion Commission (NIPC); the coordinating agency; fails to coordinate with all other government agencies effectively when granting pioneer status to companies.

In the review of the Pioneer Status Incentive list, oil and gas companies have been removed, in favour of 27 others to boost local manufacturing.

Industry experts recommend that the government come out clearly with a strategy to make this policy work for the country.

Information sources:

<https://blog.deloitte.com.ng/regulatory-alert-national-assembly-investigates-abuse-of-pioneer-status/>

4.1.5 If the country holds equity shares in resource companies, are the expected fiscal and non-fiscal benefits of the equity greater than the costs of acquiring it?

Nigeria introduced equity holding in resource companies in 1969, operational from 1971. The country holds controlling shares in all the JV arrangements. The fiscal benefit of this equity is greater than the cost of acquiring it. It provides optimal economic rent in terms of royalty compared to PSCs. Equity holding in JV arrangements also allows the country to earn a share in oil and gas production and the proceeds from the sales of petroleum resources as well as taxes from thereby maximising the economic rent. However, the absence of good policies, prudent management and several other factors resulted in funding challenges with the country unable to pay cash calls. The JVs became more of a liability and the country exited them in December 2016 devising a payment plan to offset all outstanding cash calls.

Information sources:

https://www.researchgate.net/publication/280113982_Multinational_Companies_And_Joint_Venture_Investment_Management_Strategy_A_Contemporary_Diagnosis_Of_Nigeria's_Oil_Sector

SANI SAIDU, and HAMIDU ABUBAKAR SADIQ, "Production Sharing or Joint Venturing: What Is the Optimum Petroleum Contractual Arrangement for the Exploitation of Nigeria Oil and Gas?" Journal of Business and Management Sciences, vol. 2, no. 2 (2014): 35-44. doi: 10.12691/jbms-2-2-2.

¹⁶<https://blog.deloitte.com.ng/regulatory-alert-national-assembly-investigates-abuse-of-pioneer-status/>

4.1.6 Do government officials have the expertise and information to evaluate and design fiscal regimes?

The Federal Government has made efforts to improve the capacity of her officials to design fiscal regimes but this has proven inadequate resulting in frequent consultations with external experts to address the capacity gaps. The Federal Ministry of Finance, in conjunction with its key MDAs such as Federal Inland Revenue Service (FIRS), Nigerian Custom Services, etc are the fiscal authorities responsible for designing the fiscal regimes. However, the Department of Petroleum Resources (DPR) and FIRS are two of the government principal agencies that have more direct mandates to collect many of the oil and gas fiscal instruments such as PPT, Royalties, Rents, Bonuses, etc. Over the years, underassessment and underpayments attributed to capacities gaps which FIRS (oil and gas department) have been addressed through investments in capacity building exercises over the years. The practice of reaching out to and engaging persons who have attained great heights in the private sector, retaining very senior individuals who have retired as consultants, engage with faculties from the academic institutions and embracing deep engagement with development partners who offer technical support has contributed to the level of expertise among officials in several aspects of the sector, including the evaluation of fiscal regimes. This has been further enhanced by the activity of the National Content Development Board (NCDB), reputed to be about the best in Africa and the Petroleum Technology Development Fund (PTDF). The result is the spread of expertise across several MDAs. For instance, there is an Oil and Gas Fiscal Division in the Ministry of Finance and the Central Bank of Nigerian among others.

Information sources:

<http://finance.gov.ng/index.php/the-ministry/department/technical-service>

4.2 Legal Framework of Fiscal Terms

According to the Revenue Watch Institute Guide to the 2013 EITI Standard, the legal framework and fiscal regime establishes the rules that determine the economic contribution that royalties, taxes, in-kind revenues, infrastructure/barter arrangement, transportation revenues and other payments make to the national economy. The information must include a summary of legal framework, including an overview of the relevant laws and regulations, etc.

The existing legal framework governing the Nigeria oil and gas sector are outdated. As observers have noted “the laws governing oil and gas in the country are not favourable to the country and its citizens. This led to reforms in the sector that culminated in preparation of the Petroleum Industry Bill (PIB) in 2008. But nine years later, the bill has not been passed into law” (See: Igbuzor and Nwonye, 2017). A new Petroleum Industry Bill (PIB), which has been under consideration at the National Assembly, was recently passed by the Senate. The passage of the Petroleum Industry Governance Bill (PIGB) by the Senate represents a phased approach to pass component parts of the Petroleum Industry Bill (PIB) required for the effective regulation of the oil and gas sector in Nigeria.

As December 2016, there are about 19 legislations that form the taxation laws in Nigeria (FIRS, 2017)¹⁷. The list include the under-listed

1. Associated Gas Re-Injection Act
2. Capital Gains Tax Act
3. Companies Income Tax Act
4. Deep Offshore and Inland Basin Production Sharing Contracts Act
5. Tertiary Education Trust Fund Act
6. Federal Inland Revenue Service (Establishment) Act
7. Income Tax (Authorised Communications) Act
8. Industrial Development (Income Tax Relief) Act
9. Industrial Inspectorate Act
10. National Information Technology Development Act
11. Nigerian Export Processing Zones Act
12. Nigeria LNG (Fiscal Incentive Guarantees and Assurances) Act
13. Oil and Gas Export Free Zones Act
14. Personal Income Tax Act
15. Petroleum Profits Tax Act
16. Value Added Tax Act
17. Stamp Duties Act
18. Taxes and Levies (Approved List for Collection) Act
19. Casino Act

¹⁷ Reviewed on Tuesday, October 17, 2017 from <http://www.firs.gov.ng/Tax-Management/Pages/Tax-Legislations.aspx>

Experts suggest that there is a lot of room for improvement to be resolved through training and re-training, or even hiring experts from the private sector to boost their efficiency, compliance and enforcement. Experts have opined;

“the revenue collecting agents of government should be pragmatic and objective in their revenue drive to ensure sustainable revenue generation”¹⁸

The revenue from oil had been largely mismanaged by the successive governments, as the level of economic and social infrastructural development does not reflect the revenue derived from the petroleum sector. This is evident in the absence of the kind of infrastructural facilities, health and education services that should Research Journal of Finance and Accounting www.iiste.org ISSN 2222-1697 (Paper) ISSN 2222-2847 (Online) Vol.4, No.6, 2013 100 befit the world's 14th largest oil producing country in 2010 instead the UN has ranked Nigeria 145th out of 172 countries in its human development index. Public opinion raises doubts about the accuracy of payments made by oil companies to the government of Nigeria with respect to tax and royalty payment etc. This is confirmed by the lack of transparency and accountability by the International Oil Companies (IOCs) dealing with government in the sector.

4.2.1 Does the government set all fiscal terms using legislation or model contracts, with a minimum number and defined scope for bidding or negotiation terms?

The government uses the combination of legislation and model contracts with defined scope for bidding and negotiation. This allows for flexibility and reflection of the peculiarity of the licensing should additional incentive be required to stimulate investment. The Memorandum of Understanding between the NNPC and some of her Production Sharing Contracts (PSCs) partners for deep offshore concessions provided fiscal terms that were different from the Petroleum Profit Tax Act (PPTA). For instance, the tax rate for the PSCs was 50%, compared to the 65.75% and 85% rate in the PPTA. The PSCs also provided for Investment Tax Credit (ITC) of 50%, against the rate of between 5% and 20% provided in the PPTA. These provisions were later backed by the Deep Offshore and Inland Basin Production Sharing Contracts Act (No. 9) of 1999. Significantly, Section 16 (1&2) of the act provides that if the price of crude oil at any time exceeds \$20 per barrel, the share of government shall be renegotiated to such extent that the production sharing contracts shall be economically beneficial to the government of the federation. In addition, the decree is subject to review after a period of 15 years from the date of commencement (January 01, 1993) and every 5 years thereafter.” This has resulted in dispute about how the PPT should be calculated and is currently under judicial review. The Nigeria Liquefied Natural Gas (NLNG) Act 2004 and contracts that granted Pioneer Status to certain companies were also a deviation from subsisting legislations. However, these contracts are usually negotiated in secret and the contents kept confidential such that even the Revenue authorities also at times do not know until tax returns are made and audited

¹⁸[http://pakacademicsearch.com/pdf-files/ech/519/99-114%20Vol%204,%20No%206%20\(2013\).pdf](http://pakacademicsearch.com/pdf-files/ech/519/99-114%20Vol%204,%20No%206%20(2013).pdf)

4.2.2 If there are legal clauses that stabilize legal terms governing an extractive project do these clauses limit stabilization to key fiscal terms; and are stabilization limited in duration?

The legal clauses limit stabilization to commercial interests and fiscal terms and tie them to when either legislation or terms will change. According to experts, “given the nature of investment in oil and gas extraction (long term, large-scale and upfront), a particular concern for investors is to guard themselves against unforeseen changes to the financial premises of the project. One safeguard mechanism that is often sought by investors is the inclusion of a fiscal stability clause in the project agreement. This, to governments can be an attractive and, in the short term, inexpensive way of minimizing investor risk. A PSC between NNPC and Gas Transmission and Power Limited, Energy 905 Suntera Limited and Ideal Oil and Gas Limited and the Nigeria-Sao Tome and Principe Joint Development Authority Model contract has such stabilization clauses. The PIB will also set some fiscal terms which address this.

4.3 Tax Administration

4.3.1 Are the definition of tax bases similar to one another, and is there a reasonable limit on the number of tax types?

Though the Federal Inland Revenue Service and some auditing firms agreed that the definition of the tax bases are simple but other respondents including regulatory agencies, NEITI and industry experts are of the view that the laws are too complicated and therefore make it difficult to interpret the definition and bases.

“The prevailing fiscal systems for accessing and collecting oil revenues such as the k-factor computations....is too complicated for the federal inland revenue services to effectively administer, which have made the revenue that ought to have accrued to the government to be highly understated, according to a key stakeholder from the - Central Bank of Nigeria. This was corroborated by an industry expert that “the complicated tax law is difficult to understand “

4.3.2 Does the fiscal regime include a set of provisions to limit tax avoidance practices?

The Nigerian domestic tax laws merely provide general anti-avoidance rules, whereby related party transactions must be conducted at arm’s length, and no detailed guidelines on the application of the arms’ length guidelines were provided.¹⁹

Accordingly, the regulations were introduced to provide guidance on the application of the arms length principle. These regulations are to be applied in a manner that is consistent with the arms length principle in article 9 of the United Nations and the Organization for Economic Co-operation and Development (OECD) model tax convention on income and capital and OECD transfer pricing guidelines for the multinational enterprises and tax administration (OECD guidelines)²⁰. With the publication of the Panama and Paradise papers, the weaknesses in the Nigerian system to prevent, detect, track and sanction tax evasion and avoidance, profit shifting and base erosion were exposed.

However, since 2015, Nigeria, through the Open Budget Principle, has committed to addressing tax transparency. Nigeria has signed unto the Common Reporting Standards and Addis Tax Agreement. She has also signed on for automatic information exchange with several countries so as to address the possibility of corporate tax dodging, especially by IOCs. The move towards beneficial ownership disclosure is designed to address individual and vested interests in companies.

¹⁹ www.ey.com/gl/en/services/tax/tax_service

²⁰ www.ey.com/gl/en/services/tax/tax_service

4.3.3 Are the number of collecting organizations minimized, and do tax administrators coordinate with other government agencies?

The Taxes and Levies (approved list for collection) CAP T2, laws of the federation of Nigeria 2004, clearly set out of the various taxes and levies and their approved list of collecting agencies at the three (3) tiers of government.

In spite of the above stated, investors claim that there are several taxes and collecting personnel who may collect 'taxes' without repatriating them through official channels. The government has failed to address these illegal activities which tend to adversely affect the operations of the industry operators.

Although the FIRS is the agency charged with tax administration, the Productions Sharing Contract (PSC) arrangement has given rise to a situation where the Nigerian National Petroleum Corporation (NNPC) has to undertake certain fiscal responsibilities in discharging the tax obligations in respect of the acreage or contract area which formed the subject matter of the Production Sharing Contract's regimes in the oil and gas sector. Under the current PSC, the contractors prepare the tax returns and submit same to the NNPC which is the License Holder. The License Holder in turn submits the returns to the FIRS.

The License Holder is also obligated to pay the appropriate taxes to the FIRS from the tax oil allocated under the PSC. This anomalous arrangement tends to not only insulate the FIRS from dealing directly with the accruable tax but also raises the legal question of whether the License Holder is acting as the agent of the contractor or the FIRS. This is because the FIRS Act requires appointment of entities as agent of the FIRS to be in writing or published in Federal Gazette. There should therefore be an administrative and legislative response to the current anomaly.²¹ The advocacy by NEITI is for the automation of the financial transactions in the sector. This way, all payments and receipt are tracked in real time by all the relevant agencies. Tax liability is readily known and payment can be done electronically and computation and payment of taxes are. The application of technology simplified the process and also makes avoidance difficult.

4.3.4 Are tax administration procedures simple, effective and harmonized, reflecting principles of self-assessment, with a risk-based compliance strategy?

The tax administrative procedures are not simple and harmonized, but according to Federal inland revenue services' annual report and accounts 2015, the introduction of compliance monitors has led to more efficient returns, payment and processing functions resulting in improved performance monitoring and compliance as well as enforcement initiatives. The frequent monitoring of the compliance and effective application of the self-assessment regulations resulted in increased revenue in 2015.

²¹<http://maketaxfair.net/assets/Policy-brief-on-tax-revenue-1.pdf>

The complexity of the procedures in tax administrations undermines the effectiveness of the principles of selfassessment and in turn attendant revenue losses to the government. A new National Tax Policy was approved by the Federal Executive Council in 2016. The proposed reforms aimed at simplifying the tax system to make compliance easier or tax payers and the efforts to meeting up with the challenges of the Open Government partnership, should contribute to the simplification of the system and harmonization which also speaks to the ease of doing business.

4.3.5 Are tax administrators competent and well-sourced?

In 2014/2015, the Federal Inland Revenue Service (FIRS) launched the capacity enhancement program (CEP) to deliver on four key objectives; introduction of the e-filing system, integrated tax administration system which aims at standardizing and automating tax administrative processes and increased efficiency and transparency among the personnel's. This; in addition to other milestones achieved such as development of data quality, assurance and control policy, review of the national tax policy, etc. helped to strengthen the capacity of the tax administrators.

Field respondents still indicated significant capacity constraints especially in the use of the k-factor computations contained in the Memorandum of Understandings (MoUs) between NNPC and her partners which are either outdated or too complicated. This suggests that whilst the tax administration process has been bolstered there's still room for improvement. Strategies which seek to curb or eliminate tax leakages under the applicable tax regime must be improved upon.

Information sources:

FIRS Annual Report 2015

4.4 Accountability and Transparency of Fiscal Regimes

4.4.1 Does the government disclose fiscal terms and company data to inform oversight?

Several efforts have been put in place to improve disclosure procedures within the oil and gas sector, starting from the President's commitment at the London anti-corruption summit, which formed the basis for sector specific commitment for coordination with all stakeholders to enhance transparency. This was to be achieved through a concrete set of disclosures for payments by companies and receipts by governments on all transactions across the sector's value chain²². Other efforts include the release of the strategy to grow the oil and gas sector 2015 - 2019 (7 Big Wins) by the ministry of petroleum with definite commitments, time-lines and key performance indicators. The monthly reports published by the Nigerian National Petroleum Corporation (NNPC), the Extractive Industry Transparency Initiative (EITI) Validation of Nigeria conducted in 2016, rated Nigeria's level of data disclosure as having improved meaningfully, which implies that significant aspect of the requirement has been met and the broader objective for disclosure is being fulfilled²³. However, in terms of licensing disclosures, significant improvements are still required as Nigeria rarely discloses "government officials' financial interest in the oil and gas sector transactions or identities of beneficial owners of extractive companies."

In addition, against the 2017 Revenue Governance Index (RGI), Nigeria scored 17 out of 100, placing it 77 out of the 89 countries reviewed in the assessment of licensing. The RGI pointed out that though the Nigerian government made commitments with the Extractive Industries Transparency Initiative (EITI) and the Open Government Partnership (OGP) to improve its disclosure processes, it is yet to disclose details of contracts in oil, gas and mining contracts as indicated in its "Seven Big Wins" strategy. Although, the Minister of State for Petroleum Resources, IbeKachikwu, committed to the new policy direction, tagged Seven Big Wins, meant to revamp and revive the oil and gas sector, in October 2016, no significant strides have been made to achieve this objective.

4.4.2 Does the government consult with businesses and civil society before reforming the fiscal regime?

Government consults substantially with businesses but not so much with civil society before adopting changes to the fiscal framework. Reports from stakeholders suggests that federal government does consult with oil and gas sector companies before reviewing the fiscal regime for the sector. This was done in the development of the National Petroleum Fiscal Policy by the Ministry of Petroleum Resources in 2017 and the recently reviewed Tax Policy by the FIRS and other stakeholders earlier this year. It should be noted though that the civil society organizations are not largely consulted; sometimes as a result of perceived lack of capacity to contribute and to preserve confidentiality.

²² <https://www.opengovpartnership.org/documents/nigeria-national-action-plan-2017-2019>

²³ https://eiti.org/sites/default/files/documents/Nigeria_Validation_Report_ENG_0.pdf

Information sources:

National Assembly Journal (2015). A Bill and Memorandum on Legal Regulatory Framework, Institutions and Regulatory Authorities for the Nigerian Petroleum Industry, to Establish Guidelines for the Operation of the Upstream and Downstream Sectors, and for the Purposes Connected with the Same. Abuja: National Assembly Journal, December 15, 2015, No. 36, Vol. 12 December 15, 2015, No. 36, Vol. 12

4.4.3 Do official agencies perform strong oversight functions of the fiscal regime?

Legislative Committees and other government Agencies that have oversight responsibilities are very weak. These are for reasons which range from non-independence of some of the agencies, lack of capacity to monitor and enforce compliance on the operators and conflict of interest by politically exposed persons (PEPs) within the various oversight institutions including legislators.


Information sources:



<http://napims.com/aboutus.html>




PRECEPT 5: MANAGING LOCAL IMPACTS



Natural resource projects can have significant positive or negative economic, environmental and social effects, which should be identified, explored, accounted for, mitigated or compensated for at all stages of the project cycle. The decision to extract should be considered carefully.

Overall Precept Score	
<p>Precept 5: Local Impacts</p> <p>No significant change since 2014, as Nigeria still does not meet the NRC benchmark. Policies to ensure meaningful participation by the affected communities are absent and resulting benefit from resource extraction is clearly overwhelmed by the negative effect. The government agencies responsible for monitoring ESIA's lack the technical and financial capacity to enforce compliance and there are weak grievance mechanisms at the local and national levels.</p>	

Overview of the Questions and Ratings	
5.1 TRUST	
5.1.1 Does the government ensure that affected communities meaningfully participate in decision-making about resource projects?	
5.1.2 Does the government ensure that affected communities have realistic expectations about the impacts of resource projects?	
5.1.3 Does the government ensure that there are credible and effective dispute resolution procedures for affected communities?	
5.1.4 Does the government ensure that government and private security providers related to resource projects do not use excessive force?	
5.1.5 Does the government ensure that the rights of indigenous people are protected?	
5.2 IMPACT ASSESSMENT	
5.2.1 Does the government use strategic impact assessments before deciding to open an area to exploration and production activities?	
5.2.2 Does the government use environmental and socioeconomic impact assessments to inform decision-making at all stages of the resource project?	
5.3 COST MITIGATION	
5.3.1 Does the government favour prevention over minimization, and avoid practices that require compensation and resettlement?	
5.3.2 Does the government set and enforce effective environmental, social and health regulations?	
5.3.3 Does the government require companies to develop environmental mitigation management plans and does it ensure that these plans are followed?	
5.3.4 Does the government require companies to develop effective disaster response plans?	
5.3.5 Does the government effectively allocate responsibility for the execution and financing of project closure and land rehabilitation?	

5.3.7 Where resettlement is unavoidable, does the government ensure that resettlement provides adequate redress?	
5.4 LOCAL BENEFITS	
5.4.1 Does the government ensure companies come to an agreement with affected communities as to how companies will deliver community benefits?	
5.4.2 Does the government encourage companies to direct employment and procurement opportunities towards affected communities?	

Summary of Key Findings

Trust

- There is limited government effort to ensure that there are good working relationships between all stakeholders within affected communities. Policies to ensure meaningful participation by the affected communities are absent and due to government’s failure to manage expectations, affected communities have an inflated expectation of benefits and a limited awareness of adverse effects prior to resource extraction.

Impact Assessment

- The government does not use strategic impact assessments (SIAs) before deciding to open an area to exploration and production activities.
- The Department for Petroleum Resources is the designated agency responsible for approving oil and gas sector projects but lack the technical and financial capacity to enforce compliance to ESIA requirements. There is no regulation that requires EIAs to be carried out by independent third parties, neither are there regulatory requirements that cover involuntary resettlement nor grievance mechanisms at the local and national levels. Although, the law requires EIA report to be made publicly available, it is not done in practice.
- There is no regulation to ensure that local communities are consulted and the free prior and informed consent of displaced population sought, in EIA process. Although regulation covers security-related concerns, it is that of oil infrastructure that is covered and not the security concerns of the local communities.

Mitigation

- Statistics on oil spills are made available by NOSDRA and are accessible online, on an interactive digital spill map. However, despite the government's promise to implement the UNEP report and clean up Ogoni, there is no evidence of delivering on this promise more than six years after.

Local Benefits

- Divestment of some IOCs since 2014 has led to more local participation in the oil and gas sector. However, mechanisms through public-sector for enhancing local benefits and facilitating the rapid, even and sustainable development of the Niger Delta have been ineffective in doing so.

5.1 Trust

5.1.1 Does the government ensure that affected communities meaningfully participate in decision-making about resource projects?

Unfortunately, the government has not put in place legislation or framework to ensure consultation and meaningful participation of affected communities in decision-making about resource projects. Section 11(1a) of the Environmental Impact Assessment (EIA) Act merely states that when information within an EIA indicates that the environment is likely to be significantly affected by a proposed project or activity, then the potentially affected State or Local government should be notified of the proposed activity or project. Section 11(1c) of the Act only requires timely consultation with the affected State or Local government in this regard. Yet, the effective management of local impacts warrants an environment of trust between all stakeholders, including affected communities, not just the sub national and/or national governments.

Section 7 of the EIA Act permits the public to comment on the EIA of an activity before the Ministry of Environment gives a decision on the activity for which an environmental assessment has been produced. This includes members of the public, government agencies, experts in any relevant discipline and interested groups. Nonetheless, this provision prejudices against the people the law ought to offer protection because it indirectly excludes the largely illiterate population from getting involved in the assessment process, as they are not prepared in accessible local languages. Further, there is no regulatory requirement allowing affected communities to be involved in the early stages of the EIA, an important period where the scope of the environmental assessment is determined, including the methodology.

Moreover, the Land Use Act vests ownership of land in the state, therefore oil companies with oil prospecting or mining licenses are not legally obliged to seek consent of host communities before they access land required for resource projects. Although it remains the norm for companies to consult with host communities, entering into memorandums of understanding (MOUs) that are mainly aimed at promoting conflict-free operations rather than designed or intended to integrate affected communities into the decision-making processes regarding their environment and livelihood. More so, these MOUs are not legally binding therefore compliance is discretionary.

Information sources:

<http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm>

RhuksAko (2013) Environmental Justice in Developing Countries: Perspectives from Africa and Asia-Pacific, Routledge pp. 30-31

5.1.2 Does the government ensure that affected communities have realistic expectations about the impacts of resource projects?

The government fails to adequately communicate, provide information, and set reasonable expectations concerning the costs and benefits of extraction to affected communities. The EIA Act only provides for notification of potential environmental impacts that a resource project may have on the host community by the agency responsible for making decision concerning proposed projects. There is no proactive communication that spans the different stages of a project; exploration, development, operation and closure. Also, companies are not actively encouraged by the government to communicate with affected communities throughout the lifecycle of a project. This poor management of expectation on government's part has left affected communities with little awareness of the adverse effects that resource projects may have on their environment until they occur on one hand and a high expectation of benefits from resource projects on the other hand.

Information sources:

<http://www.nigeria-law.org/Land%20Use%20Act.htm>

General perception from Stakeholder Engagement with community leaders and members

5.1.3 Does the government ensure that there are credible and effective dispute resolution procedures for affected communities?

None of the regulatory standards in the oil and gas sector concerning affected communities covers grievance mechanisms at either the local or national levels, outside normal public complaints, arbitration and judicial processes. Besides, host communities' perception of the credibility of local judicial processes is poor. Particularly, the fair, impartial, and timely resolution of grievances by the local courts is often in doubt. This explains the push by many local communities to seek redress abroad, although such cases are few relative to those in local courts.

Moreover, unique social dynamics at play in some cases further complicates dispute resolution processes. For instance, some community members and the lawyers that represent the community can serve to pursue personal but community-defeating agendas.

The NOGICD Act 2010 established the Nigerian Content Development and Management Board (NCDMB), which has the power to ensure resource companies abide by the rules and regulations formulated to protect the local community in which they are operating. However, there is no specific provision for grievance mechanisms as such (e.g. what local communities can do if oil operators do not adhere strictly to the regulations).

Although regulatory standards do not exist, there are grievance mechanisms that exist in practice. Resource companies may have their own mechanisms for local communities to express their grievances, as described in their activity reports and procedures. However, there is little information on actual implementation. Furthermore, government in some oil-producing states has initiated dispute resolution mechanisms for the benefit of affected communities. The actions taken by state governments and the federal government are driven by the different incentives they face.

Unconventional means for expressing grievances are employed by restive individuals who use violence and vandalism. It is worth noting that dispute resolution is taken seriously and acted upon urgently by the federal government when agitations become violent. Particularly, the federal government has historically responded militarily to violent agitations in affected communities. However, renewed agitations, especially by the Niger Delta Avengers, since 2014 has been managed through dialogue by the government. Presently, the Pan Niger Delta Elders Forum (PANDEF), which was established in 2014, has been at the forefront of negotiations with the federal government, although its influence among agitators is waning recently due to disagreement among its sub-units.

Information sources:

Stakeholder Engagements with community members and leaders

<https://www.premiumtimesng.com/regional/south-south-regional/240151-mend-announces-pull-edwin-clark-led-pandef-negotiating-nigerian-govt.html>

<http://saharareporters.com/2017/08/08/niger-delta-dialogue-osinbajobuhari-pandef-and-milestones-deceit-ifeanyi-izeze>

5.1.4 Does the government ensure that government and private security providers related to resource projects do not use excessive force?

There is no legislation covering security-related concerns for host communities. According to the 2014 NNRC report, the only semblance of legislation on security-related concerns is reflected in specific laws such as the Associated Gas Re-Injection Act (1979, as amended in 1985) and the EIA Act 1992, which mandates oil companies to submit documents indicating prior consideration of potential social and environmental impacts before the issuance of licences and onset of activities. The key challenge, however, has historically been the weak enforcement mechanisms inherent in the system, which have meant these provisions hardly being enforced in the operations of the sector.

In practice, measures have been put in place to address security-related concerns of oil and gas infrastructure and installations. Particularly, the Nigeria Security and Civil Defence Corps (NSCDC) are mandated to secure oil pipelines and oil companies invest in securing their assets and personnel. However, nothing is done to address the security-related concerns of host communities. The Act establishing the NSCDC, which performs regulatory roles on private

security companies, fails to provide legal requirements for strict compliance to human rights concerns by private security.

Additionally, most international oil companies operating in Nigeria, including Shell and Chevron, have signed as corporate participants to The Voluntary Principles on Security and Human Rights. By participating in The Voluntary Principles Initiative, these companies ought to align their corporate policies and procedures with internationally recognized human rights principles in the provision of security for their operations. As seen in precept 12 of this report, no improvements have been recorded in regard to human rights by extractive companies in Nigeria despite The Voluntary Principles Initiative.

Information sources:

<http://nscdc.gov.ng/nscdc-act/>

<http://www.foei.org/news/5-years-failure-un-voluntary-measures-arent-stopping-bad-business-behavior>

5.1.4 Does the government ensure that government and private security providers related to resource projects do not use excessive force?

At present, there are no requirements in Nigeria that provide for free, prior and informed consent with citizens potentially displaced by project developments. The Land Use Act 2004, which vests the control and ownership of land in the custody of government, has enabled resource companies to operate without the legal consent of the people in the oil regions in the absence of provision for displaced citizens. Yet, the United Nations Declaration on the Rights of Indigenous Peoples established the rights of citizens to give or withhold free, prior, and informed consent concerning projects that affects them. The Nigerian government has failed to domesticate this international human right law to protect its citizens.

Information sources:

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

5.2 Impact Assessment

5.2.1 Does the government use strategic impact assessments before deciding to open an area to exploration and production activities?

Unfortunately, there is no law that requires the government to conduct strategic impact assessments (SIAs). The failure of extant laws to provide for SIAs exhibits the lack of recognition by the government of the importance of SIAs to the decision-making process in the oil and gas sector. Yet, SIAs provide the government with a methodological process for evaluating the overall benefits and costs of licensing new areas for exploration and production. Failure of the government to incorporate the practice of SIAs leaves it without a tool to consider whether a new project aligns with its needs and objectives, or whether there is institutional readiness to manage resource extraction.

5.2.2 Does the government use environmental and socioeconomic impact assessments to inform decision-making at all stages of the resource project?

The regulatory requirements for EIAs prior to project resource extraction can be found in the Land Use Act, FEPA Act 1992, EIA Act 1992 and EGASPIN 2002. Under EGASPIN 2002, the DPR requires that any extractive company planning a project should submit a report that sets out the potential biophysical impacts of the project, as well as appropriate measures to prevent or mitigate the impacts of the project, before giving an operating permit to start project activities.

Section 17(2b) of the EIA Act 1992 provides for alternative means of carrying out the project that are technically and economically feasible, and addresses the environmental effects of any such alternative means. Examining alternative sites or technology to eliminate environmental and social impacts is a prevention procedure. In practice, there is no evidence that prevention is the preferred response to mitigating impacts. Owners of resource projects often outline minimization or compensation plans to offset the potential negative impacts of the projects rather than prevent them by exploring alternative sites or technology.

The prevailing ESIA requirement in Nigeria includes criteria for the analysis of cumulative impacts. This is well stated in the EIA Act 1992. For instance, Section 4(d) states that ‘an assessment of the likely or potential environmental impacts on the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects, shall be provided for.’

According to information from the 2014 NNRC Report, the regular environmental audits of projects, normally at two-to-three-year intervals, are required by the Federal Ministry of Environment on any project or activity, representing a means of ongoing monitoring. The DPR also carries out regular environmental audits of oil and gas installations, stations, depots and other facilities. Additionally, Section 17(2c) of the EIA Act 1992 states the need for, and the

requirements of, any follow-up programme in respect of a project. Also, the Act provides for clean-up and other activities related to the end of the life cycle of a project.

However, there is no regulatory requirement ensuring EIAs are done by independent third parties in Nigeria's natural resource sector. Under the FEPA Act 1988 and the EIA Act 1992, EIAs are usually left to the owners of the project to complete through the recruitment of their own consultants. In the oil sector, there is further confusion as a result of multiple regulators. The DPR and the state environmental protection agencies under the enabling legal instruments are permitted to conduct EIAs without limitation. The DPR's instrument is its regulation, EGASPIN 1991, which empowered it to conduct EIAs. None of these legal instruments contains a provision for EIAs to be done by independent third parties.

Unfortunately, EIA requirements do not include consultation with affected communities or actively involve them in the decision-making process. Section 11(1a) of the EIA Act merely states that when information within an EIA indicates that the environment is likely to be significantly affected by a proposed project or activity, then the potentially affected state or local government should be notified of the proposed activity or project. Section 11(1c) of the Act only requires timely consultation with the affected State or Local government in this regard.

There is a regulatory provision that requires EIA reports to be made publicly available under the EIA Act 1992. Particularly, Section 7 of the Act prohibits the Agency from making a decision on an activity for which an EIA statement has been produced until members of the public have been given an opportunity to make comments on it. Also, a provision to make EIAs publicly available is contained in the FEPA Act Section 6(b). This also applies to the DPR in the natural resource sector, as required under EGASPIN 2002. In practice, however, the relevant agencies have insufficient capacity to publish and maintain access to such reports in a timely manner, even on their websites. Further, EIAs are not produced in local languages to enhance accessibility to affected communities.

Information sources:

<http://www.nigeria-law.org/Land%20Use%20Act.htm>

<http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm>

https://kupdf.com/download/the-environmental-guidelines-and-standards-for-the-petroleum-industry-in-nigeria-egaspin-2002_59bbfd9e08bbc59b09686e8b_pdf

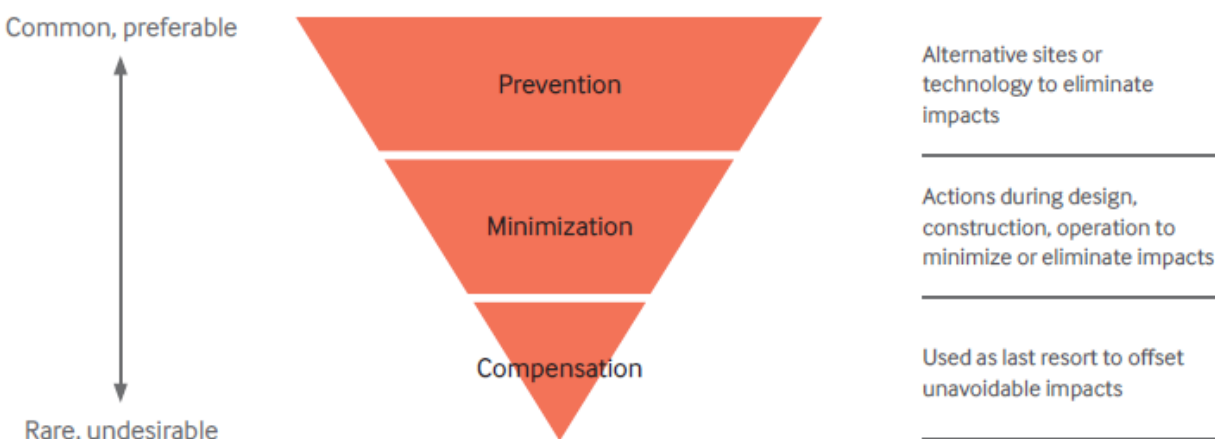
<http://www.placng.org/new/laws/F10.pdf>

5.3 Cost mitigation

5.3.1 Does the government favor prevention over minimization, and avoid practices that require compensation and resettlement?

The EIA Act 1992 requires any proponent planning a project or activity to submit a report of the environmental impact assessment of the project before commencing operation. The report must include potential plans for preventing or mitigating the environmental impacts of the project, as well as clean-up options. However, there is no evidence that relevant government agencies follow the mitigation hierarchy recommended in the Natural Resource Charter (see Figure 5.1) in assessing project proponents' cost mitigation plans. The approach is usually to seek ways of minimizing impacts and providing compensation where necessary. Still, compensations offered to affected communities are often neither timely nor commensurate to the severity of impact, where they are at all provided.

Figure 5.1: Mitigation Hierarchy



Information sources:

Revised NRC Benchmarking Framework

<http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm>

5.3.2 Does the government set and enforce effective environmental, social and health regulations?

The Federal Ministry of Environment and the National Environmental Standards and Regulations Enforcement Agency (NESREA) are responsible for overseeing compliance with environment and socioeconomic performance standards and requirements. In addition, within the natural resource sector, DPR is responsible for overseeing compliance with environmental and socioeconomic performance standards and requirements. The National Oil Spill Detection and Response Agency (NOSDRA) are specifically responsible for maintaining environmental standards in the oil and gas sector in Nigeria. There are no such specific institutions put in place by the government to manage health and social impacts of resource projects. Rather, various agencies oversee regulatory standards covering environmental, health and social impacts. The problem lies in effective enforcement of available regulatory standards.

In terms of technical capacity, the agencies ought to be well staffed in principle as there are provisions under the FEPA Act to guarantee competence and reputable professionalism. However, in practice the agencies are largely ineffective, either due to failure to adhere to recruitment provisions or failure to fully deploy available capacity. Moreover, the DPR – which is responsible for enforcing compliance with environmental and socioeconomic standards in the natural resource sector under EGASPIN – has severe financial and technical capacity constraints. Also, the principle of Federal Character is followed in recruitment processes of these government agencies. This may not necessarily lead to technical deficiency, yet corruption and nepotism displace merit in the recruitment processes, which contributes to the technical capacity constraints.

Private sector participants in the oil and gas sector seem to have superior technical and financial capacity. They have access to better technology, and differences in incentive structures allow private companies to attract the best workers. This lag in capacity makes the enforcement of regulatory requirements more challenging for government agencies.

Information sources:

<http://www.nesrea.gov.ng/our-functions/>

http://file.scirp.org/pdf/JEP_2015032715353135.pdf

<https://www.onepetro.org/conference-paper/SPE-189060-MS>

<https://dpr.gov.ng/index/functions-of-dpr/>

Stakeholder Engagement with industry experts

5.3.3 Does the government require companies to develop environmental mitigation management plans and does it ensure that these plans are followed?

The EIA Act 1992 contains provision for mitigating negative environmental impacts of resource projects. Mitigation is defined to include “the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means”. In practice, there is weak compliance to these standards. However, the Act does not contain measures or processes for avoiding, reducing or compensating for negative social impacts on local communities. Also, there is no express provision requiring companies to develop management and monitoring plans in response to impact assessment processes.

The government agencies charged with monitoring the local impacts of oil-related activity lack both the personnel and technological competence to measure these impacts. Also, the fact that the federal government excludes other federating units from oil resource management makes it difficult to enforce monitoring at a local level. For example, a regulatory body monitoring impact like NOSDRA has a federal presence in Abuja rather than in the affected areas (including delegating authority for monitoring to state and local government counterpart agencies).

Information sources:

<http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

5.3.4 Does the government require companies to develop effective disaster response plans and is it enforced?

At the government level, Nigeria has a National Oil Spill Contingency Plan that has been developed and approved. However, there is no express provision in extant laws that require companies to document plans for major accidents and disasters. Nonetheless, resource companies operating in Nigeria often adhere to higher standards set by shareholders’ expectations and home governments’ regulations, which pushes them to develop such plans, even outside the scope of local legal requirements.

Given the nature of oil installations and the vast area they cover that makes surveillance difficult, there is often a lag between when disaster strikes and when it is noticed and acted upon. Affected community members sometimes notice and report when there are disasters concerning oil installations. In responding to disasters, there is no coordinated attempt by companies in collaboration with government services to cover affected communities in addition to operation sites in providing response. Consequently, there are disaster sites across affected communities where oil installations have been rehabilitated whereas clean up abandoned.

Additionally, previous NNRC reports have highlighted the value of having a comprehensive and publicly available spill map and noted the efforts of the National Oil Spill Detection and

Response Agency (NOSDRA) and Stakeholder Democracy Network (SDN) in developing a comprehensive web-based digital mapping initiative to map and track oil spills in the extractive regions of the country. In this update, we note that statistics on oil spills are made available by NOSDRA and are accessible online.

Information sources:

Stakeholder Engagement with community members and industry experts

<https://oilspillmonitor.ng/>

5.3.5 Does the government effectively allocate responsibility for the execution and financing of project closure and land rehabilitation?

The EIA Act 1992 contains a provision for clean-up activity after the completion of a project activity. The Act defines mitigation to include restitution for any damage to the environment caused by adverse environmental effects of projects through replacement restoration, compensation or any other means. EIA reports of projects submitted to DPR must have detailed plans of how the project proponent intends to close the project at the end of its life cycle. The responsibility for project closure lies with the project proponent who is required by law to provide an elaborate plan for closing a project. In the case of the clean-up of Ogoni, Hydrocarbon Pollution Remediation Project (HYPREP) is responsible to remediating the environmental damage occasioned by oil exploration in Ogoni land. The funding for the clean-up is provided by both the federal government and joint venture oil companies.

Information sources:

<http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm>
<http://sweetcrudereports.com/2017/08/07/shell-commits-10m-to-hyprep-for-ogoni-clean-up/>

5.3.6 Where social and environmental costs are unavoidable, does the government ensure that there is adequate compensation?

The EIA Act 1992 contains provision for mitigating negative environmental impacts of resource projects. Mitigation is defined to include “the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means”. Direct compensation to specific individuals or communities for use and/or destruction of land and access to resources or livelihoods are inconsistent and not timely. Moreover, because the Land Use Act vests ownership of land with the government, direct compensation is typically not commensurate to the costs incurred by affected communities.

The government also applies more general compensation mechanisms, especially with the revenue-sharing arrangement between the federal and subnational governments. States with oil producing communities receive a share (13 percent) of all revenues accruing to the federation account from any natural resources. There are other mechanisms such as the Ecological Fund, which were created to serve compensatory roles.

However, an effective compensation mechanism should leave affected populations in as good a position as they were before extraction commenced. This cannot be said to apply to Nigeria's oil producing communities.

Information sources:

<http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm>

<http://www.nigeria-law.org/Land%20Use%20Act.htm>

[http://www.lawnigeria.com/LawsOfTheFederation/ALLOCATION-OF-REVENUE-\(FEDERATION-ACCOUNT,-ETC.\)-ACT.html](http://www.lawnigeria.com/LawsOfTheFederation/ALLOCATION-OF-REVENUE-(FEDERATION-ACCOUNT,-ETC.)-ACT.html)

5.3.7 Where resettlement is unavoidable, does the government ensure that resettlement provides adequate redress?

The Land Use Act 1990 vested the entire ownership of land, resettlement and compensation in each state of the federation under the State Governor. Land use, resettlement and compensation issues therefore fall within the State Governor's authority for commercial, agricultural, and other purposes. The Act provides that land legally or customarily occupied before the Act came into force could be revoked and acquired by the government 'for mining or oil pipeline purposes with compensation restricted to the value of unexhausted improvements at the date of revocation'. However, the Land Use Act does not cover involuntary resettlement that might arise as a result of oil exploration. It is worth noting that there have been few instances in the oil and gas sector where involuntary resettlement has taken place in practice.

Information sources:

<http://www.nigeria-law.org/Land%20Use%20Act.htm>

5.4 Local Benefits

5.4.1 Does the government ensure companies come to an agreement with affected communities as to how companies will deliver community benefits?

Although the Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010 makes provisions for enhancing the impact of resource developments on Nigerian companies and workers, it provides no specific measures for affected communities. However, resource companies often take the initiative to enter into memorandum of understandings (MOUs) with local communities. However, these are not legally binding, compliance is discretionary and affected communities cannot readily seek redress when resource benefits are shared equitably. Community Development Agreements (CDA) are part of the legal structure in the mining sector, as contained in 'The Host Community' segment of the Nigerian Mineral and Mining Act 2007.' There is no similar provision in the legal framework governing the oil and gas sector.

However, mechanisms such as the Niger Delta Development Commission, Ministry of Niger Delta Affairs, the derivation principle enshrined in the 1999 Constitution, Ecological Fund, and local content all have measures to ensure that local communities benefit from resource extraction. However, these mechanisms have been relatively ineffective in equitably distributing benefits to local communities, especially to vulnerable groups. The revenues devoted to local communities is not commensurate with the level of development needs in the communities.

Furthermore, prescriptive development programmes initiated under these mechanisms have failed to meet the needs of the people that they target. Existing mechanisms need to be more inclusive to ensure benefits for local communities. Specifically, community members should be well informed about these measures and involved in deciding projects to be funded.

Information sources:

www.lawnigeria.com/LawsoftheFederation/Nigerian-Minerals-and-Mining-Act.html

5.4.2 Does the government encourage companies to direct employment and procurement opportunities towards affected communities?

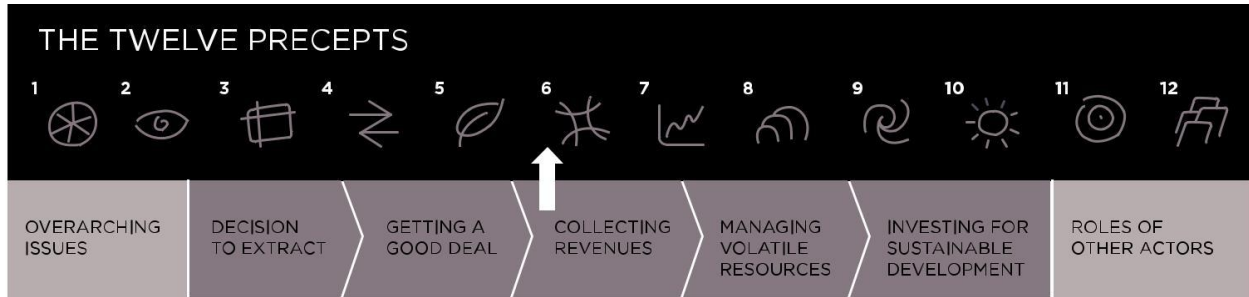
It is noted in the 2014 NNRC report that the NOGICD Act 2010 puts in place mechanisms that ensure local communities benefit from oil exploration and extraction. Some of these benefits are realized through direct employment by operators in the sector, business development schemes, education and health programmes, and youth development initiatives. Also, oil companies have put mechanisms in place for extending the benefits of resource development to affected communities. Particularly, companies have departments for public relations domiciled within their organizations and carry out social investments under the umbrella of corporate social responsibility (CSR), including job opportunities, scholarships and training.

Some Nigerian firms have taken control of marginal oil fields in the upstream sector following divestments by some IOCs recently. Nonetheless, the lack of adequate financial capacity among Nigerian companies makes it difficult for them to control more lucrative but technically demanding assets, which are usually offshore.

Information sources:










<https://www.thisdaylive.com/index.php/2017/07/05/iocs-to-dispose-of-more-assets-after-pib-passage-licence-expiration/>

PRECEPT 6: STATE OWNED ENTERPRISES: NNPC



Nationally-owned resource companies (NORCs) should operate transparently with the objective of being commercially viable in a competitive environment.

Overall Precept Score	
<p>Precept 6: State Owned Enterprises</p> <p>Mild changes have been observed since 2014. The Petroleum Industry Governance Bill (PIGB) was passed by the Senate; gasoline subsidy withdrawn by the Federal Government; and transparency in the NNPC operational and account information marginally improved. However, the observed muddling of the corporation’s business roles with its non-commercial and auxiliary regulatory functions continues. Commercial decisions and operational activities of the corporation are still subject to political interference.</p>	●

Overview of the Questions and Ratings	
6.1 SOE ROLE AND FUNDING	
6.1.1 Does the government clearly define a commercial role for the NNPC that reflects the company's actual financial and technical capacity?	
6.1.2 Does the government clearly define the company's non-commercial roles? Does this definition limit conflicts of interest?	
6.1.3 Does the government ensure that the NNPC has a workable funding mechanism?	
6.2 SOE CORPORATE GOVERNANCE	
6.2.1 Does the government clearly establish the identity and role of state shareholders in the NNPC?	
6.2.2 Does the NNPC have an empowered, professional and independent board?	
6.2.3 Does the NNPC invest in staff integrity and capacity?	
6.3 SOE TRANSPARENCY AND ACCOUNTABILITY	
6.3.1 Does the NNPC disclose key operational and payment data?	
6.3.2 Does the NNPC subject itself to independent financial audits, and publish the results?	
6.3.3 Does the legislature oversee NNPC performance without unduly constraining its decision making?	

Summary of Key Findings

SOE Role and Funding

- NNPC's business roles remain diluted with its non-commercial and auxiliary regulatory functions, which is all at variance with guidelines provided by the NNPC Act. This often brings about confusion and conflict of interest with the DPR, the designated regulator of the oil and gas sector. The recently passed PIGB in the senate is one of the measures being taken to correct regulatory and management lapses in the oil and gas sector and the enhance performance of the sector.
- NNPC is not properly incentivized and motivated to deliver commercially-viable services in the oil and gas sector. Lack of appropriate market incentives engender inefficiency which culminates in serial operational losses in most subsidiaries of the NNPC.

SOE Corporate Governance

- Top positions in the NNPC are subjected to political influence and ratification. This tends to hamper merit-based recruitment in the organization and effective functionality of the executive directors.
- NNPC is fully owned by the government with shares not publicly traded or transferable. As such, it is accountable only to the government and its commercial drive is limited to the priority and goals set by the government.

SOE Transparency and Accountability

- The NNPC disclosure requirements are not the same with other publicly quoted companies. The corporation audited accounts are not made public knowledge and key financial information are guarded with the utmost secrecy. Although an improvement has been made with the recent monthly publication of the operational and financial activity of the organization, there are still some inconsistencies within those reports.
- Audited accounts of the corporation cover all subsidiaries, and when the need arises, are prepared by independent external auditors in conformity with international best practices. However, the quality of the audited reports are usually affected by inadequate and improper financial records which limit sound financial judgment.

6.1 SOE Role and Funding

6.1.1 Does the government clearly define a commercial role for the NNPC that reflects the company's actual financial and technical capacity?

The NNPC Act (1977) unambiguously clarified that the commercial activities relating to the petroleum sector should be carried out by the corporation. However in practice, NNPC is not properly incentivized and motivated to deliver commercially effective services. The organization's financial and operational structure hampers efficiency and limits commercial effectiveness. The law allows the corporation to hold on to revenue to cover production and operating costs and there are no clear rules governing the amount it can withhold. This provides an avenue for huge retained revenue from crude oil which may create wastages and inefficiency in spending. Also, the corporation is not held accountable for losses incurred in its operations and this limits its drive towards commercially-viable services.

Information sources:

<https://www.ft.com/content/b5a5f5f0-cf20-11e5-92a1-c5e23ef99c77>

<https://www.premiumtimesng.com/news/headlines/201087-nnpc-withheld-n824-7-billion-oil-revenue-6-months-buharis-govt-report.html>

6.1.2 Does the government clearly define the company's non-commercial roles? Does this definition limit conflicts of interest?

Non-commercial roles of the NNPC are not clearly defined and in most cases are in conflict with the corporation's business roles. An example of the muddle is the corporation's strong appetite in assuming the role of de facto regulator in the petroleum sector. As noted in Nwokeji (2007) and Gillies (2009), the overbearing disposition of the NNPC in assuming both commercial roles as well as exercising de facto regulator through its interaction with IOCs limits the power and functions of the Department of Petroleum Resources (DPR), the designated regulatory body in the oil and gas sector. The situation has not changed over the years. This kind of overlap in responsibilities creates conflict and confusion and also hinders effective performance of the oil and gas sector. Lack of adequate resources constrains the functionality of the DPR. In contrast, NNPC has enough resources and capabilities to ensure effective discharge of its duties and wrestle functional power with the DPR. The obvious regulatory lapses brought about the initiation of the Petroleum Industry Governance Bill (PIGB), a section of the Petroleum Industry Bill (PIB) that unbundles the governance structure of the oil and gas sector, provides clarity, and fosters transparency and accountability in the administration of the sector. Section 4 of the PIGB as recently approved by the Nigerian Senate, provided for the establishment of the Nigeria

Petroleum Regulatory Commission as the sole regulatory institution for the Nigerian oil and gas industry across the various value chain.

Another non-commercial function of NNPC as seen in practice is the task of ensuring regular supply of fuel irrespective of the prevailing economic and demand conditions. This quasi-fiscal activity distorts market incentives and hampers its profitability and commercial viability. NNPC has a reputation for making significant losses in most of its operational units. However, there is evidence of strong commitment to viable and vibrant commercial operation in recent time. The Corporation has succeeded in reviewing and cancelling commercially unfavourable oil swap deals and offshore processing agreements (OPA). This in addition to cost efficiency measures implemented at the corporate headquarters which has reduced operational losses to a very limited extent. Of the 11 subsidiaries of the Corporation, only NNPC Retail and the Nigerian Gas Company consistently made profits during the year 2016 (NNPC 2016 Report). This is an improvement over what was obtainable in the past.

Information sources:

www.premiumtimesng.com/business/business-news/235046-2-nnpc-subsidiaries-profitable-2016-report.html

www.thisdaylive.com/index.php/2016/07/08/for-first-time-in-15-years-nnpc-reports-monthly-profit-of-n274m/

Nwokeji, G. Ugo (2007). "The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions." Policy Report on the Changing Role of National Oil Companies in International Energy Markets. Houston, TX: Rice University, James A. Baker III Institute for Public Policy

Stakeholder engagement with NEITI official

Gillies, Alexandra (2009). "Reforming corruption out of Nigerian oil? Part one: Mapping corruption risks in oil sector governance." U4 Brief, available at www.u4.no/themes/nrm

<http://www.petroleumindustrybill.com/wp-content/uploads/2017/05/FINAL-COPY-OF-PETROLEUM-INDUSTRY-GOVERNANCE-BILL-2017-May-15.pdf>

6.1.3 Does the government ensure that the NNPC has a workable funding mechanism?

Huge funding is required by the NNPC to effectively deliver its statutory functions in the oil and gas sector. Therefore, the corporation relies on different sources to meet its operational financing. As a way to enhance the performance of the corporation, the federal government approves an annual budget for the corporation. The organization also seeks funding through cash calls from the government and withholds some portion of oil revenue to fund its operations. However, the corporation maintains that the above sources are insufficient in meeting the

corporation’s huge investment requirements in the oil and gas sector (which is estimated at \$7 - \$9 billion annually). Lack of commercial drive as well as inefficiency and opacity surrounding the operations of the state-owned oil firm serves as a strong disincentive to investors and hampers the ability of the corporation to have a workable funding mechanism over the years. In the face of non-improving funding from the federal government, the NNPC has started exploring alternative financing arrangement especially from foreign sources.

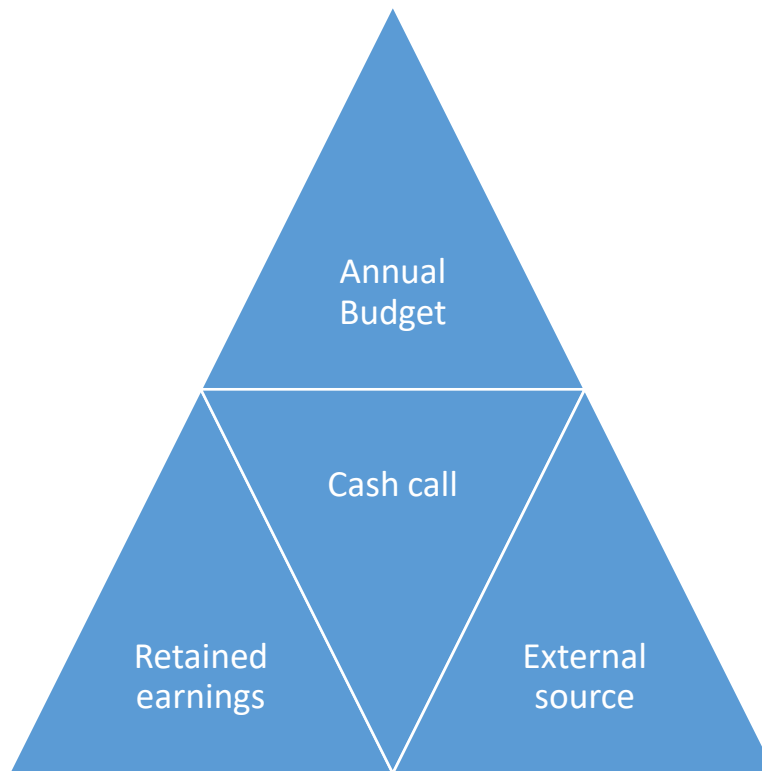


Figure 1: Major sources of NNPC funding mechanism

Information sources:

<https://www.vanguardngr.com/2017/11/nnpc-gets-3-7bn-alternative-funding/>

6.2 SOE Corporate Governance

6.2.1 Does the government clearly establish the identity and role of state shareholders in the NNPC?

NNPC is a statutory corporation wholly owned by the government with no public shareholding status. This implies that its shares are not listed, publicly traded and transferable. The organization is only answerable and fully accountable to the government. The government through its appointed officials sets goals and priority for the corporation and this to a reasonable degree determines the extent of commercial effectiveness of the organization.

Recently, strong recommendations abound on the need to list and trade NNPC shares publicly on the Nigerian Stock Exchange albeit with no strong commitment or political will on the part of decision makers to do so.

Information sources:

www.newsexpressngr.com/news/detail.php?news=19187&title=NNPC-to-be-listed-on-the-Stock-Exchange-in-2018

www.thisdaylive.com/index.php/2016/11/15/69553/

6.2.2 Does the NNPC have an empowered, professional and independent board?

By design, the board and executive management are granted autonomous and independent powers to make decisions as it affects the running of the corporation. However, this is not reflected in practice. In most cases, incessant political interference limits the independence and effective functionality of the NNPC Board and management. The appointment of members of the board of directors and top management of the corporation is based on political patronage. The power to nominate and appoint granted to the Federal Executive Council are mostly abused, as shown in high turnover of the GMDs – 7 in three administrations i.e. September 2007 – till date. This development hampers policy stability and consistency as well as effective and efficient operation of the organization.

Undue political meddling in NNPC management can risk rapid turnover in key staff, creating difficulty in consistency and ability to execute strategic initiatives, as noted in PwC October 2017 report entitled “The new nation builders: creating the African national oil company of the future”.

Information sources:

PwC (2017). The new nation builders: creating the African national oil company of the future. Accessed at:

<https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjYs9zDsPfWAhVKBsAKHejwA1MQFgqkMAA&url=https%3A%2F%2Fpricewaterhousecoopers-pwc.africa-newsroom.com%2Ffiles%2Fdownload%2Fd229099aa2e0cbb&usq=AOvVaw064wp5cokH4eOJe2rhdwCF>

www.naij.com/1129424-nnpc-boss-baru-dismisses-kachikwus-corruption-allegation.html?source=notification#1129424

6.2.3 Does the NNPC invest in staff integrity and capacity?

NNPC has one of the best staff welfare packages and working conditions in the public service in Nigeria. The organization has a highly competitive remuneration structure for workers with schedule capacity training. While promotions into mid-level positions in the organization seems to follow a due process, this is not so for the top managerial roles in the corporation. Top positions in the corporation are dispensed based on political patronage, quota systems, catchment area or national spread. Recently, in October 2017, the NNPC GMD in person of DrMaikantiBaru was alleged to have involved in appointment scandal in the organization without appropriate due process. In terms of staff integrity, recent information from the organization e-information channel shows that the corporation trains its employees in anti-fraud activities with a view to reducing corruptions in the system.

Information sources:

<http://nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/844/NNPC-Tackles-Corruption-with-Anti-Fraud-Training-for-Staff.aspx>

<http://nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/813/GMDs-One-Year-Achievements-Address-to-Staff.aspx>

<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/735/NNPC-Clarifies-Subsidiary-Spending-on-Staff-Transfer.aspx>

6.3 SOE Transparency and Accountability

6.3.1 Does the NNPC disclose key operational and payment data?

There is no provision in the NNPC Act that directs the organization to feed members of the public information relating to its operational and financial activities. Nevertheless, the enactment of Fiscal Responsibility Act (2007) and Freedom of Information Act (2011) encourages public access to information relating to the activities of MDAs. Despite the existence of these Acts, NNPC still keeps opaque information about its operational activities and very few have a clue about how the organization is being run.

However, the corporation transparency improves marginally in 2016 during the tenure of Dribekachikwu who served in the capacity as both NNPC GMD and Minister of State for Petroleum Resources. During the brief period, the monthly financial and operational report of the corporation was published for public scrutiny. This is to promote public access to financial information of the organization, reduce corruption speculation, and improve probity, transparency and accountability in the system. However, the fact that the recent move is yet to be backed by any known substantive law in the oil and gas sector has questionable implications for the sustainability of this initiative.

Information sources:

www.businessnews.com.ng/2016/02/12/frc-tackles-nnpc-over-non-submission-of-audited-accounts/

www.thisdaylive.com/index.php/2017/07/04/improving-transparency-in-nnpc/

www.nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20and%20Operations%20Report%20for%20the%20month%20of%20January%202016.pdf

6.3.2 Does the NNPC subject itself to independent financial audits, and publish the results?

Section (7) subsection (2-3) of the NNPC Act (1977) directs the corporation to conduct audited report of its financial year. In this respect, the Act mandates the organization to select independent auditors through the approval of the National Council of Ministers and in accordance with laid down procedures of the Auditor-General of the Federation. What obtains in practice, to some reasonable extent, does not deviate from the law. NNPC's audited accounts, when the need arises, are usually carried out by independent auditors. In 2010, the federal government through the ministry of finance engaged the services of the KPMG to carry out a

forensic audit into the accounts of the NNPC to provide clarity on the allegation by the 36 state governors that the corporation has been illegally making deductions at source to fund its operations. Also, in 2014 the federal government outsourced NNPC's audit report to PwC to investigate allegation by the then CBN governor, Mallam Sanusi Lamido Sanusi that the corporation failed to remit about \$20 billion to the federation account. The audit report debunked the notion of unremitted \$20 billion. It however, acknowledged some malpractices in financial information of the corporation. However, audited financial reports of the NNPC are not frequently carried out and are sometimes driven by the demand of the political office holders especially the executive arm of government.

NNPC does not make public its audited accounts for a financial year. Despite the existence of Fiscal Responsibility and FOI Acts which promote public knowledge on the activities of the MDAs and NEITI which ensures transparency in the extractive industry, NNPC is still deficient. NNPC is still deficient in the area of timely supply of its audited accounts for public scrutiny. For example, the Fiscal Responsibility Commission has decried the corporation's incessant disregard to submit its audited report to the commission since 2011. However, marginal improvement has been observed especially since 2016 when the corporation made an effort to make public its monthly financial and operational information.

Information sources:

<https://www.vanguardngr.com/wp-content/uploads/2015/04/Audit-Report-on-NNPC.pdf>

<http://eie.ng/files/KPMG%20NNPC%20Report.pdf>

<http://punchng.com/nnpc-accounts-not-audited-since-2010-frc/>

<https://www.thenigerianvoice.com/news/77279/revealed-the-kpmg-audit-report-on-nnpc.html>

www.businessnews.com.ng/2016/02/12/frc-tackles-nnpc-over-non-submission-of-audited-accounts/

www.thisdaylive.com/index.php/2017/07/04/improving-transparency-in-nnpc/

www.nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20and%20Operations%20Report%20for%20the%20month%20of%20January%202016.pdf

6.3.3 Does the legislature oversee NNPC performance without unduly constraining its decision making?

Section 88(2) (a)&(b) of the 1999 Constitution as amended specifies power jurisdiction of the National Assembly. Based on the section, the legislative institution is to exercise power only for the purpose of enabling it to make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and expose corruption, inefficiency and waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

In accordance with the constitution, the National assembly's oversight in the NNPC is largely in the area of examination and approval of the Corporation's annual budget estimates as well as ensuring that its operations are optimally discharged and in alignment with appropriation act. The National Assembly through its Standing or Joint committees on Petroleum Resources monitors the activities and performance of the NNPC by conducting schedule visits to the Corporation and its subsidiaries. And when there are alleged irregularities or contravention of parliamentary Acts, the designated committees seek clarification by inviting concerned authority in the corporation.

However, in most instances the federal government does approve the annual budget for the NNPC without passing through the legislative process. Also, the power to summon and investigate granted to the legislative institution is sometimes undermined especially by members of the executive arm of government. In many instances, top officials in the NNPC flout the summon order by the National Assembly committees to provide information on certain practices in the corporation. This constrains the ability of the legislative arm of government to effectively discharge its roles in monitoring the operation of the corporation. Also, the quality of oversight is weakened by absence of information on the corporation activities.

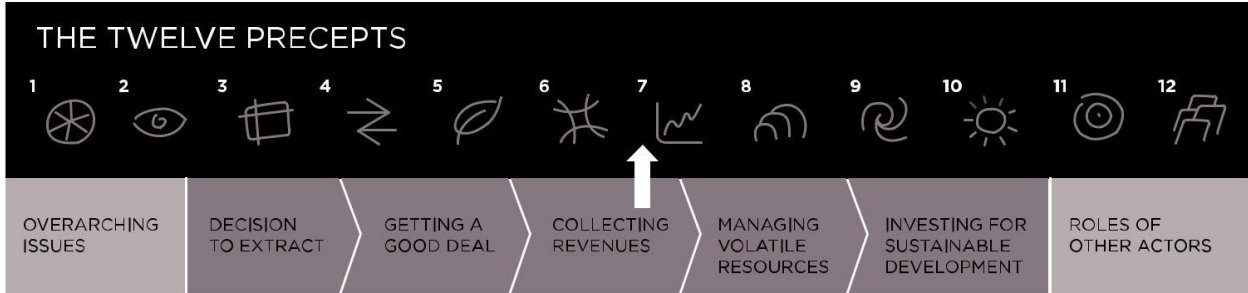
Information sources:

Haruna U & Barde H (2015). Financial accounting in oil and gas in Nigeria and the technical accounting issues. International Journal of Management and Social Science Review, Vol 1, Issue 18

<http://thenewsnigeria.com.ng/2015/04/pwc-auditors-slam-nnpc-accounting-system/>









<http://nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/859/NNPC-Subsidiary-NGPTC-Declares-N1581Bn-Profit-after-Tax-in-2016.aspx>

PRECEPT 7: INVESTING FOR GROWTH



Resource revenues should be used primarily to promote sustained, inclusive economic development through enabling and maintaining high levels of investment in the country.

Overall Precept Score	
<p>Precept 7: Investing for Growth</p> <p>There is some notable progress since 2014, especially as it relates to timely publication of monthly allocation to the various federating units. However, the share of recurrent expenditure remains disproportionately high, while capital expenditure and net financial accumulation are experiencing rapid decline. Also, medium term sector strategy (MTSS), which is expected to guide public investment and capital expenditure, are not updated since 2011.</p>	●

Overview of the Questions and Ratings	
7.1 CURRENT AND FUTURE NEEDS	
7.1.1 Is the government investing a reasonable proportion of revenues?	
7.2 DEVELOPMENT AND DISTRIBUTION	
7.2.1 Does the government have an up-to-date and publicly available national development strategy that outlines the country's development objectives?	
7.2.2 Are sector strategies prepared, including estimates of their capital and recurrent costs, to guide the identification of public investment projects?	
7.2.3 Are the expenditure and savings plans reviewed and approved by the legislature?	
7.2.4 Are there arrangements for resource revenue sharing between central and sub-national government and are these set in legislation?	
7.2.5 Does the government publish information on resource revenue-sharing transfers and arrangements and make it easily accessible?	
7.2.6 Does the sub-national government publish information on resource revenues and expenditures, and make it easily accessible?	
7.2.7 Are cash transfers to citizens used as redistribution mechanisms?	

Summary of Key Findings

Current and Future Needs

- The pattern of public finance indicates that current needs are accorded higher priority to the neglect of future generations. The share of recurrent expenditure remains disproportionately high, while capital expenditure and net financial accumulation are experiencing rapid decline.

Development and Redistribution

- Nigeria has a set of national development strategies comprising of a long-term plan (Vision 20:2020) and medium-term plan (Economic Growth and Recovery Plan) which are publicly available, but the plans are not aligned and lacks coordination among the federating units.
- The federal and majority of the state governments have not updated MTSS since 2011. However, there are significant changes in the budgeting process, with the shift from envelope budgeting system to the zero-based budgeting system.
- Statutorily, expenditure and saving plans are reviewed and approved by the legislature, but in reality this process has not improved allocative efficiency or reduced wastages, but rather elevate the aggregate expenditure and erode savings.
- A substantive revenue sharing template in Nigeria exists for three federating units and the information is regularly published on the website of the National Bureau of Statistics. There are also private sector led initiatives to improve the accessibility of the public-sector budget and statistics.
- While there a conditional cash transfer (CCT) scheme exists, it is presently limited in scope, coverage and impact to reduce high poverty incidences in Nigeria.

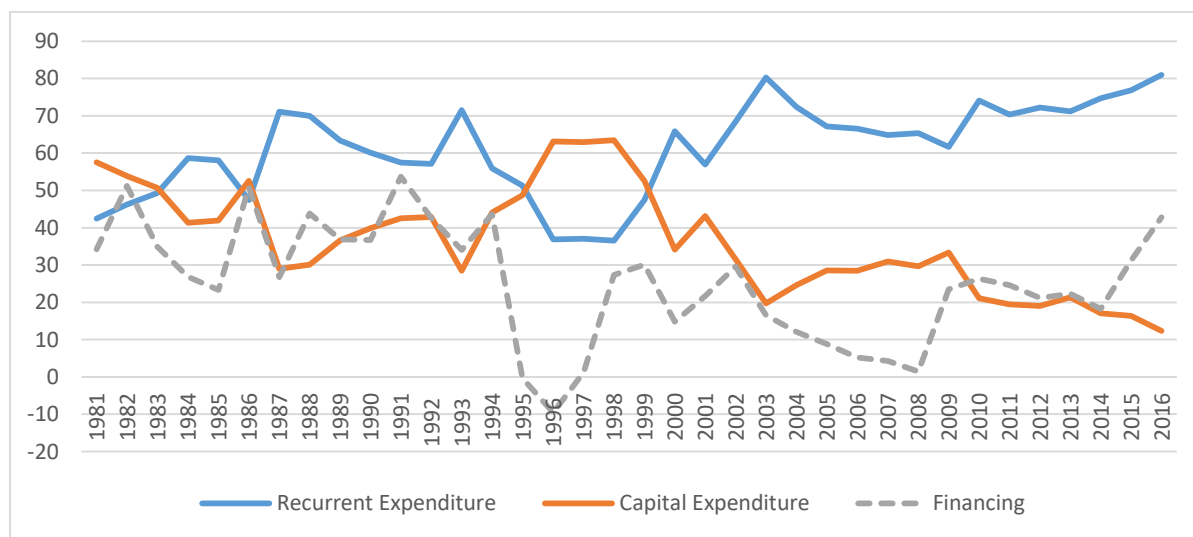
7.1 Current and Future Needs

7.1.1 Is the government investing a reasonable proportion of resource revenues?

The optimal way to effectively utilize resource endowment is through allocating the resource revenues towards meeting the present needs without compromising the needs of the future generations. This requires investing substantially in capital goods, improving the country’s net financial accumulation and reducing the debt burden on the future generations through savings. Between 1981 and 2016, Nigeria has earned about ₦80trillion from oil revenue. Analysis of government expenditure over these periods shows that recurrent expenditure has consistently overwhelmed capital expenditure. More worrying is the fact that the recent trend, as shown in Figure 7.1, indicates a downward trajectory in capital expenditure, dropping to below 20% of total expenditure in 2011. In contrast, recurrent expenditure has been rising over the same period. At present, the major component of recurrent expenditure goes into administration and transfer expenses, which are less related to development priorities of the country.

Figure 7.1 further shows the trend in value of financing as a proportion of total expenditure. Financing captures the differences between government expenditure and revenue, which could basically generate a surplus or deficit. Financing provides a perspective of the net financial asset accumulation by the government; as surplus implies increase in net public sector wealth, and vice versa. As the result shows, Nigeria has only recorded surplus in one year over the three decades. The persistent deficit means government has been accumulating debt despite huge inflows from resource revenues. Also, notable from Figure 7.1 is the surge in deficit between 2014 and 2016, a period which coincided with the recent economic downturn. This demonstrates lack of savings and other fiscal buffers to mitigate macroeconomic shocks experienced during the period.

Figure 7.1: Composition of Government Expenditure and Financing 1981-2016



Source: CBN and authors’ calculations

Another perspective to assess the extent to which Nigeria is investing its resource revenues is by examining its portfolio of specialized saving mechanisms such as Excess Crude Account (ECA) and sovereign wealth fund (SWF), which are designed as investment/saving buffers. Table 7.1 compares the size of SWF in Nigeria to other resource countries. The analysis shows that Nigeria created SWF belatedly in 2012 and its current portfolio is USD1.5 billion. This represents about 6.2% of Nigeria's 2017 budget and an investment of \$8 per person. Comparatively, Botswana and Kuwait current SWF portfolio represents USD14400 and USD148000 of investment per person respectively.

Table 7.1: *Comparison of the Nigerian SWF with other Resource Countries*

Country	Year Established	Seed capital (\$billion)	Size (\$ billion)	% of Budget (2017)	Per Capita SWF (\$)
Norway	1990	0.31	922.1	3720	185000
Chile	2007	2.38	24.1	39.8	1330
Angola	2012	5	4.6	10.4	178
Botswana	1994	-	5.7	101.8	14400
Russia	2008	66.89	89.9	32.1	627
Kuwait	1953	0.7	592	910.8	148000
Nigeria	2012	1	1.5	6.2	8

Source: NEITI (2017)

Looking further at the ECA, which was established in 2004 to encourage savings of oil revenues, a similar pattern of weak propensity to save is depicted. As shown in Figure 7.2, inflows into ECA has reached \$167billion over the years, but this has been matched by outflows of about \$165billion. The high outflows indicate that ECA is not meeting its intended objective as a mechanism for saving oil revenue. A disaggregation of ECA outflows shows that over 50% are allocated for Federal Accounts Allocation Committee (FAAC) distribution to augment the monthly allocation to the three tiers of government. Only a modest 0.6% proportion of the ECA outflows went into SWF. Overall, similar to the preceding benchmarking exercises of 2012 and 2014, Nigeria has not witnessed any significant change as it relates to investing a reasonable proportion of oil resource revenues.

Table 7.2: Excess Crude Account Financial Analysis

Summary Tables of Findings - ECA US\$			
Details	Sum of \$ Inflows	%	
Income	\$97,575,192,366	60.26%	
Reversals	\$48,824,547,774	30.16%	
Refund Paris Club Exit	\$12,490,637,206	7.71%	
Interest on Investment	\$1,968,288,545	1.22%	
Special Transfer	\$1,000,000,000	0.62%	
Refund National Population Census Fun	\$36,077,498	0.02%	
Exchange Rate Gain	\$14,361,416	0.01%	
Refund Un-utilised LC	\$1,599,544	0.00%	
Total	\$161,910,704,349	100.00%	
Add: Balance Brought from 2004	\$5,918,965,803		
Grand Total	\$167,829,670,152		
	Details	Sum of USD Withdrawals	%
	FAAC Dist	\$83,423,599,104	50.37%
	Debt Repayment	\$46,012,875,915	27.78%
	NIPP	\$10,745,242,725	6.49%
	Transfer to Domestic Crude a/c	\$10,266,094,390	6.20%
	Oil Marketers/Subsidy Payments	\$4,593,813,655	2.77%
	Sure-P	\$4,364,554,735	2.64%
	Reversal Contra	\$3,326,698,215	2.01%
	JVC Operations	\$1,513,230,000	0.91%
	Sovereign Wealth Fund	\$1,000,901,528	0.60%
	FGN Payment to 3rd Parties	\$250,000,000	0.15%
	Exch Rate Loss	\$87,595,080	0.05%
	Population Census	\$34,621,236	0.02%
	Losses Investment	\$2,008,223	0.00%
	Commission	\$1,259,784	0.00%
	Grand Total	\$165,622,494,589	100%

Source: FOSTER (2015)

Information sources:

CBN (2017). Statistical Bulletin. Available: <http://www.cbn.gov.ng/documents/Statbulletin.asp>

Nigerian Extractive Industry Transparency Initiative (NEITI, 2017). The Case for a Robust Oil Savings Fund in Nigeria. NEITI Occasional Paper Series Issue 2, July, 2017.

Ezekwesili, O. K. (2016). Safeguarding and Smoothing Fiscal Adjustment in Nigeria: Policy Options. Facility for Oil Sector Transparency and Reforms in Nigeria.

7.2 Development and Redistribution

7.2.1 Does the government have an up-to-date and publicly available national development strategy that outlines the country's development objectives?

Since the inception of democratic governance in Nigerian in 1999, various administrations have laid out national development plans (NDP) for the country, all of which are publicly available. Statutorily, the National Planning Commission (NPC) now known as Ministry of Budget and National Planning (MBNP) is saddled with the responsibility of identifying national priorities and developing strategic plans that align with them. Till date, the Vision 20:2020 is the most comprehensive and sector-wide national development document prepared by the MBNP, with clear targets and key performance indicators to measure progress. The plan set a timeframe of 2020, along three phases of national implementation plan (NIP): First NIP (2010-13), Second NIP (2014-2017) and Third NIP (2018-2020).

However, the emergence of other medium term plans that partly deviate from Vision 20:20 creates some confusion. For example, Jonathan administration initiated the Transformation Agenda to cover 2011-2015, while the present Buhari Administration introduced Economic Growth and Recovery Plan (2017-2020). Although all the strategic plans were developed by the MBNP and are all claimed to be derived from the Vision 20:2020 document; yet each administration has focused more on its signatory strategic plan rather than Vision 20:2020. Moreover, the far-reaching and ambiguous developmental goals set in Vision 20:2020 has been sidestepped for more limited and modest goals contained in the subsequent plans. This has led to reduced focus on important issues around social and human development, environment and resource governance.

The conflicting roles of the MBNP have also hampered the implementation of the NDP in Nigeria. Between 2011 and 2015, Ministry of Finance was saddled with the function of formulating the budget, while NPC, as it was known then, was in charge of policy formulation. This delinks the planning and budgeting functions. The budget formulation function was only restored back to the ministry in September, 2015 by the present administration. These changing roles between the Ministry of Finance and MBNP have persisted since 1999, and generally weakened the capacity to design and proactively implement long-term development plans.

Another key concern with the NDP framework in Nigeria relates to coordination between federal and sub-national governments. The various NDP's earlier alluded to were solely developed by the federal government, without the state governments' inputs. A cross-section of the stakeholders interviewed highlighted this not as an anomaly but a normal framework for a federal system of government. However, this still leaves a key role for coordination, especially when the different levels of governments are working at cross-purposes. Again, the constitution recognizes MBNP as the institution to coordinate the development plans and programmes across the three tiers of government. Presently, it serves as secretariats for most institutions where the federal, state and local governments interface, including: (1) the National Economic Council, (ii) Conference of Ministers and Commissioners responsible for economic planning, (iii)

Joint Planning Board, (iv) National Economic Advisory Council. The key challenge remains the means to balance development priority of each federating units without compromising the overall national development plan.

Information sources:

<http://www.nationalplanning.gov.ng/index.php/national-plans/nv20-2020>

<http://www.lawnigeria.com/LawsOfTheFederation/NATIONAL-PLANNING-COMMISSION-ACT.html>

<http://www.nationalplanning.gov.ng/images/pub/ERGP%20document%20as%20printed.pdf>

7.2.2 Are sector strategies prepared, including estimates of their capital and recurrent costs, to guide the identification of public investment projects?

Economic development entails critical strengthening of inter-sectorial linkages to deliver better development outcomes. The adoption of a programme budgeting system and preparation of Medium Term Sectoral Strategy (MTSS) are two areas Nigeria has strived to achieve this objective. At federal level, MTSS has not been updated since 2011. However, evidence from press releases and engagement with stakeholders in the public sector indicate that preparation of MTSS 2017-2019 is currently going on. This is expected to cover 14 ministries namely: transportation; power works and housing; interior; water resources; solid minerals; health; agriculture; Niger Delta Affairs; education; defense; Federal Capital Territory; environment; science and technology and communication. The implication is that the federal government has been operating since 2011, without a sectorial strategy. A similar trend is observed at the sub-national level, as only Lagos State has updated the MTSS for 2013-2015 and 2015-2017 periods.

The budgeting system has also witnessed an overhaul with zero-based budgeting replacing the envelope budgeting used in the past. Zero-based budgeting ensures that all expenses are justified and revised each new period, in order to improve efficiency and reduce resource wastages. The use of zero-based budgeting is relatively new in Nigeria; therefore a comprehensive assessment of its effectiveness cannot be done. However, lack of MTSS to help strengthen its operationalization implies that zero-based budgeting is yet to play a crucial role in inter-sectorial linkages and improving allocative efficiency of the budgeting processes.

Information sources:

http://www.cabrisbo.org/uploads/files/Documents/nigeria_2017_formulation_external_budget_proposal_ministry_of_finance_cen-sad_ecowas_english_1.pdf

<http://www.thetidenewsonline.com/2016/08/17/economy-fg-sensitises-14-ministries-on-medium-term-strategies/>

7.2.3 Are expenditure and saving plans reviewed and approved by the legislature?

The constitution empowers the national assembly to review and approve all expenditures by the government. The legislative oversight over expenditure comes in two aspects. First, each MDA is required to defend their allocation with the relevant committee in the parliament. The committee can revise and amend the budgetary allocation, as it deems appropriate. The revised allocations at the committee level are subsequently aggregated and presented to the whole assembly for approval. While the role of the legislature in appropriation is unambiguous, a more salient point is the extent to which this oversight helps to improve allocative efficiency and curb overspending. An examination of the budgetary process in Nigeria indicates that legislative oversight has not improved overall efficiency; but rather has had the opposite effect. The legislature in most instances pushes for more spending. The legislature has also undermined attempts to improve public savings through Oil Price-based Fiscal Rule (OPFR), by raising the oil price benchmark above those proposed by the executive, which is often reflective of reduced potential savings into the ECA. Another problem with the budgeting process in Nigeria relates to issues around virement and off budget components. Budgets of several MDAs are not subjected to legislative oversight.

The major development with potential to improve expenditure and revenue management is the introduction of a Treasury Single Account (TSA). The TSA eliminates the practice in which MDAs operate separate accounts, enabling better cash management of inflows and outflows. However, TSA was a policy introduced and implemented within the executive arm of government, without legislative inputs or oversight. Compared to the preceding benchmarking exercises of 2012 and 2014, there has been no significant change in the extent to which legislative oversight improves appropriation and savings in Nigeria.

Information sources:

<https://www.premiumtimesng.com/features-and-interviews/199725-15-things-know-treasury-single-account-tsa.html>

<https://www.thecable.ng/44-5-oil-benchmark-nigerias-2017-budget-may-risk>

7.2.4 Are there arrangements for resource sharing between central and sub-national government and are these set in legislation?

According to Section 32(b), Part I of Schedule III of the 1999 Constitution, the Revenue Mobilization Allocation and Fiscal Commission (RMAFC) will 'review, from time to time, the revenue allocation formula and principles in operation to ensure conformity with changing realities: provided that any revenue formula which has been accepted by an Act of the National Assembly shall remain in force for a period of not less than five (5) years from the date of commencement of the Act'. This provision essentially empowers the RMAFC to present through the executive bill the resource sharing template for the three federating units for approval by the

National Assembly. The present revenue formula was introduced in 2004 through the Executive Order by President Olusegun Obasanjo. This specifies allocation of 52.68% to federal government, 26.72% to state governments and 20.6% to the local governments.

A number of amendments to the revenue formula have been subsequently proposed by the RMAFC and other stakeholders. These are yet to be implemented due to lack of consensus among the key stakeholders. Overall, there exists a substantive revenue arrangement among the three tiers of government. Nevertheless, in-depth interview of the key stakeholders in revenue management reveals a number of pertinent issues to strengthen and make the present revenue arrangement more effective. First, the present structure in which RMAFC operates as a unit of the executive arm at the federal level is defective. There is a need for more independent structure to ensure RMAFC function in a neutral way that is detached from the politics among the tiers. Second, the present constitutional arrangement requires RMAFC to submit its recommendation to the national assembly through the executive arm. Again, this relates to the issue of independent structure and the need to open a direct channel between the RMAFC and the parliament. Lastly, the present arrangement was formulated through an executive order and has not been reviewed in 13 years, which is against the spirit of constitution.

Information sources:

<http://www.gamji.com/article6000/NEWS6296.htm>

[http://www.lawnigeria.com/LawsOftheFederation/ALLOCATION-OF-REVENUE-\(FEDERATION-ACCOUNT,-ETC.\)-ACT.html](http://www.lawnigeria.com/LawsOftheFederation/ALLOCATION-OF-REVENUE-(FEDERATION-ACCOUNT,-ETC.)-ACT.html)

7.2.5 Does the government publish information on resource revenue-sharing transfers and arrangements, and make it easily accessible?

There has been significant development since the 2014 NNRC BER with regards to the availability and accessibility of public information on allocation to each federating unit. The National Bureau of Statistics now publishes monthly information on allocation to federal, state and local governments. The information is provided on their website in a timely and comprehensive manner. For example, the FAAC report, accompanied with detailed excel tables are released less than a month after the disbursement. Other government MDAs such as Ministry of Finance and Office of the Accountant General also publish this information, although not as up to date as NBS. Interestingly, there are private sector led initiatives that improve accessibility of government allocation information. For example, private organizations—BudgIT and Economic Confidential—now publish regularly and in a more compact format; allocations disbursed to the three tiers of government. This has translated to significant improvements in the accessibility and timeliness of public information over the past three years.

Information sources:

[file:///C:/Users/hp/Downloads/Federation Account Allocation Committee \(FAAC\) AUGUST 2017 Disbursement .pdf](file:///C:/Users/hp/Downloads/Federation%20Account%20Allocation%20Committee%20(FAAC)%20AUGUST%202017%20Disbursement%20.pdf)

<http://yourbudgit.com/data/federal/>

7.2.6 Does the sub-national government publish information on revenues and expenditures, and make it easily accessible?

Over the past three years, there has been a marked increase in the number of sub-national governments providing their budget details. According to BudgIT (2017), about 20 out of the 36 states have published their budget for 2017. In addition, BudgIT; using both the publicly released budgets and budget speeches of the State Governors, has been able to provide a complete budget for the 36 states including their capital and recurrent expenditure for 2016. Economic confidential has also started releasing annual data about revenue inflows to states including the federally collected and internally generated revenues. Compared to the 2014 NNRC BER in which only two states are reported to have published their budget estimates, this represents a significant improvement. However, the budget estimates provided are not comprehensive, as they only provide details about the recurrent and capital expenditures. Detailed sectorial estimates are not provided, except in few cases like Oyo State. More importantly, the published budgets only represent proposed estimates—the extent to which they are implemented is still not made public.

Information sources:

<https://twitter.com/BudgITng/status/913723357723537409>

<http://www.yourbudgit.com/wp-content/uploads/2015/11/THE-FATE-OF-STATES-Final1.pdf>

<https://economicconfidential.com/financial/facts-a-figures/asvi-lagos-igr-30-states/>

7.2.7 Are cash transfers to citizens used as redistribution mechanisms?

Targeted redistribution mechanisms have become central to efforts aimed at using resource revenues to improve the prospects of the most vulnerable groups in many societies. Globally, conditional cash transfer (CCT) is one of the most widely adopted redistribution mechanisms, as it achieves the duo goals of increasing income of the poor and enhancing their human capital. According to NNRC 2012 and 2014 BER's, Nigeria has launched two pilot CCT schemes: Care of the People (COPE) and SUPE-P Maternal and Child Health. These schemes have been phased out by the present administration and replaced with a new Social Investment Programme (SIP). Basically, SIP has four sub-components: National Homegrown School Feeding Programme, designed to address issues of malnutrition among school children; N-Power which is a job programme for unemployed graduates and non-graduates; Government Enterprises Entrepreneurship Programme (GEEP) to support aspiring entrepreneur, and Conditional Cash Transfer (CCT).

The pilot phase of CCT scheme started in December, 2016 and it is targeted at providing a monthly stipend of N5000 to one million of the poorest and most vulnerable Nigerians. By the government's own estimate, only about 26,942 beneficiaries have been reached across nine states. This represents 0.03% of the intended beneficiaries. However, the present CCT scheme falls short in terms of scope and coverage, when compared with an estimated 112million Nigerians living below the poverty line.

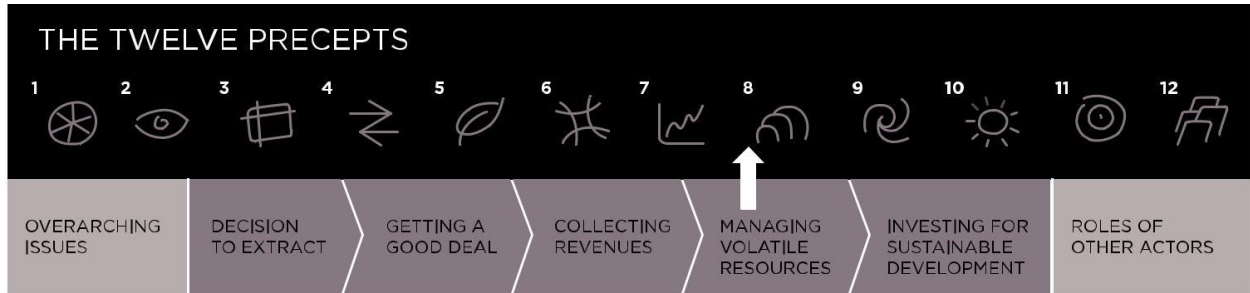
The key limitations identified with the previous CCT schemes are also prominent in the present scheme. First, there is a problem of mismatch between the value of the grant and the household needs. In many cases, the grant provided does not substantively lift the household out of poverty. Second, the present scheme is lacking in institutional framework regarding graduation and human capital condition that households must undertake. There are also issues around continuity. For example, there is no link between the present and past CCT schemes. Likewise, the institutional and legal frameworks to ensure that the programme continues beyond the lifespan of the present administration is absent. Overall, we observe no significant improvement in the impact, scope and coverage of CCT schemes in Nigerian from benchmarking exercise of 2014.

Information sources:

<https://www.vanguardngr.com/2017/05/osinbajo-orders-immediate-expansion-social-investment-programmes/>














Homes et al. (2011).The potential for cash transfers in Nigeria. Project Briefing No. 60, Overseas Development Institute.

PRECEPT 8: STABILIZING EXPENDITURE



Effective utilization of resource revenues requires that domestic expenditure and investment be built up gradually and be smoothed to take account of revenue volatility.

Overall Precept Score	
<p>Precept 8: Stabilizing Expenditure</p> <p>No significant change in the government management of expenditure volatility to commodity prices. The major oil price shock that started in 2014 exposes the weakness in the existing exchange rate and expansionary fiscal policy of government. The Sovereign Wealth Fund, although professionally managed, is grossly underfunded to mitigate expenditure shortfall.</p>	●

Overview of the Questions and Ratings	
8.1 EXPENDITURE VOLATILITY	
8.1.1 Is the government's spending (particularly consumption expenditure) stable relative to its revenue?	
8.1.2 Are there stabilization measures in place to manage revenue volatility?	
8.1.3 Does a savings fund exist for use during high-resource, revenue generating periods?	
8.1.4 Are the expenditure and savings plans reviewed and approved by the legislature	
8.1.5 Is the fund subjected to parliamentary approval?	
8.1.6 Are deposits, withdrawal and investment rules for the fund appropriate?	
8.1.7 Are adequate records and information produced, maintained and disseminated to meet decision-making, control and management and reporting purposes?	
8.2 OTHER MACROECONOMIC CONSIDERATIONS	
8.2.1 Does the government have debt policy or resource exploration plan to reduce expenditure volatility?	
8.2.2 Does the government have exchange rate stabilization policies to protect domestic firms against oil price volatility?	
8.2.3 Does the government have fiscal policy to mitigate against inflationary pressures due to oil price volatility?	
8.2.4 Does the government have measures to avoid volatility of FDI in the extractive industry?	
8.2.5 Does the government have measures to avoid budget revenue volatility at the national level?	
8.2.6 Does the government have measures to avoid budget volatility at the sub-national level?	

Summary of Key Findings

Expenditure Volatility

- Total government expenditure has risen consistently over the past years, regardless of volatility in oil revenues. In particular, the recurrent expenditure maintains an upward trajectory, while capital expenditure shows considerable volatility, consistent with the trend in oil price fluctuation.
- The Federal Government has implemented a number of measures to improve savings from Nigerian resource revenues including the introduction of OPFR, the Sovereign Wealth Fund (SWF) and the 0.5% Stabilization Fund Account (SFA). However, the aggregate savings in these accounts stand at presently less than USD3billion, and at present cannot fund 20% of federal government budget.
- Despite the modest savings going into the SWF, the management of the funds has been generally impressive. The transparency and accountability of the Nigeria Sovereign Investment Authority (NSIA) has improved significantly in recent years and a sound legal and institutional framework exists to guide withdrawal from and investment of the funds.
- The major challenge in managing Nigeria's oil resources remains around discretionary control over some of the savings fund, as evidence in depletion of savings into the Excess Crude Account (ECA) and 0.5% Stabilization Fund Account.

Other Macroeconomic Considerations

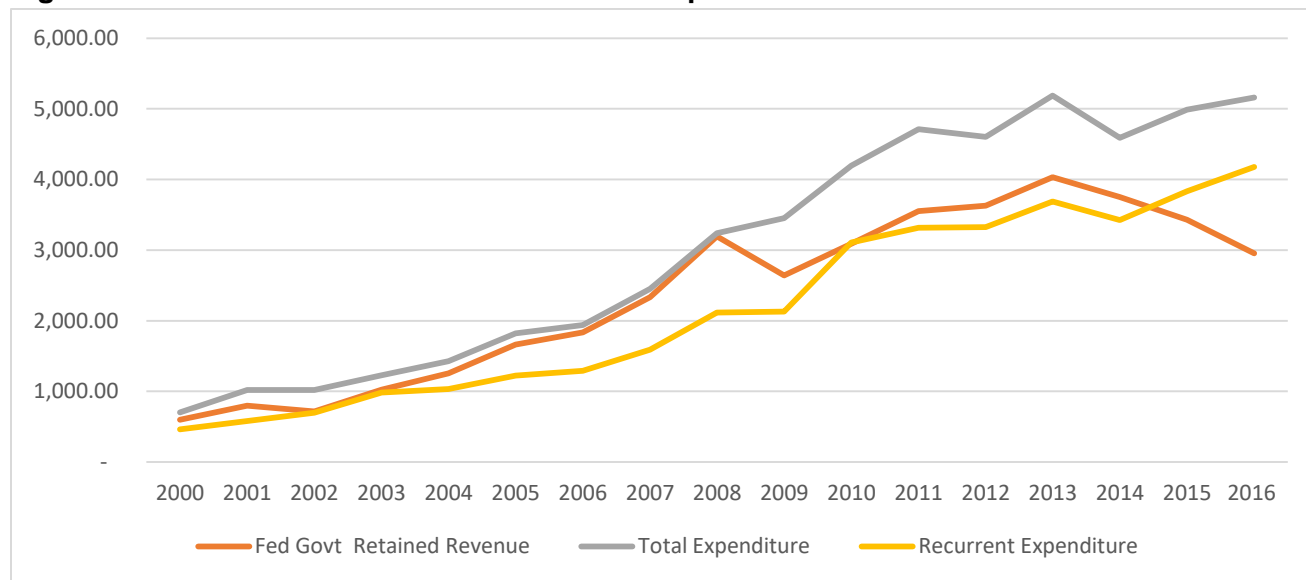
- The Federal Government has been able to stabilize its expenditure over the years primarily through deficit financing. However, the subnational governments have had to resort to subventions and bailouts from the federal government to meet their financing needs.
- There are presently a lack of systematic measures to avoid volatility in foreign direct investment and mitigate the effect of resource revenue influxes on exchange rate appreciation and inflationary pressure.

8.1 Expenditure volatility

8.1.1 Is the government's spending (particularly consumption expenditure) stable relative to its revenue?

No observable change has taken place as it pertains to stabilization of total and recurrent expenditures over the past three years. As shown in Figure 8.1, the total and recurrent expenditures by the federal government has been on the upward trajectory. In contrast, the total revenue has been volatile, due to high dependency on oil revenue. Also, the level of government expenditure exceeded total revenue over all the considered years, which means the government has consistently incurred deficits. If government had a strategy for smoothening expenditure, it would have been expected that periods of high oil revenue (such as 2010 to 2014) would be associated with budget surpluses. However, the result shows that deficit levels persist even in periods when oil revenue rises. This means there is less savings to augment revenue shortfalls during oil price crash.

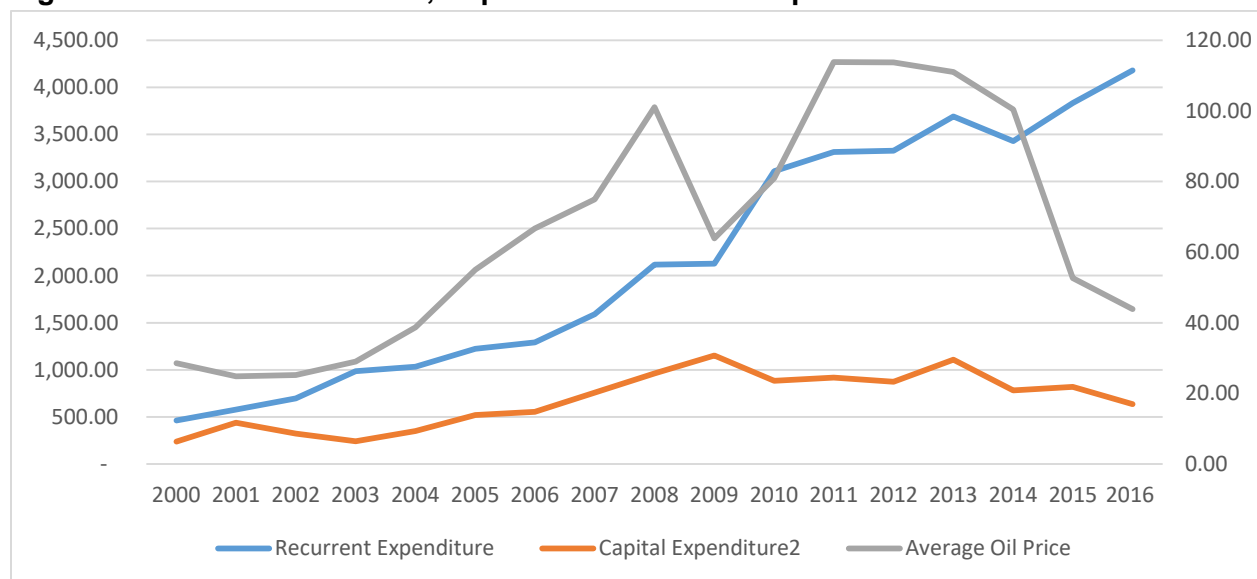
Figure 8.1: Federal Government Revenue and Expenditure: 2000-2016



Source: CBN and authors' calculations

Figure 8.2 further captures the trends in oil prices, capital and recurrent expenditures. Again, it can be observed that while recurrent expenditure has been rising, capital expenditure has been volatile. Between 2014 and 2016, the capital expenditure declined and this trend matches the observed path of oil prices. In essence, periods of buoyant oil prices are associated with rising recurrent expenditure, but marginal increases in capital expenditure. In general, the paths of government expenditure remain unsustainable and insufficient to effectively smoothen the effect of oil revenue volatility.

Figure 8.2: Trend in Oil Prices, Capital and Recurrent Expenditures



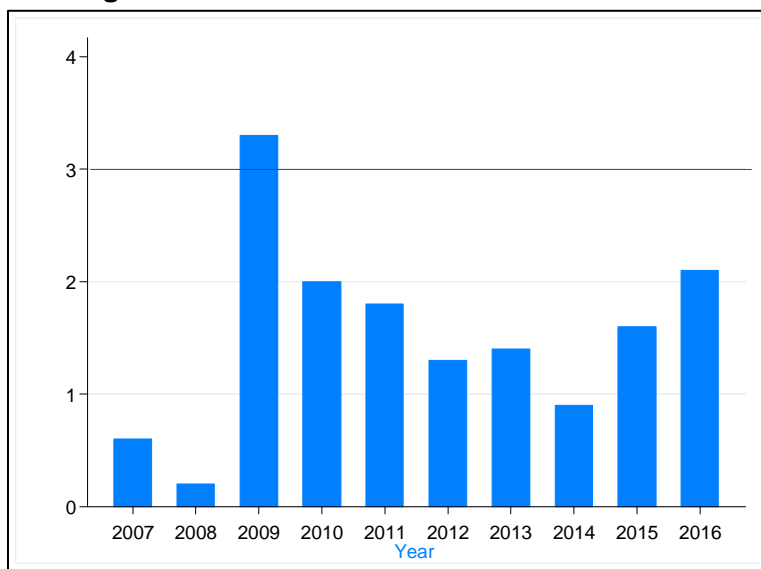
Source: CBN and authors’ calculations

Information sources:

CBN (2017). Statistical Bulletin. Available: <http://www.cbn.gov.ng/documents/Statbulletin.asp>
<https://www.imf.org/external/pubs/ft/scr/2016/cr16102.pdf>

8.1.2 Are there any measures in place to stabilize domestic expenditures and investment to take account of revenue volatility?

The Nigerian government has put in place some measures to mitigate oil revenue volatility. Since 2004, the government has adopted an OPFR, which establishes a benchmark oil price that is lower than the expected international oil price. This rule is to ensure that there is a fiscal buffer to prepare for economic uncertainty and external shocks. There are also measures on the fiscal policy side to reign-in government expenditure. For example, the Fiscal Responsibility Act (FRA) of 2007 recommends that budget deficits not exceed 3% of GDP (Figure 8.3). There are other measures in the FRA that impose limits on the operating cost and general government expenditures. The Act also introduces a long-term perspective to public budgeting in Nigeria, through mandatory tying of the annual budget to the medium term budgeting processes.

Figure 8.3: Trend in Budget Deficit to GDP ratio

Source: Central Bank of Nigeria

The major challenge has been the effective implementation of these measures. For example, savings made through the OPFR have been marginal, due to constant depletion of the funds. Also, while the government deficit is still in line with the dictates of the Fiscal Responsibility Act, the rebased GDP figure has covered up the increasing debt portfolio. Essentially, while the present measures can be regarded as viable, more efforts are required around implementation.

Information sources:

<http://lawsfnigeria.placng.org/laws/fiscal%20responsibility.pdf>

<https://www.imf.org/external/pubs/ft/scr/2016/cr16102.pdf>

8.1.3 Does a savings fund exist for high-resource, revenue-generating periods?

Nigeria currently operates a number of savings funds for windfall from its resource revenues. The oldest is the Stabilization Fund Account (SFA) created through the Allocation Revenue Act of 1990. The Act allocates 0.5% of inflows into the Federation Account to the SFA and is to be disbursed to states that suffer absolute decline in their revenue arising from factors outside their control. The Nigerian Extractive Industry Transparency Initiative (NEITI) Fiscal Allocation and Statutory Disbursement Audit Report estimates that the balance in the account as at May 2017 is about NGN29billion, from over NGN300billion that has accrued into the account. Analysis of outflows from the SFA by Premium Times Newspaper shows that a significant proportion are for loans to fund recurrent expenditure such as purchase of vehicles, election, internal security and other government schemes. While SFA is prone to abuse, the scale of savings in it is minimal compared to the fiscal buffer required given Nigeria's resource revenues. Also, SFA is not

strictly a savings fund for oil revenues, as it encompasses all revenue streams going into the federation account.

The Excess Crude Account (ECA) was established in 2004 specifically to address these shortcomings, to ensure savings of resource revenues are made during commodity price booms. The ECA works through the OPFR such that the government sets a benchmark oil price below the expected international oil price for a fiscal year; the difference is thereafter saved into the special account. Despite more than \$167billion having accrued into the account, only a balance of \$2billion remains. The key problem with the ECA is that it has no subsisting legal or institutional framework for withdrawal and investment; this makes it susceptible to abuse.

The Nigerian Sovereign Wealth Fund was thereafter created in 2012 to address the challenges with the ECA. The SWF was established via an act of parliament, which also creates the Nigeria Sovereign Investment Authority (NSIA). The new framework makes each federating unit co-owner of the fund, and places a stringent rule for withdrawal. The seed capital endowment into SWF was USD1billion, and was recently increased to USD1.5billion. There has been no withdrawal from SWF since its inception and the apportioned share for each tier of government is clearly defined. Thus, SWF remains the only legitimate saving funds for resource revenue, as ECA has no legal foothold. At present, the total savings in the three funds amount to about \$3.9billion, and according to NEITI (2017) can only fund less than 20% of federal government budget for 2017. Basically, while there are savings funds, they have been persistently abused and used to raise fund for activities outside its intended purpose.

Information sources:

Nigerian Extractive Industry Transparency Initiative (NEITI, 2017).The Case for a Robust Oil Savings Fund in Nigeria. NEITI Occasional Paper Series Issue 2, July, 2017.

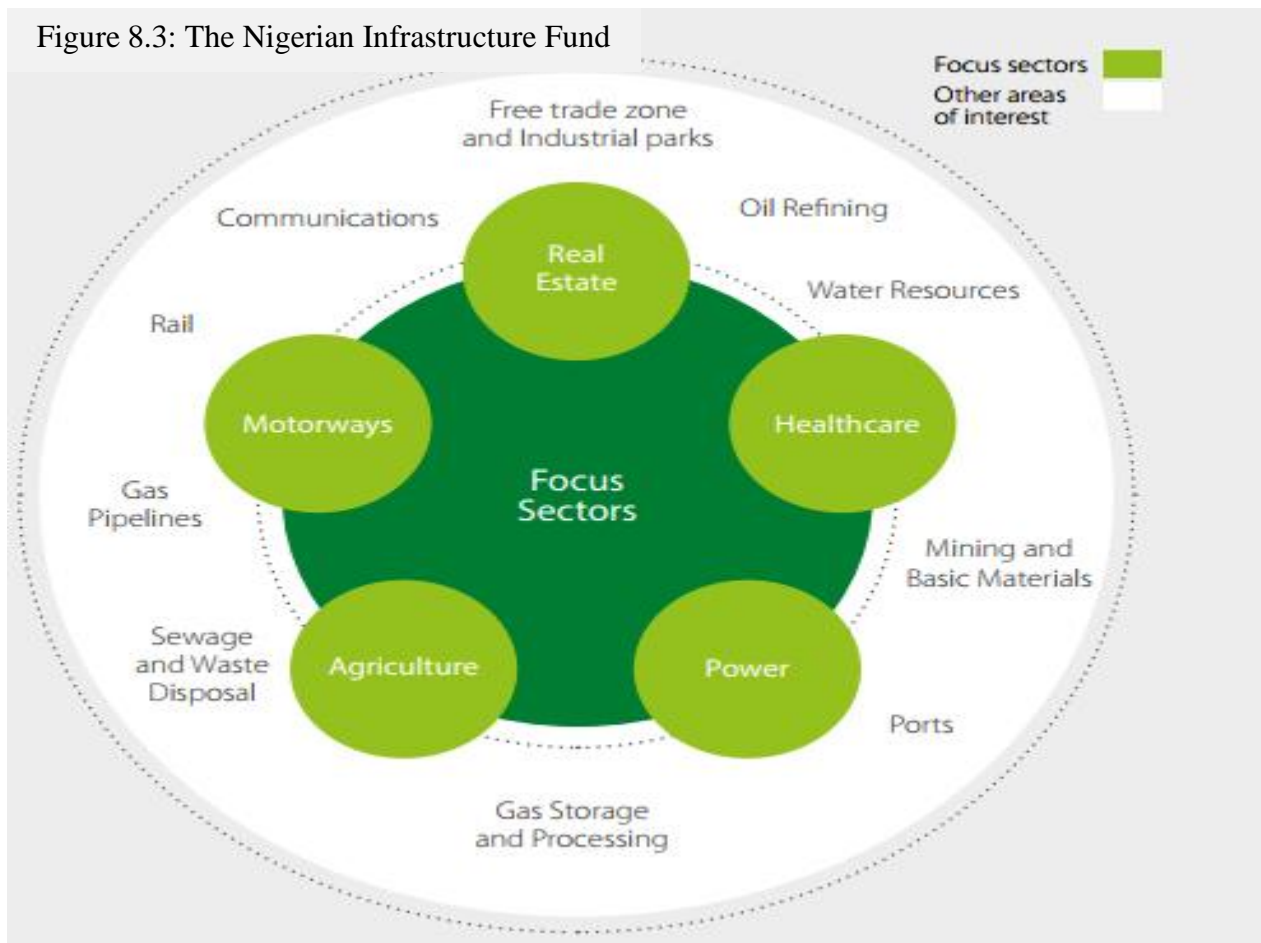
http://nsia.com.ng/wp-content/uploads/2013/02/NSIA_ACT.pdf

<https://www.premiumtimesng.com/news/headlines/198822-exclusive-3-nigerian-presidents-wasted-n247-billion-oil-savings-gave-illegal-loans-nsa-sao-tome.html>

8.1.4 Does the organization responsible for the fund publish information on its assets and transactions?

There are notable improvements on the transparency and accountability of NSIA over the past years, especially in weak areas identified in the NNRC 2014 BER. The NSIA now publishes the yearly financial report and statement of account on their website annually, detailing various transactions, assets and liabilities, profit margins, investment policy statement, board charter and audited report by PricewaterCoopers. They also make public information on the current levels of funds and allocation made to the three component funds of the SWF. As an example, Figure 8.3 shows the focus sectors under the three component funds; the Nigerian Infrastructural Fund, the Stabilization Fund and the Future Generations Fund.

Figure 8.3: The Nigerian Infrastructure Fund



Source: NSIA 2016 Annual Report

The impressive performance of NSIA is reinforced by its being rated the most transparent sovereign wealth fund in Africa and joint second in the world on the Linaburg-Maduell Transparency Index for 2015, 2016 and 2017. Linaburg-Maduell Transparency Index is developed by the Sovereign Wealth Fund Institute (SWFI), to compare countries globally based on various criteria, including the disclosure policy and purpose of the SWF, source of capital, regulatory oversight, regular independently audited yearly reports, the establishment of ethical standards and clearly outlined strategies for investment and management compensation. Between 2015 and 2017, NSIA scored nine out of ten points, ahead of countries like China, Russia and Botswana. Notably, Nigeria moved from 33rd in 2014 to 2nd to 2015. NSIA's investment portfolio is also highly rated, as evidenced in the recognition in 2016 by the African Investor (Ai) for its investment in infrastructure. The NSIA's remarkable performance can be attributed to clarity of roles, existence of corporate governance and management structure that meets global best practices, and the level of independence it has been accorded. This helps to insulate it from bureaucratic bottleneck and political interference affecting other public institutions.

Information sources:

<https://www.swfinstitute.org/statistics-research/linaburg-maduell-transparency-index/>

<http://nsia.com.ng/wp-content/uploads/2017/09/NSIA-Annual-Report-2016-1.pdf>

<https://guardian.ng/news/nsia-retains-best-transparent-african-sovereign-wealth-firms-rating/>

<https://aidevelopersummit.com/africa-investor-infrastructure-and-sovereign-investment-summit-and-awards-engages-pension-and-sovereign-funds/>

8.1.5 Is the fund subjected to parliamentary approval?

NSIA was established by an Act of the National Assembly in 2011. This provides a clear legal and institutional framework for the fund. Specifically, the NSIA Act (2011) stipulates the NSIA's functions include "receiving, managing and investing in a diversified portfolio of medium and long-term revenue of the federation, to prepare for eventual depletion of Nigeria's hydrocarbon resources, for the development of critical infrastructure that will attract and support foreign direct investment, growth and job creation". However, the Act makes NSIA independent in the discharge of its functions and therefore not subjected to the control by any one person or authority in Nigeria. This means legislative oversight is only limited to the creation of the NSIA and does not extend to its operation, management, budgetary and investment decisions. Another channel through which parliamentary oversight indirectly takes place is through control over funding for SWF. Given that funding for SWF is expected to come through the Budget Smoothing Component of the revenue into the federation account, legislature through its appropriation function could implicitly determine the amount that will be channeled towards the SWF. Overall, the present institutional arrangement that limits legislative oversight and spreads the control of NSIA across the three tiers of government seems to help improve its efficiency and effectiveness.

Information sources:

http://nsia.com.ng/wp-content/uploads/2013/02/NSIA_ACT.pdf

<http://nsia.com.ng/wp-content/uploads/2013/07/santiagoprinciples.pdf>

8.1.6 Are the deposit, withdrawal and investment rules for the fund appropriate?

The law establishing Nigerian SWF provides a clear guideline for deposit, withdrawal and investment. For deposit, the initial funding of \$1billion was jointly provided by the three tiers of government. This initial funding was transferred from the ECA; as such the share for each federating unit corresponds to its share based on the current revenue sharing template. In addition, subsequent funding is to be derived from the residual fund transfer from the federation account.

With regards to investment, the NSIA Act stipulates three core investment portfolio and funding allocation: Stabilization Fund (20%), Nigerian Infrastructural Fund (40%) and Future Generation Fund (40%). The diversified structure of the investment by the NSIA ensures risk mitigation of investments and balancing the present and future developmental needs. The rules for withdrawal have more stringent conditions. First, the NSIA must have recorded a net profit for at least five years in each of the three funds, in addition to the year the withdrawal is to be made. Second, adequate and sufficient allocation must be made to cover anticipated operational cost of the organization's business and investment plan. Third, the maximum allowable distribution from the funds is fixed at 60% of the accumulated profit. Finally, approval of the NSIA Board of Directors and Governing Council is required.

While appropriateness of the deposit, withdrawal and investment rules for SWF is subjective, the cross-section of stakeholders interviewed indicate the rules are well-thought out and meet the global best standards. The stringent rules for withdrawal also address the key weaknesses identified with the ECA. However, the rule for deposits is less clear and relies more on moral suasion from federal government. This could explain the modest deposit of \$1.5billion in the SWF, while the cumulated inflows into ECA have exceeded \$167billion.

Information sources:

http://nsia.com.ng/wp-content/uploads/2013/02/NSIA_ACT.pdf

<http://nsia.com.ng/stabilisation-fund/>

<http://nsia.com.ng/nigeria-infrastructure-fund/>

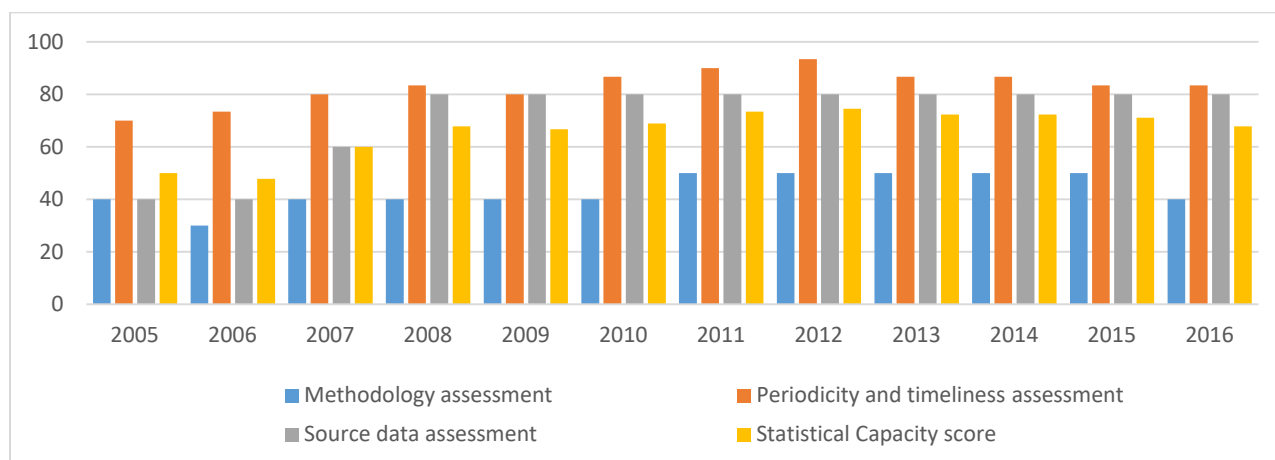
<http://nsia.com.ng/future-generations-fund/>

8.1.7 Are adequate records and information produced, maintained and disseminated to meet decision-making control, management and reporting purposes?

The National Bureau of Statistics (NBS) is the public institution saddled with the responsibility of managing and disseminating information required for decision-making in Nigeria. The NBS collects both primary data; gathered through surveys, and secondary data, which are sourced from other MDAs and private institutions. Figure 8.4 shows Nigeria's performance on the World

Bank’s Statistical Capacity Indicators (SCI) over the years. The SCI assesses a country’s statistical system along three dimensions: periodicity and timeliness of data, adequacy of data source and methodology adopted. The trend analysis shows that Nigeria has improved against two of the three indicators (periodicity and timeliness, and data source) between 2005 and 2016. However, most of the indicators reached their peak in 2012, and have dropped slightly thereafter. Specifically, Nigeria overall score has dropped from 74% in 2012 to 67.7% in 2016. The drop is particularly driven by a decrease in the indicator measuring periodicity and timeliness. Given that timeliness of dissemination of information is crucial to its relevance for decision making, this suggests the need to step up measures to improve Nigerian statistical capacity.

Figure 8.4: Nigerian Statistical Capacity Index, 2005-2016



Source: World Bank Statistical Capacity Indicator

Nigeria’s performance on the Open Budget Index (OBI) has also improved marginally from the 16 out of 100 as reported in the NNRC 2014 BER to 24 out of 100 in the most recent OBI survey for 2015. The OBI measures the level of transparency in providing key budget documents to the public. This performance moved Nigeria from the bottom category of ‘scanty or no information’ to ‘minimal information provided’. But the country still dropped from 80th position to 85th position over the period. This means many other countries are improving their performance at a faster pace. It is also important to emphasize that accuracy and comprehensiveness of the data available is important to its usefulness in decision-making. A significant number of stakeholders’ surveyed specifically raised the issue of accuracy of data. Overall, there are areas of improvement, but this has not yielded significant change from the preceding benchmarking exercises.

Information sources:

<http://www.internationalbudget.org/wp-content/uploads/OBS2015-Report-English.pdf>

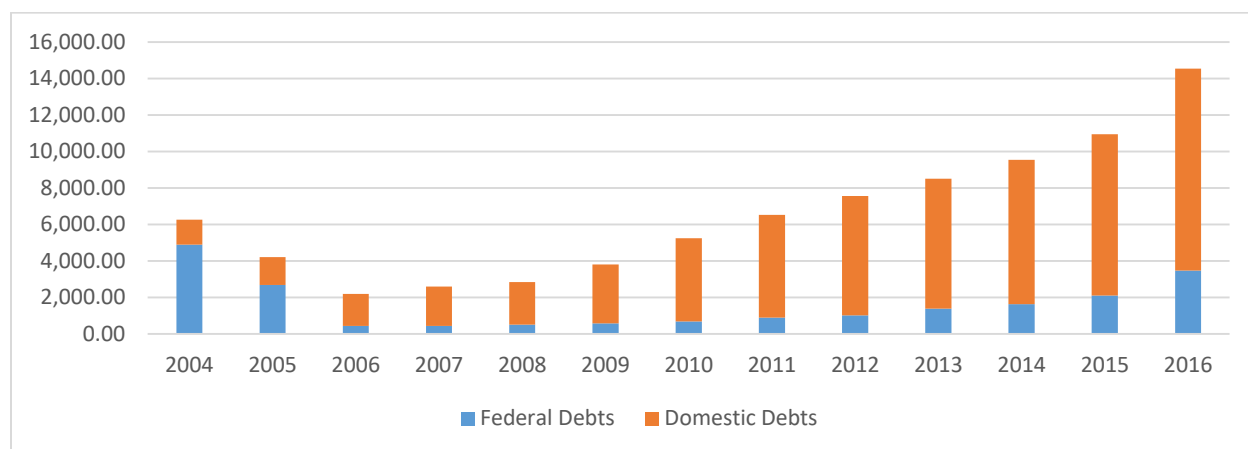
<http://databank.worldbank.org/Data/Views/VariableSelection/SelectVariables.aspx?source=Statistical-capacity-indicators>

8.2 Other Macroeconomic Considerations

8.2.1 Does the government have other mechanisms to stabilize expenditure over time (e.g. foreign borrowing, adjustment in the rate of resource depletion, etc)?

Aside from the OFPR earlier alluded to, government has other mechanism to stabilize expenditure. In particular, the government has relied more on deficit financing to cushion the effect of revenue shortfall resulting from oil price volatility. For example, between 2014 and 2016 when the oil revenues declined by 152% and the economy slid into a recession as a result, the government expenditure maintained its upward trajectory. Specifically, foreign borrowing increased by 113%, while domestic debt rose by 40% (see Figure 8.5). However, subnational governments have limited scope to stabilize their expenditure through borrowing, due to legal requirements and their weak fiscal positions. However, they resort to federal government grants, subversion and bail-out. Other globally accepted alternatives such as adjustments in the rate of resource depletion are yet to be adopted in Nigeria. The rate of resource extraction in Nigeria is typically determined by the quota set by OPEC, of which the country is a member, rather than concerns around stabilizing expenditure overtime.

Figure 8.5: Trend and Composition of Federal Government Debts (in Billion Naira)



Data source: CBN

Information sources:

CBN (2017). Statistical Bulletin. Available: <http://www.cbn.gov.ng/documents/Statbulletin.asp>

Nigerian Extractive Industry Transparency Initiative (NEITI, 2017). The Case for a Robust Oil Savings Fund in Nigeria. NEITI Occasional Paper Series Issue 2, July, 2017.

8.2.2 Is the government taking measures to avoid real exchange rate appreciation and protect exporters as a result of resource revenue influxes?

Nigeria operates a managed floating exchange rate regime, as this reduces volatility in her foreign exchange earnings, which reduces uncertainty and protects domestic firms. The Central Bank of Nigeria is able to defend the naira using the stock of foreign reserves. The oil revenue contributes more than 90% of Nigerian foreign reserves and allows the government to effectively manage the exchange rate. However, the recent oil price crash of 2014 and subsequent economic recession exposes the problem of over dependency on oil income. Specifically, the foreign reserve dropped from USD40billion to USD27billion between January, 2014 and January, 2016. This led to the appreciation of the naira from NGN160/\$ to about NGN305/\$ in the first quarter of 2017.

The effect was significant on exporters as the federal government resorted to capital control and export ban to stem the forex crisis that ensues. A study by the Centre for the Study of the Economies of Africa (CSEA) and NOI-Polls (2017) found that 75% of manufacturers were negatively affected by the forex crisis. The contribution of the manufacturing sector to GDP also shrank from 10.7% in 2014Q1 to 9% in 2016Q4. Overall, the recent forex crisis reflects the inadequacy of the government in effectively stabilizing exchange rate and mitigate against external shocks due to commodity price volatility.

Information sources:

CBN (2017). Statistical Bulletin. Available: <http://www.cbn.gov.ng/documents/Statbulletin.asp>
http://www.cseaafrica.org/index.php?option=com_digistore&controller=digistoreProducts&task=view&cid=12&pid=279

8.2.3 Is the government taking measures to manage the inflationary pressures of resource revenue influxes and to limit an over—expansionary fiscal policy?

The Federal Government's management of oil resources, especially on the fiscal side, has had a mixed effect on inflationary pressures. On the one hand, the federal government implements a price control scheme on petroleum prices. Essentially, the petroleum prices are set by the Petroleum Products Pricing Regulatory Agency (PPPRA) and the government provides subsidy whenever the actual market price exceeds the fixed price. The subsidy regime reduces inflationary pressures, as energy prices are stable over time. On the other hand, the federal government's fiscal policy has been expansionary over the years and has fed into the inflationary pressures.

The major task of stemming the inflationary pressure therefore lies with the monetary authorities. The Central Bank of Nigeria (CBN) has a key mandate to ensure price stability. This is achieved through a defensive monetary policy, to reduce inflationary pressures from expansionary fiscal policy. For example, monetary authorities have been forced to maintain high interest rates to ensure price stability. Looking at various communiqués of the monetary policy committee (MPC) meetings, there is much greater emphasis on downside risk to effective monetary policy from high public expenditure and accumulating debts. In essence, the key role of limiting inflationary effect from resource revenue influx has mostly come through the monetary policy, while the fiscal policy, in many instances, compounds the problem.

Information sources:

<https://www.cbn.gov.ng/Out/2016/MPD/Central%20Bank%20of%20Nigeria%20MPC%20Comunique%20105%20of%20Meeting%20Held%20on%20January%2025%20and%2026,%202016.%20with%20Personal%20Statement%20of%20Members%20.pdf>

<https://www.proshareng.com/news/Monetary%20Policy/CBN-Communique%C3%A9-No.-113-of-the-MPC-Meeting-%E2%80%93-May-22-23--2017/34965>

Homes et al. (2011). The potential for cash transfers in Nigeria. Project Briefing No. 60, Overseas Development Institute.

8.2.4. Is the government taking measures to avoid volatility in foreign direct investment in the extractive sector?

Given the high capital intensity of the oil and gas sector, foreign direct investment (FDI) is a crucial financing option in this regard. In Nigeria, the oil sector has been a leading recipient of FDI. Yet, the full potential of the sector has not been realized due to uncertain regulatory framework. By some estimates, Nigeria loses \$15 billion yearly to the non-implementation of reforms in the sector. The Petroleum industry Bill (PIB) was proposed in 2008 to address these weaknesses. However, after close to a decade, the bill is yet to become law, as interest-power nexus among competing stakeholders has stalled the process. This lack of direction has reduced the potential for long-term investment in the sector significantly.

Another challenge to discouraging investment is the unsupportive business and political environments. Nigeria presently stands at 169th position on Doing Business Index, a movement of twenty steps downward from position reported in the NNRC 2014 BER. The security challenges in the Niger-Delta and the lack of viable political solution to it also impacts negatively on potential investments into the oil sector. One dimension of the security threats is the Boko Haram crisis. The insecurity problem reached a critical stage in July, 2017, when 10 members of an oil exploration team in northeast Nigeria were kidnapped. Without these challenges being addressed, FDI inflows into the extractive sector would remain suboptimal.

Information sources:

<https://www.today.ng/news/24843/pib-nigeria-loses-15bn-annually-kachikwu>

<http://www.doingbusiness.org/data/exploreeconomies/nigeria>

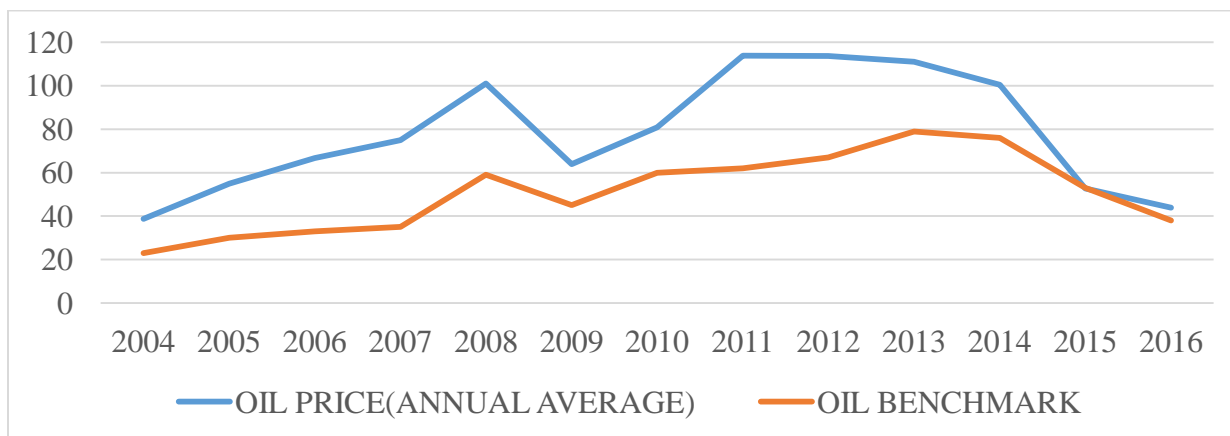
<https://www.vanguardngr.com/2017/07/boko-haram-kidnaps-10-nnpc-staff-oil-exploration-mission/>

8.2.5 Is the government taking measures to avoid budget revenue volatility at the national level?

At the national level, government has attempted to stabilize the budget by setting an oil benchmark price that is below the international oil price. This is to ensure that annual expenditure is delinked from the fluctuations in oil prices. Figure 8.6 shows the oil benchmark price vis-à-vis the international oil price between 2004 and 2016. The gap between the international and benchmarked oil prices has been reducing over the years, which could be partly attributed to recent economic downturn and declining propensity to save. Government intends to save the revenues through this process into the ECA account and subsequently channel it into the SWF. While the SWF has a stabilization component to avoid budget volatility, its size is quite small in comparison to the current level of government expenditure. By a conservative estimate, the amount in the Stabilization Fund can only meet 12.5% of the federal government budget for 2017.

Another measure being used to stabilize the budget is deficit financing. For the 2017 budget for instance, the federal government planned to borrow 32% of the budgeted sum. Already, the government has issued the Euro and diaspora bonds which were oversubscribed. This means domestic and foreign investors remain confident that the risk of default low by the federal government is low.

Figure 8.6: Oil benchmark price vs. international market oil price (2005-2012)



Source: Reuters and various budget releases

Information sources:

<https://www.brookings.edu/blog/africa-in-focus/2016/12/15/figures-of-the-week-nigerias-2017-budget/>

<https://www.bloomberg.com/news/articles/2017-03-30/investors-flock-to-nigeria-eurobonds-but-won-t-touch-the-naira>

<https://www.vanguardngr.com/2017/06/nigerias-diaspora-bond-oversubscribed-130/>

8.2.6 Have measures been taken by government to avoid budget volatility at the sub-national/state level?

Most of the measures taken by the federal government also extend to sub-national governments. For example, the SWF and OPFR are joint initiatives of the three tiers of government. But as earlier emphasized the scale of resources in these funds are not enough to meet government resource needs. Also, opportunity for deficit financing is restricted for subnational government, especially during the periods of economic recession. This conclusion reinforces a similar finding by BudgIT (2016) which found that fiscal stance to be sound only in 18 states. Also, Economic Confidential in 2017 reported that about 14 states in the federation are financially insolvent, without federal allocation or other interventions. This means the present measures to mitigate budget volatility at the subnational levels are inadequate.

Information sources:

<https://economicconfidential.com/financial/facts-a-figures/asvi-lagos-igr-30-states/>













<http://www.yourbudgit.com/wp-content/uploads/2015/11/THE-FATE-OF-STATES-Final1.pdf>

PRECEPT 9: PUBLIC SPENDING



Government should use resource wealth as an opportunity to increase the efficiency and equity of public spending and enable the private sector to respond to structural changes in the economy.

Overall Precept Score	
<p>Precept 9: Public spending</p> <p>There has been slight improvement in performance against the NRC benchmark since 2014. More MDAs have become TSA compliant since the FGN directive in September 2015 to promote financial accountability among government organs. The budget has been without any specific calendar as the timelines stipulated by the 1999 Constitution and the Fiscal Responsibility Act (FRA) has not typically been followed. There is no overarching development policy in place although the Federal government inaugurated a medium term plan (the ERGP) with which to pursue economic recovery and growth</p>	●

Overview of the Questions and Ratings	
9.1 PUBLIC SPENDING PLANNING	
9.1.1 Are national and sector plans formally integrated into the budgeting exercise?	
9.1.2 Are public investment projects designed and appraised based on national and sector plans?	
9.2 REVENUE DISTRIBUTION	
9.2.1 Is all government spending from resources appropriated through the national budget?	
9.2.2 If state-owned enterprises, savings funds or development banks receive revenues off-budget, is there sufficient justification for such arrangements, and are the revenues managed in a transparent, accountable and efficient manner?	
9.2.3 If the government distributes revenues to subnational governments, are the transfers based on a well-articulated set of objectives, and are the transfers correct and timely?	
9.3 BUDGET AND PROJECT EXECUTION	
9.3.1 Are there spending controls and commitment plans in place, and do these result in public spending in line with the approved budget?	
9.3.2 Are public investment projects implemented as planned?	
9.3.3 Is public procurement predictable and subject to a process of open and competitive tendering?	
9.4 ACCOUNTING, REPORTING AND OVERSIGHT OF PUBLIC SPENDING	
9.4.1 Is public spending (including any off-budget spending of resource revenues) fully accounted for and reported?	
9.4.2 Is budget and off-budget recurrent spending subject to independent audit and oversight?	
9.4.3 Are public investment projects fully accounted for and reported on?	
9.4.4 Are there independent audits and evaluations of public investment projects?	

Summary of the Key Findings

Public Spending Planning

- The budget cycle does not follow a fixed budget calendar in practice. There is a constitutional definition of the budget calendar which is elaborated on by the Financial Year Act. In practice, there has been no fixed budget calendar in recent years. The Annual budget approval by the legislature and the presidential assent to the budget are often beyond the timelines conceived by the Act; a knock-on effect of late submission of the budget estimates to the National Assembly.
- The Medium Term Expenditure Framework (MTEF) which forms the basis for the annual budgets has been found to have limitations. The 2017-2019 MTEF was not based on sound macroeconomic fundamentals; for example, it was silent on the current growth rate while making projections for the future growth rates. The 2014-2016 MTEF was founded on no overarching national plan with the ending of the 1st National Implementation Plan (NIP) of Vision 2020 in 2013 and the failure of government to launch the 2nd NIP in 2014. However, there is a medium term plan currently in place – the Economic Recovery and Growth Plan.
- There is an existence of costed sector strategies of primary expenditure which is consistent with fiscal forecasts but this is not done by all MDAs. The cost estimates are in the MTSS reports of key ministries and the Economic Recovery and Growth Plan (ERGP) implementation plans.
- Public investment projects are not integrated across the three tiers of government; federal policies and state policies guide investment plans at the federal and states levels respectively. Between 2004 and 2008, public investment plans were integrated across the three tiers of government through the National Economic Empowerment and Development Strategy (NEEDS).
- Public investment plans are usually silent on the issue of debt sustainability and many states are heavily indebted beyond sustainable thresholds. The Fiscal Responsibility Act (FRA) requires legislative approval for borrowing. It also stipulates that the government should ensure that the level of public debt as a proportion of national income be held at a sustainable level. The Debt Management Office (DMO) has guidelines for subnational borrowing.
- There is not enough evidence to support that there is an existence of an appraisal method which ensures that investment projects are systematically vetted and selected based on a transparent criteria.
- Not all projects are captured in the budget up to the year 2017; donor funded projects are good examples.

Revenue Distribution

- Public Finance Management reforms require that all government revenues be spent through the budget process. Not all FGN revenues are spent through the budget process and the Treasury Single Account (TSA); the Nigerian National Petroleum Corporation (NNPC) and the Central Bank of Nigeria are examples of such

government MDAs which generate revenues that are spent through off budget processes.

- The current revenue sharing formula has raised concerns as to whether it is clearly agreed upon or has clear objectives. Allocations to the three tiers of government from the Federation Account are as follows: 52.68% to the Federal Government; 26.70% to the states and 20.60% to the 776 local governments. The current sharing formula does not capture the financial needs of the lower tiers of government and it needs to be updated. It is also unclear whether the revenue sharing formula is embedded in the law.
- Verification mechanisms of fiscal entitlements of both the federal and states tiers of government exist only at the federal tier. The National Bureau of Statistics (NBS) releases a monthly update on the Federation Account Allocation Committee (FAAC) disbursements from the Federation Account to the Federal, State and Local governments. The Federal Ministry of Finance also publishes the monthly FAAC reports on her website as well. The Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) protect the interest of all tiers of government by discharging her duties which includes monitoring of accruals into and disbursement of revenues from the Federation Account. At the subnational level, there is no mechanism to ensure that local governments get their fiscal dues from the State Joint Local Government Account.
- Quarterly Budget Implementation Reports (BIRs) are produced by the Budget Office of the Federation as stipulated by the Fiscal Responsibility Act to promote transparency in resource revenues management.

Budget and Project Execution

- The margin between the budgeted primary expenditure and the actual primary expenditure has been more than 25% in recent years especially as it regards capital expenditure. On average, the variance between budgeted capital expenditure and actual capital expenditure for 2014 – 2016 is 38.36%.
- Public projects are mostly not completed on time and in line with the budget. Revenue shortfall and rolling over of capital projects into the following year are the reasons why this has been the case.
- Public investment projects are seldom adjusted to reflect the changes in government policy. Under the Transformation Agenda which sought to among other things ensure that the budgeting process “...focuses on setting allocation priorities rather than micro-budgeting...”, projects that should be executed by the local governments were still being budgeted to be executed by federal ministries. The 2016 budget which was a Zero Based Budget (ZBB) did not show evidence that Zero Based Budgeting was followed in determining the sums allocated for the budget line items; sums of some lines items were unusually high as was the case under the previous envelope system of budgeting.
- All contracts under public procurement are subject to open and competitive bidding; key defence contracts or national security contracts are however done with some degree of restriction. The Bureau of Public Procurement publishes all procurements

that pass through it that are worth up to US\$100,000 equivalent and above in her bi-annual Public Procurement Journal.

Accounting, Reporting and Oversight of Public Spending

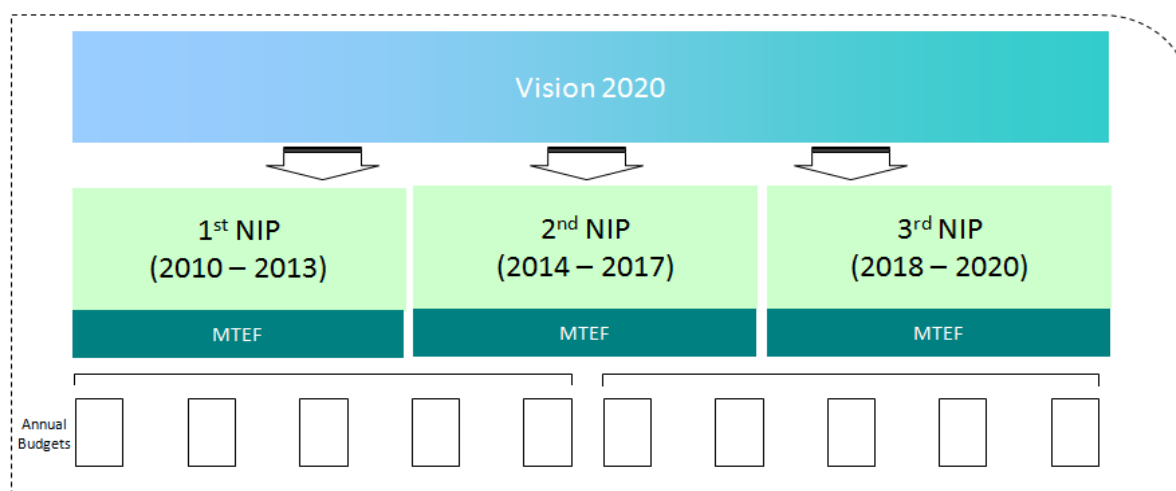
- The FGN accounting system aligns with international best practices. There exists an Integrated Personnel and Payroll Management System (IPPIIS) and International Public Sector Accounting Standards (IPSAS). Not all MDAs are connected to the Government Integrated Financial Management System (GIFMIS); the number connected to GIFMIS rose from ninety three (93) in 2012 to two hundred and nine (209) in 2013.
- Although the Budget Implementation Reports (BIRs) are produced by the Minister as directed by the Fiscal Responsibility Act, it has mostly failed to meet the prescribed thirty (30) day threshold as stipulated by the Act. The BIRs are only made available at the Budget Office of the Federation's website but are not published in mass and electronic media; limiting access to understanding the FG's budget implementation to only the computer literate.
- The audit process is yet to meet the global best practices as there is no financial independence of the audit institution. The auditing process is guided by the Audit Ordinance Act of 1956 which has become moribund and effete. The proposed Audit Reform Bill which would address this and other concerns is yet to become law and has been stalled at the National Assembly.
- The Auditor General publishes report on the consolidated operations of the federal government. This has not been done on time in recent years as it takes up to ten (10) to twelve (12) months after the end of the financial year to do so. Findings/recommendations from the Consolidated Audit of the FGN financial statements are transmitted to the National Assembly for oversight but these have not been used to improve the designing of projects; programmes and policies; and resource allocations.
- Ideally, public investment projects and any related public assets are to be fully accounted for, properly recorded and their depreciation recognized in financial statements. This was not being done under the previous cash basis method of accounting. Since IPSAS is yet to be fully operational, these are yet to be fully addressed.

9.1 Public Spending Planning

9.1.1 Are national and sector plans formally integrated into the budgeting exercise?

National and sector plans are not typically integrated into the budgeting exercise. Although fiscal forecasts seem to be prepared on rolling basis of up to three years consistently, the forecasts are not based on sound macroeconomic fundamentals. For example, a “Review of the 2017-2019 Medium Term Expenditure Framework” revealed that projections on GDP growth rate from 2017 to 2019 were unclear and without any analysis on how the projections were arrived at. The 2014-2016 MTEF had its limitations. Firstly, it was founded on no overarching national plan with the expiry of the 1st National Implementation Plan (NIP) of Vision 2020 in 2013 and the failure on the part of government to bring into effect the follow up 2nd National Implementation Plan which was to be from 2014 to 2017. The Chart below paints a clearer picture:

Chart 1: The Anchors of the MTEF



U. Amakom (2013), Review of the Macroeconomic Framework of the 2014-2016 MTEF

Secondly, the 2014-2016 MTEF was silent on the projected inflation and interest rates, access to credit, accretions to external reserves, broad money (M2), etc. With the high rate of unemployment, the MTEF was expected to contain substantive information on what should be done to ameliorate unemployment. However, it remained silent. Furthermore, the MTEF failed to propose any strategies for monetary policy nor did it propose any for the harmonisation of monetary and fiscal policies for the stabilisation and growth of the economy.

Investments decisions have not been typically based on sector strategies neither are their recurrent cost implication included in the forward expenditure estimates. Evidence from the budgets of most federal MDAs suggests that choices of investments are not properly aligned with their sector strategies. Some MDAs execute projects that are not core to their mandate raising questions on whether the investments are based on their MTSS while others execute

projects without drawing up an MTSS. For example, analyses of the 2016 Federal Budgets for the Ministries of Health, Education and others showed that their budgets were proposed and passed without an MTSS underlying the budgets. Moreso, given that sectors hardly cost their sector strategies when there is one, the budget estimates are not typically informed by the sector strategies.

However, there is an existence of costed sector strategies of primary expenditure which are consistent with fiscal forecasts but this is not done by all MDAs. The cost estimates are in the MTSS reports of key ministries and the Economic Recovery and Growth Plan (ERGP) implementation plans.

Regarding the budget circulars issued to Ministries, Department and Agencies (MDAs), they are without ceilings for individual administrative units or functional areas and are not clear enough to reflect the FGN approved ceilings. Also, considering that FGN has adopted the zero based budgeting approach, there are no prior approved ceilings. S.4.1.1 of the 2018 FGN Budget Call Circular is instructive: *“All MDAs are required to work within their 2017 expenditure ceilings in preparing their 2018 Capital and Overhead budget submissions. The final ceilings for 2018 will be determined and communicated subsequently. MDAs are however to note that, while the final ceilings for some may be lower than it was in 2017, some others may see significant upward adjustments to reflect the current priorities of government, especially the need to spur economic growth”*. This is not a clear and definite statement.

The Nigerian Debt Management Office (DMO) conducts annual Debt Sustainability Analysis with relevant stakeholders such as the Federal Ministry of Finance, Budget Office of the Federation, Central Bank of Nigeria (CBN), etc. and publishes a yearly Debt Sustainability Analysis (DSA) Report. This analysis contains both external and domestic components. This is true of the fiscal years 2014-2017 and the preceding years.

On the existence of and adherence to a fixed budget calendar, there is a prescribed budget calendar but it is not followed in practice. Section 318 (1) of the 1999 Constitution (as amended) states that the financial year means *“any period of twelve months beginning on the first day of January in any year or such other date as the National Assembly may prescribe”*. Section 1 of the Financial Year Act, Cap C23, Laws of the Federation of Nigeria (LFN) 2004 states that *“the financial year shall, pursuant to section 318 (1) of the Constitution of the Federal Republic of Nigeria 1999, be the period of twelve months commencing on 1st January and ending on 31st December”*. Also, S. 11 (1) and (2) and S.14 of the Fiscal Responsibility Act (FRA) provides the timing for the Medium Term Expenditure Framework (MTEF) which provides an anchor to the budget.

The Constitution is the supreme law of the land and takes precedence when there is inconsistency with any other law. What obtains in practice is that the stipulation of the Constitution that empowers the National Assembly (NASS) to prescribe “such other date” is being mistaken for arbitrariness; a financial year running from January to December while the following financial year runs from May to April. For example, the 2015 and 2016 budgets commenced in the month of May and ended in April while that of 2017 commenced in the month of June. It is imperative for the financial year to be certain and not be subject to change every year. This will facilitate execution of capital projects provided for in the budget and ensure proper monitoring and evaluation.

The annual budget approval by the legislature for the past three (3) years (2014-2016) has not been timely. Against the Financial Year Act stipulation that a financial year should begin on the 1st of January and end on the 31st of December, the 2014 federal budget was approved by the legislature on the 9th April, 2014; that of 2015 was approved on the 28th April, 2015 while that of 2016 was approved on the 23rd March, 2016. As a result of these, presidential assent were late as well: 2014 budget received presidential assent on the 23rd May, 2014; that of 2015 was signed into law on the 19th of May, 2015; while that of 2016 was assented to on 6th May, 2016.

Information sources:

1999 Constitution of the Federal Republic of Nigeria

Financial Year Act, Laws of the Federation of Nigeria (LFN) 2004

Federal Annual Budgets 2014, 2015, 2016 and 2017

2018 Federal Budget Call Circular <http://www.budgetoffice.gov.ng/index.php/2018-budget-call-circular>

U. Amakom (PhD), "Review of the Macroeconomic Framework of the 2014-2016 MTEF", Paper Presentation at CSJ's Pre-Budget Session, November, 2013.

2016-2018 MTEF

2017-2019 MTEF

CSJ (2017), "Review of the 2017-2019 Medium Term Expenditure Framework". See www.csj-ng.org/?ddownload=2691

<https://www.dmo.gov.ng/publications/reports/debt-sustainability-analysis>

Health Sector MTSS 2017-2019

Agriculture MTSS 2017-2019

CSJ (2016), "Engaging the Approved 2016 Federal Health Budget", Page 22.

CSJ (2016), "Engaging the Approved 2016 Federal Education Budget", Page 16.

9.1.2 Are Public Investment Projects Designed and Appraised Based on National and Sector Plans?

Public investment projects are not designed and appraised based on national and sector plans. There is a lack of integration of public investment plans across the Federal, State and Local governments. This is because investment plans are segregated across tiers of government; i.e. federal investment plans are based on the federal policies while state investment plans are based on state policies. Public investment plans were integrated through the National Economic Empowerment and Development Strategy (NEEDS) of 2004 where state policies were aligned

with the Federal Policies through SEEDS and LEEDS. Since the expiration of NEEDS in 2008, each tier of government has operated independently.

Public investment plans do not provide certainty about funding. The trend is that most MDAs do not have MTSS where costing is presented while the MTEF does not contain the sectoral breakdown that arises from project costing. Also, revenue shortages pose a challenge towards funding projects in the Public Investment Plans as what government receives as revenue and what it borrows informs disbursements of funds for public investments.

The Fiscal Responsibility Act of 2007 provides a threshold and guidelines for national and subnational borrowing. Section 41 (1) (a) and (b) of the FRA stipulates that borrowing shall only be for capital expenditure and human development; be on concessional terms with low interest rates and a reasonably long amortization period. The FRA also requires legislative approval for borrowing. It also stipulates that the government should ensure that the level of public debt as a proportion of national income is held at a sustainable level. The Debt Management Office (DMO) has guidelines for subnational borrowing. However, public investment plans are usually silent on the issue of debt sustainability and many states are heavily indebted beyond sustainable thresholds. Essentially, public investment plans do not create an environment that ensures sustainable levels of subnational borrowing

The trend of line items found in the budget over the years suggests that an appraisal method that ensures systematic vetting of projects and selection based on transparent criteria and in keeping with realistic priorities does not entirely exist. For example, the 2017 budget line items were selected using multi-criteria analysis approach and rapid appraisal technique but what was finally approved was not entirely the product of this approach and technique. The Executive prepares the budget and hands it over to the National Assembly who in the process of passage reshuffles the line items, removing some items and adding other new ones. What gets to be the approved budget is a collection of sector specific items that emanated from the sectors and other provisions for each sector that cannot be said to have emanated from an appraisal method that systematically vets projects. Also, there are no ex ante independent review of appraisals conducted.

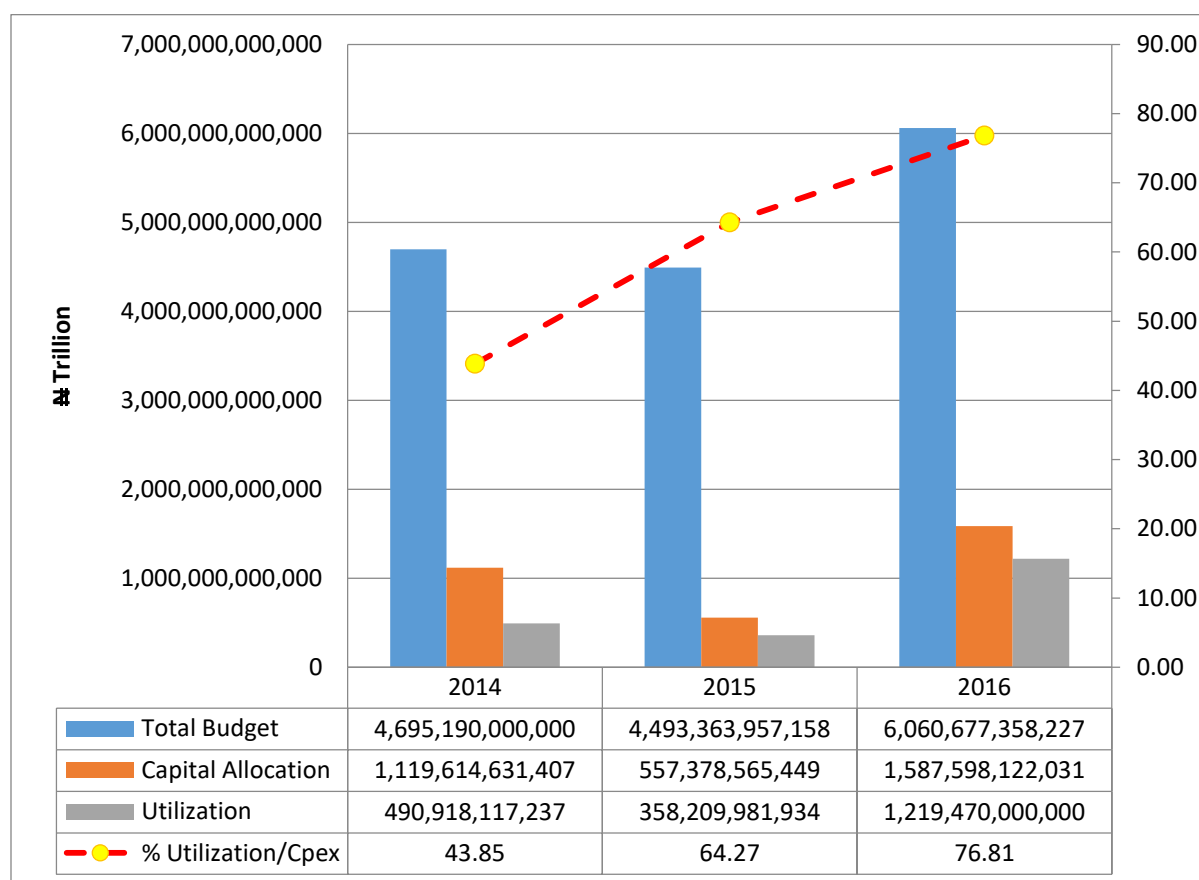
There is also the issue of 'frivolous' expenditure line items that do exist in the budget. These questionable budget line items are vague in meaning, appearing to be wasteful or inappropriate provisions for expenditure. Under the Presidency in the 2016 approved budget, there was a provision for "Annual Routine Maintenance of Villa Facilities by JBN" for N3.9 Billion without clarity on what are to be maintained²⁴. Another example in the same year is an N830m provision for "Purchase of Residential Buildings" in the Federal Road Safety Commission budget which begs the question of what the monetization policy of the government is about. Other examples abound even in the earlier budgets. This shows lack of systematic vetting of line items included in the budget.

The recurrent cost of public investment projects (which are capital projects) are not taken into account at the time of preparation of the projects but are met after the projects have been fully built.

²⁴ See Citizens Wealth Platform (2016), "Recommendations on the Line Items of Frivolous, Inappropriate, Unclear and Wasteful Estimates in the 2016 Federal Appropriation Bill"

Over the medium term, it should be noted that items in the budget are fiscal expenditure plans which at best represent a statement of intent of those in authority. This has been proven to be different from what finally gets executed. The 2014 budget was a budget of N4.695 trillion of which N1.1 trillion was for capital expenditure and what ended being utilized as capital expenditure was N490.9 billion representing a 43.85% investment spending for the financial year. The 2015 budget had capital expenditure allocation of N557 billion out of a total budget of N4.493 trillion. What was utilized was N358.2 billion representing an annual investment spending of 64.27%. The 2016 budget of N6.06 trillion had a capital expenditure allocation of N1.587 trillion out of which N1.22 trillion was utilized, representing an investment spending of 76.81%. The trend of capital expenditure utilization rate is presented below:

Chart 2: Total Budget, Capital Allocation, Actual Utilization and Utilization Rate of the Capital Allocation from 2014–2016



At the first glance, the above graph suggests that there is a level of predictability of investment spending on the part of the government as both capital allocation and utilization rate in 2016 went up from their 2014 values. Upon further inspection, it shows that total capital allocation reduced from N1.1 trillion in 2014 to N557 billion in 2015 and went back up to N1.58 trillion in 2016; calling into question the predictability on investment spending. One possible explanation

for this could be that 2015 was the election year but this very reason makes a case for unpredictability on investment spending. In terms of transparency, there is a need for clarity as to what constitutes a fiscal year in Nigeria as the 76.81% capital utilization being reported for 2016 includes capital projects executed in April 2017. In the medium term therefore, it cannot be said that there is sufficient transparency or predictability on investment spending.

Not all projects in Nigeria up to the year 2017, especially the donor funded projects, are captured in the budget. The need for the reportage of these projects in the budget would promote efficiency, effectiveness, accountability and transparency in fiscal governance in Nigeria. Reporting these projects in the budget would eliminate opportunities for mismanagement of funds; a recent example of mismanagement of donor funds is the Global Funds grants scandal, which was a misappropriation of a total sum of US\$3.8 million of grants for combating HIV, tuberculosis and malaria between 2010 and 2014.

Information sources:

Fiscal Responsibility Act

DMO (2016), Debt Sustainability Analysis 2016

Debt Management Office, Subnational Borrowing Guidelines 2008-2012;
<https://dmo.gov.ng/index.php/publications/other-publications/borrowing-guidelines/1054-subnational-borrowing-guidelines-2008-2012>

Federal Budgets 2015, 2016 and 2017

CWP (2016), **“Recommendations on the Line Items of Frivolous, Inappropriate, Unclear and Wasteful Estimates in the 2016 Federal Appropriation Bill”**

CWP (2017), **“Recommendations on the Line Items of Frivolous, Inappropriate, Unclear and Wasteful Estimates in the 2017 Federal Appropriation Bill”**

Approved budgets 2015, 2016 and 2017

Federal Budgets 2014, 2015, 2016

Budget Implementation Reports 2014-2016

9.2 Revenue Distribution

9.2.1 Is All Government Spending from Resources Appropriated through the National Budget?

Not all revenues of government through the MDAs are spent through the budget process. The Nigerian National Petroleum Corporation (NNPC) and the Central Bank of Nigeria are examples of such government agencies whose generated revenues are spent through off budget process.

Treasury Single Account (TSA) was introduced in Nigeria in 2012 to consolidate all inflows of MDAs of Government into a single account at the Central Bank of Nigeria (CBN). TSA became fully operational in Nigeria in September 2015 following a federal government directive to MDAs to fully implement the Account. Although the CBN Banking Supervision Annual Report 2015 revealed that the implementation of the TSA led to a 2.9% decrease in customers' deposits, it brought about a reduction in the proliferation of bank accounts that are operated by MDAs towards promoting financial accountability among governmental organs. The 2015 CBN Annual Report confirmed that *"Ministries, Departments and Agencies(MDAs) of the Federal Government complied with the directive, largely, by moving their accounts from banks to the CBN. The Initiative was expected to minimise the cost of government borrowing, facilitate better management of cash resources, and harmonise fragmented government receipts and payments accounts"*.

It has been the practice that resource and non-resource revenues are reported separately in the national budget. The underlying assumptions for both oil and non-oil revenues are clearly reported in the MTEFs and the actual revenues from both sources are also clearly disaggregated in the Budget Implementation Reports (BIRs).

Regarding oil revenue for example, the 2016-2018 MTEF made an oil production forecast of 2.2 million barrels per day (mbpd) at a benchmark price of \$38 per barrel for the year 2016; a 2.347 mbpd oil projection for 2017 at a benchmark price of \$48 per barrel and a 2.469 mbpd at a benchmark price of \$50 per barrel for 2018. On non-oil revenues, projections on gross revenue figures for Companies Income Tax (CIT) and Value Added Tax were also given. The BIRs also reports on the Net Redistributable revenue disaggregated by oil and non-oil categories.

Information sources:

Central Bank of Nigeria 2015 Banking Supervision Annual Report, Page 63. <https://www.cbn.gov.ng/Out/2017/BS/BANKING%20SUPERVISION%20ANNUAL%20REPORT.pdf>

Central Bank of Nigeria 2015 Annual Report

2016-2018 MTEF, see

<https://drive.google.com/open?id=0B1vqjeaProJRWGZ3RUlvVUR4eU0>

Budget Implementation Reports (2014, 2015, 2016), see <http://www.budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

9.2.2 If State-owned Enterprises, Savings Funds or Development Banks Receive Revenues Off-budget, is there Sufficient Justification for such Arrangements, and are the Revenues Managed in a Transparent, Accountable and Efficient Manner?

Off-budget expenditures refer to financial transactions that are not accounted for in the budget. There exists a proportion of government spending which is made through off-budget mechanisms. Certain government expenditures are excluded from the budget; thus the budget is not a complete statement of public expenditures. It is preferred by global best practice standards that off-budget expenditures be minimal. Although off budget expenditures exist, its proportion to budget expenditures are low. Agencies like National Communications Commission (NCC); Securities and Exchange Commission (SEC); Niger Delta Development Commission (NDDC); Nigeria Maritime Administration and Safety Agency (NIMASA); and Nigerian National Petroleum Corporation (NNPC) prepare their budgets and defend them separately. Most accountability issues stem from the management of these off budget revenues.

It is desirable for there to be clearly defined roles for state owned entities. Some of the State owned entities perform other roles through the execution of their Corporate Social Responsibility (CSR) for example. Although such oil and a few manufacturing companies' spending in non-core activities are small. It is however difficult to estimate what the percentage in question value. In assessing the sectoral budgets, it can be observed that in preparing budgets, some sectors delve into areas that are beyond their core mandates although the sectors that do this are considerably small.

Off-budget spending does not appear to be coordinated with sector plans. State owned companies intervene based on the demands of their host communities and are not often coordinated with state and national plans.

The auditing, reporting and oversight, off budget expenditure are carried out by agencies like NNPC, NIMASA, SEC, NCC, and NDDC etc. Section 85 (3 and 4) of the 1999 Constitution permits these agencies of government to appoint external auditors from a list of qualified auditors provided by the Auditor General to audit their books. The Auditor General is also mandated to *"comment on their annual accounts and auditors' reports"* and also *"to conduct checks of all government statutory corporations, commissions, authorities and agencies ..."* the Auditor General does not conduct the audit of these agencies but report on their audited financial statements (vetting) and can conduct periodic checks. The periodic checks and vetting reports form part of the Auditor-General's Annual Report.

Information sources:

1999 Constitution of the Federal republic of Nigeria

Auditor General for the Federation Office

9.2.3 If the Government Distribute Revenues to Subnational Governments, are the Transfers Based on a Well-articulated Set of Objectives, and are the Transfers Correct and Timely?

The federal government distributes revenues to states and local governments but there are no verification mechanisms at the subnational level to ensure the local governments get their due fiscal entitlements. There is an existence of a revenue sharing formula; the current formula is reported to allocate about 52.68% to the Federal Government from the Federation Account; 26.70% to the 36 states and 20.60% to the 776 local governments. The formula has however been reported to be without clear objectives. This is because the current revenue allocation formula has been anything but clearly agreed upon hence the current calls for restructuring.

There have been calls from both houses of the Legislature to the Executive to submit a new revenue sharing formula, arguing that the current revenue sharing formula was conceived over two decades ago and that it is no longer in tune with the current realities as it relates to the financial needs of the three tiers of government. Another reason cited was that it allocates too much to the Federal, leaving the others tiers with too little to work with.

It should be noted however that the Executive arm of government has taken steps to improve the formula. The Revenue Mobilization Allocation and Fiscal Commission (RMAFC) had in 2016 reviewed the allocation formula and adopted a draft report on the proposed new revenue allocation formula. The contents of the new formula are as yet unpublished and whether the new proposed formula will address the issues raised above remains to be seen.

The formula is not clearly embedded in the law. The law embedding the current revenue formula was enacted in 1982 and was amended in 1992 before it came into force in the Fourth Republic in the 1999 Constitution. Again, it was amended by a Modification Order issued by former President Olusegun Obasanjo in May 2002, amended in July 2002, and January 2004 respectively. The Modification Orders were made by the President under S.315 (2) of the 1999 Constitution (as amended). "The Order which emanated from the Supreme Court Judgment of April 5, 2002 was to bring the relevant sections of the subsisting Allocation of Revenue (Federation Account, etc.) Act, in conformity with the provisions of the 1999 Constitution (as amended) of the Federal Republic of Nigeria"²⁵.

Paragraph 32 of the Third Schedule of the 1999 Constitution as amended mandated the RMAFC to, from time to time, do a review of the revenue allocation and principles in operation to ensure that it aligns with the changing realities of time. And when it finishes the review, it submits same to the President who is mandated by S. 162 (2) of the 1999 Constitution to table before NASS proposals for revenue allocation from the Federation Account.

The extant revenue allocation formula based on the Executive Modification Order appears to be of doubtful legality considering that very clear and less arbitrary provisions were made by the Constitution for NASS to review and approve the revenue allocation formula.

There is no balance between the revenue and expenditure assignments of subnational governments – states and local governments. States have a lot of unfunded mandates as the FGN retains the bulk of Federation Account revenue. The ideal situation is for there to be a

²⁵ <http://www.rmaf.gov.ng/revenue-allocation-formula-rmaf-adopts-draft-report-ready-for-submission/>

balance between revenues and expenditure assignments of subnational governments. Wastage and mismanagement of resources will be encouraged if the transfers to subnational governments are much higher than required. On the other hand, infrastructural decay will occur if transfers to subnational governments are much less than required.

By S.162 (6) of the Constitution, each state maintains the State Joint Local Government Account into which is paid the allocations to local government councils in the state from the Federation Account and from the Government of the State. State Governments abuse this account and usually transfer less than is required by the local governments. Again, by S.4 of the Allocation of Revenue (Federation Account etc) Act, states are to transfer 10% of their internally generated revenue to local governments. Most states in the federation also fail to transfer this percentage. Thus, most local governments are cash strapped and cannot perform their basic obligations.

International best practices require that there be a ceiling above which subnational government cannot borrow. There is a clear provision in the law for subnational governments not to go above a given ceiling. Section 42 (1) of the FRA has stipulations on the overall limits of the consolidated debt of the federal and state governments. These limits are to be set by the Executive subject to the approval of the legislature. But the ceilings are yet to be set, ten years after the coming into effect of the Fiscal Responsibility Act.

By S.222 of the Investments and Securities Act, when a subnational body intends to raise bonds or borrow from the capital market, the total amount of loans outstanding at any particular time for the subnational body including the proposed new loan shall not exceed 50% of the actual revenue of the body concerned for the preceding 12 months. Again to borrow from money deposit commercial banks, the Subnational Borrowing Guidelines of the DMO prescribes that the monthly debt service ratio of a subnational which includes the commercial bank loan being contemplated should not exceed 40% of its monthly Federation Allocation of the preceding 12 months. The External Borrowing Guidelines of the DMO prescribes that State Governments must demonstrate that the ratio of their projected external debt service plus all other deduction obligations for the next twelve months (inclusive of the new loan under consideration) to their total Federation Accounts Allocation over the preceding twelve months will not exceed 40%. The rule takes account of other sources of revenue as appropriate. However, available evidence indicates that these rules are not adhered to as most states have repayment obligations exceeding the stated ratios - calculated from their monthly Federation Allocation of the preceding 12 months and their internally generated revenue.

S.35 of the FRA provides for savings of crude oil proceeds which are in excess of the reference commodity price. The savings of each Government in the Federation is to be deposited in a separate account which shall form part of the respective Government's Consolidated Revenue Fund to be maintained at the Central Bank of Nigeria by each Government. The Account called the Excess Crude Account is of doubtful legal validity in the light of the provisions of S.162 of the 1999 Constitution. Further, there is a Nigerian Sovereign Investment Authority (Establishment, etc) Act, which saves "excess" resource revenue in a Sovereign Wealth Fund. However, there is very little savings in the above stated accounts.

The existence of a verification mechanism at both the national and subnational level ensures that due fiscal entitlements are received especially by the subnational governments. There exists a verification mechanism at only the federal tier of government. The National Bureau of Statistics (NBS) releases a monthly update on the Federation Account Allocation Committee

(FAAC) disbursements from the Federation Account to the Federal, State and Local governments. The Federal Ministry of Finance is supposed to publish the monthly FAAC reports on her website as well. However, the last report on the website of the Federal Ministry of Finance was for December 2015.

The table below is an example of such disbursement which was the FAAC disbursement of the sum of N426.88bn to the three tiers of government in December 2016 from the revenue generated in November 2016.

Table 1: FAAC December 2016 Disbursement

Beneficiaries	Statutory	Exchange Gain Difference	NNPC Refund to FG	Distribution of =N= 66billion from Excess PPT Savings Account	VAT	Total
	=N=	=N=	=N=	=N=	=N=	=N=
FGN	97,896,655,218.68	18,240,108,338.14	6,330,393,548.39	30,248,856,000.00	10,883,448,451.99	163,599,461,557.20
State	49,654,491,788.97	9,251,626,704.54	-	15,342,624,000.00	36,278,161,506.65	110,526,904,000.16
LGCs	38,281,531,843.29	7,132,616,396.46		11,828,520,000.00	25,394,713,054.65	82,637,381,294.41
13% Derivation Fund	13,612,610,235.11	4,228,210,710.29		8,580,000,000.00	-	26,420,820,945.40
Cost of Collection - NCS	3,536,318,752.85	-			-	3,536,318,752.85
Transfer to Excess PPT	33,672,242,747.79	-			-	33,672,242,747.79
Cost of Collections - FIRS	2,253,260,269.44	-			3,023,180,125.55	5,276,440,394.99
Cost of Collection - DPR	1,213,397,552.39	-			-	1,213,397,552.39
Total	240,120,508,408.52	38,852,562,149.44	6,330,393,548.39	66,000,000,000.00	75,579,503,138.84	426,882,967,245.19

Source: National Bureau of Statistics

From the total disbursement of N426.88bn for the month of December 2016, Federal government received a total of N163.59 billion; States received a total of N110.53bn while the Local governments received N82.64bn. The sum of N26.42bn was shared among the oilproducing states as 13% derivation fund and N33.67bn was transferred to the Excess Petroleum Product Tax(PPT) Account. The Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) protects the interest of all tiers of government by discharging her duties which includes monitoring of accruals into and disbursement of revenues from the Federation Account. At the subnational level however, there is no mechanism to ensure that local governments get their fiscal dues from the State Joint Local Government Account as the states evidently mismanage their funds. There is also no verification mechanism for the disbursement of the 10% of IGR from states to local governments as dictated by S.4 of the Allocation of Revenue (Federation Account, etc.) Act.

There is clear information on disaggregated revenue stream of the government but not on some statutory transfers of the Federal Government. As has been stated above, the NBS and the Ministry of Finance release information on the monthly disbursements from the Federation Account. But statutory transfers to federal agencies like National Judicial Council (NJC), Independent National Electoral Commission (INEC), Niger Delta Development Commission (NDDC), Public Complaints Commission and National Human Rights Commission, all appear as

lump sums in the budget without details. This is an administrative practice which is not supported by the law. However, there is information on the disaggregated revenue stream of the government. This is made available in the Budget Implementation Reports (4th Quarter Reports), disaggregated by revenue streams and also compared against the projections made for each quarter. These reports are made available online for anyone who cares to download and read them. They can be found in the website of the Budget Office of the Federation

Information sources:

<http://www.rmafc.gov.ng/revenue-allocation-formula-rmafc-adopts-draft-report-ready-for-submission/>

The 1999 Constitution of the Federal Republic of Nigeria

Allocation of Revenue (Federation Account, etc) Act

Constitutional Amendment Bill approved by the NASS seeking Local Government Financial Autonomy

Fiscal Responsibility Act

Investments and Securities Act

DMO, "Subnational Borrowing Guidelines", <https://dmo.gov.ng/index.php/publications/other-publications/borrowing-guidelines/1054-subnational-borrowing-guidelines-2008-2012>

DMO, "External Borrowing Guidelines", <https://dmo.gov.ng/index.php/publications/other-publications/borrowing-guidelines/1052-external-borrowing-guidelines-2008-2012>

Nigerian Sovereign Investment Authority (Establishment, etc) Act

NBS, see [nigerianstat.gov.ng/download/505](http://www.nigerianstat.gov.ng/download/505)
<http://www.finance.gov.ng/index.php/resources/faac-report-archives>

Budget Office of the Federation

Budget Implementation Reports (2014, 2015, 2016)

<http://www.budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

9.3 Revenue and Project Execution

9.3.1 Are there Spending Controls and Commitment Plans in Place, and do these Result in Public Spending in Line with the Approved Budget?

There are no effective tools (e.g. spending and commitment controls, cash flow planning) in place to keep in-year spending under control. There are no known controls that are standardized. What obtains in practice varies from one year to another. In practice, there are no spending commitments; releases to the sectors are at the discretion of the federal government in any of the four quarters of the calendar year.

S. 25 of the FRA states as follows: *(1) The Federal Government shall cause to be drawn up in each financial year, an Annual Cash Plan which shall be prepared by the Office of the Accountant General of the Federation. (2) The Annual Cash Plan shall be prepared in advance of the financial year setting out projected monthly cash flows and shall be revised periodically to reflect actual cash flows.* Further, S.26 of the Fiscal Responsibility Act directs the Minister of Finance to set the time frame for the disbursement of funds: *“The Minister, shall within 30 days of the enactment of the Appropriation Act, prepare and publish a Disbursement Schedule derived from the Annual Cash Plan for the purpose of implementing the Appropriation Act”.* Again by S.28 of the same FRA, where by the end of three months after the enactment of the Appropriation Act and the Minister determines that the targeted revenues may be insufficient to fund the heads of expenditure in the Appropriation Act, the Minister shall within the next 30 days of such determination, take appropriate measures to restrict further commitments and financial operations according to the criteria set in the Fiscal Risk Appendix.

These stipulations have yet to be adhered to as the Ministry of Finance has failed to produce an Annual Cash Plan, Budget Disbursement Schedule and Fiscal Risk Appendix. A law suit by Centre for Social Justice in 2013 seeking to compel the Minister of Finance to prepare and produce the Disbursement Schedule showed that none has been prepared. There is no evidence to suggest that either the Annual Cash Plan or the Budget Disbursement Schedule or the Fiscal Risk Appendix have been prepared or produced since that suit at the time of this report.

On the margin between the actual and the budgeted primary expenditures, actual expenditures have always deviated from the budgeted expenditure by more than 25% in recent years especially as it regards capital expenditure. The 2014 Capital Expenditure (CAPEX) Utilization Rate was just 43.85%, which means that the variance between actual primary expenditure and the budgeted primary expenditure was 56.15%. CAPEX utilization rate for 2015 was 64.27% meaning that there was a 35.73% variation between actual and budgeted primary expenditure. The variation between the budgeted and actual CAPEX was 23.19% in 2016, as the CAPEX utilization rate was 76.81%. On average, the variance between budgeted capital expenditure and actual capital expenditure for 2014 – 2016 is 38.36%. The table below illustrates these points.

Table 2: Margin between Actual and Budget Primary Expenditure

Year	2014	2015	2016
Capital Expenditure (CAPEX) Allocation (N)	1,119,614,631,407	557,378,565,449	1,587,598,122,031
CAPEX Utilized (N)	490,918,117,237	358,209,981,934	1,219,470,000,000
% of Utilization to CAPEX	43.85%	64.27%	76.81%
Variance between Utilization and CAPEX (N)	628,696,514,170	199,168,583,515	368,128,122,031
Variance (%)	56.15%	35.73%	23.19%

Source: Budget Implementation Reports (2014, 2015 & 2016) and the Authors' Calculations

Variance in expenditure composition in the years 2014-2016 and indeed in the years before them exceeded 20%. The average capital budget implementations for the years in view have been less than 62%.

Regarding what average amount of expenditure is actually charged to the contingency vote, the practice in Nigeria is that contingency votes are represented by Service Wide Votes (SWV). The actual expenditure charged to SWV was on average more than 10% of the original budget. For example, the 2014 SWV was a total sum of N489.3 Billion representing a 10.42% of the overall 2014 Budget. However, about 62% of this SWV is disaggregated into budget line items while the balance (38%) stood as lump sum.

There is an orderly and transparent way to amend the budget. The 2015 Appropriation Amendment Act is an example of such an amendment. The power to amend the budget is constitutionally vested with the legislature under S.4 of the 1999 Constitution. However, amendment of the budget must be differentiated from a Supplementary Budget which adds more projects and activities to be funded for the year. The FRA dictates in S.27 that the sums appropriated for a specific purpose shall be used solely for the purpose specified in the Appropriation Act. Virements can only be recommended by the Minister of Finance subject to the approval of the legislature.

The federal government does not produce a mid-year review of budget execution that takes into account a shortfall in resources or an increase in expenditures beyond the authorities' control. The mid-year review of the budget would ideally help in the evaluating whether budget execution has been as planned and what best to do to ramp up capital budget implementation. The federal government simply implements the part of the budget that available resources can fund because there have not been enough resources over the years to fully implement the budget.

By S.28 of the same FRA, where by the end of three months after the enactment of the Appropriation Act and the Minister determines that the targeted revenues may be insufficient to fund the heads of expenditure in the Appropriation Act, the Minister shall within the next 30 days of such determination, take appropriate measures to restrict further commitments and financial

operations according to the criteria set in the Fiscal Risk Appendix. But, no Fiscal Risk Appendix has ever been prepared.

Information sources:

Budget Implementation Reports 2014, 2015 and 2016

Appropriation Act 2014

Fiscal Responsibility Act 2007

Centre for Social Justice v Ministry of Finance & Anor (Suit No. FHC/ABJ/CS/251/2013)

1999 Constitution of the Federal Republic of Nigeria

9.3.2 Are Public Investment Projects Implemented as Planned?

Public projects are mostly not completed on time or in line with the budget. This happens for many reasons. Firstly, the issue of revenue shortfall is one major reason public projects are not completed on time. Some projects are executed half-way and rolled over onto the following year's budget as ongoing projects while others will continue to appear year after year. Most Federal Roads Construction projects that appear in the budget on a yearly basis are good examples of this.

Due to late passage and assent to the budget, capital projects execution has been constantly shifted into the following fiscal year. In the last three years (2014-2016) for example, capital project implementation has been shifted to the second quarter of the following year. The 2016 capital projects execution was extended to May 2017 as a result of late passage of the 2016 Appropriation Act.

Some major recurrent costs not envisaged at the appraisal have arisen after the budget appraisal stage. This has happened at least once in the last five years when the federal government responded to the demands of the Academic Staff Union of Universities (ASUU) and other professional bodies' demands. The ideal situation is for there to be no major recurrent expenditure(s) that were not envisaged at the budget appraisal stage to arise afterwards.

The MTEF which articulates Government's revenue and spending plans over the period of three years as well as its fiscal policy objectives over the period are updated on a rolling basis. It also provides the basis for the annual budget which is done annually.

Public investment projects are seldom adjusted to reflect the changes in government policy. From the year 2011 to 2015, the FGN Transformation Agenda sought to among other things review the budget process *"to provide greater clarity of roles between the executives and the legislature and ensure that the process focuses on setting allocation priorities rather than micro-budgeting or contesting figures with the Executive"*. But this did not happen; and in those years' budgets, projects that should be executed by the local governments were still being budgeted for to be executed by the federal ministries.

This was no different with the change in government in 2016 following the 2015 general elections. The 2016 budget which was said to be a Zero Based Budget (ZBB) had no evidence to show that the zero based budgeting was actually followed in developing the projects in the 2016 budget. Provisions for some projects were as high as they were in the periods that the Envelope System of Budgeting was followed. A good example is a N213.87 million provision in the 2016 budget under the Presidency for “Linking of Cable from Guest House No. 9 Generator House to Gate” (Line Item Code SH04015179). One would think that following a zero based budgeting approach; items like the foregoing would not be in the 2016 budget.

Project execution is dependent on the amount of funding made available by the government for such projects. Thus, in practice, the funding of projects throughout their project implementation cycles are unreliable and unpredictable. This is primarily dependent on the proportion of the revenue projection of the government that is realised and the proportion of her budget deficit that she is able to finance through borrowing. Moreover, the budget making and execution process is a political exercise. Some projects are given priority funding over others not based on empirical evidence of their being more of a national priority. Essentially, project funding is not reliable as revenue forecasts are usually overly optimistic.

Information sources:

FGN Annual Budgets (2014, 2015, 2016)

The Transformation Agenda (2011-2015); see www.nationalplanning.gov.ng/images/docs/Transformation.pdf

The Economic Recovery and Growth Plan (ERGP)

Full Year Budget Implementation Reports (2014, 2015 and 2016)

9.3.3 Is Public Procurement Predictable and Subject to a Process of Open and Competitive Tendering?

The Public Procurement Act (2007) section 24 (1, 2 and 3) provides for all procurements of goods and works by all procurement entities of government to be on the basis of open competitive bidding. It also stipulates that equal simultaneous information and opportunity be given to every interested bidder to offer what needs to be procured; indicating that the winning bid shall be the one with the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard.

By law, all procurements are to be made subject to open and competitive bidding except in some cases. Contracts like key defence or national security contracts are done with some degree of restrictions. There are also selective and direct procurement methods which are used when a few service providers are involved in providing a given service or goods and when a sole service provider/supplier is the supplier of the needed goods respectively. In practice, more than 60% of contracts are subject to open and competitive bidding.

The “Approved Revised Thresholds for Service Wide Application and Special Thresholds for Procurement in Oil Sector” published by the Bureau of Public Procurement (BPP) sets the

procurement approval thresholds for MDAs, stating what contract sums or goods supplies worth that can be approved by what authority in the MDAs.

The proportion of divergence of procurement of major projects from plans is less than 50%. A procurement plan is an acquisition plan of what an MDA has identified to acquire in the needs assessment. MDAs do integrate all their procurement expenditure in their annual budget as required by section 18 of the Public Procurement Act (2007). Every MDA is also required to submit their procurement plans for capital projects for each financial year to the BPP for approval. However, what finally gets procured is subject to financial releases to the MDAs by the federal government and this leads to procurements not totally aligning with plans.

The BPP publishes contracts above a certain value (US\$100,000). US\$100,000 is equivalent to N30,550,000 at the official CBN exchange rate of N305:5 to US\$. Section 18 of the Public Procurement Act requires BPP to publish procurements that pass through it; these must have passed through the Federal Executive Council (FEC). It also mandates other levels of approving authorities in the MDAs to publish approved projects on their website. The Bureau of Public Procurement publishes all awarded contracts that are within the sum of US\$100,000 equivalent and above in her bi-annual Public Procurement Journal. This was usually published on a quarterly basis in the past but has most recently been published on a bi-annual basis.

It should be noted however that the Federal Executive Council (FEC) approves contracts against the stipulations of the Public Procurement Act (2007) that a National Council on Public Procurement be set up. This council is yet to be set up.

Information sources:

Public Procurement Act (2007)

BPP Manual “**Approved Revised Thresholds for Service Wide Application and Special Thresholds for Procurement in Oil Sector**”

Bureau of Public Procurement - Public Procurement Journal (July – December 2016)

9.4 Accounting, Reporting and Oversight of Public Spending

9.4.1 Is Public Spending (including any Off-budget Spending of Resource Revenues) Fully Accounted for and Reported?

The FGN has an accounting system that aligns with international best practices used in tracking of budget execution. There exists an Integrated Personnel and Payroll Management System (IPMIS) and International Public Sector Accounting Standards (IPSAS). The Government Integrated Financial Management System (GIFMIS) has the following objectives:

- "Increases the ability of FGN to undertake central control and monitoring of expenditure and receipts in the MDAs.
- Increases the ability to access information on financial and operational performance.
- Increases internal controls to prevent and detect potential and actual fraud.
- Increases the ability to access information on Government's cash position and economic performance.
- Improves medium term planning through a Medium Term Expenditure Framework (MTEF)
- Provides the ability to understand the costs of groups of activities and tasks.
- Increases the ability to demonstrate accountability and transparency to the public and cooperating partners".

According to the GIFMIS website, the number of MDAs that are connected to GIFMIS rose from ninety three (93) in 2012 to two hundred and nine (209) in 2013. The proportion of cash plans, warrants, releases and reporting as a percentage of the budget was reported by GIFMIS website to be at 100%.

The FRA in S.30 (1) and (2) mandates the Minister of Finance through the Budget Office of the Federation to monitor and evaluate the implementation of the annual budget and to produce a quarterly report to this effect to the Fiscal Responsibility Council and the Joint Committee of the National Assembly. It further stipulates that this report be published in the mass and electronic media and the Ministry of Finance website not later than thirty (30) days after the end of each quarter.

Although the Budget Implementation Reports (BIRs) are produced by the Minister as directed by the Act, it has mostly failed to meet the prescribed thirty (30) day threshold as stipulated by the Act. For example the 2016 BIRs, specifically that of Q₃ and Q₄, were not published on time. Secondly, the BIRs are only made available at the Budget Office of the Federation's website but are not published in mass and electronic media; limiting access to understanding the FG's budget implementation to only the computer literate. The reports are usually written in understandable language but are not comprehensive enough to give a full picture of capital budget implementation.

Information is published through the annual audited financial statement of the federal government. This is usually prepared by the Auditor General of the Federation and is available on the website of the Office of the Auditor General for the Federation.

Information sources:

<http://gifmis.gov.ng/gifmis/index.php/about-gifmis>

<http://gifmis.gov.ng/gifmis/index.php/implementation-update>

Fiscal Responsibility Act

Budget Implementation Reports (2015, 2016, 2017),

<http://www.budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

<https://oaugf.ng/index.php/audit-reports>

9.4.2 Is Budget and Off-budget Recurrent Spending Subject to Independent Audit and Oversight?

There is no extant Audit Law at the federal level in Nigeria as the 1956 Audit Act had been declared to have been overtaken by the provisions of the Constitution of the Federal Republic of Nigeria 1979 by the Law Review legislation of the Laws of the Federation 1990. However, the provisions for federal audit in the 1999 Constitution are not comprehensive. The Auditor General of the Federation and the States do not enjoy financial independence as they still go cap in hand to the executive for their funding. Again, only ministries are subject to the Auditor-General's audit as government statutory corporations, commissions, agencies and authorities are exempt from the audit. A situation where the board and management of government corporations appoint their own auditors from a list supplied by the Auditor-General is not ideal. The Auditor-General merely conducts periodic checks on these bodies, provide comments and make a report thereon on their accounts.

The Auditor-General works with good and fit standards but has no powers of enforcement of the recommendations or to compel timely responses to audit queries. Thus, there is a yearly repetition of financial and process offences recorded by audit reports without a proper recourse mechanism. The foregoing is the basis for the Audit Reform Bill which has stalled in the National Assembly in the last ten years.

The audit process addresses the reliability of financial statements, regularity of transactions, functioning of internal control and the procurement systems. However, the Bureau of Public Procurement also addresses procurement issues in its procurement audit.

Sound Public Financial Management requires an independent body from the executive to carry out the important task of auditing the financial statement of the Executive. The Auditor General's

Office although independent does not have independence regarding funding as their operation is subject to budgetary releases instead of as a statutory transfer.

Reports on Federal Government's consolidated operations are made available through the Office of the Auditor General of the Federation but this report is not published within six months of completed audit. The FGN financial transcripts are transmitted to the Auditor General within six months of the end of the financial year while the Auditor General takes about three (3) months to do the audit and transmit to the National Assembly at about the ninth (9th) month after the financial year. The 2016 Audit Report for example, is yet to be published on the Auditor General's website as at the tenth (10th) month following the end of the financial year.

Findings/recommendations from the Consolidated Audit of the FGN financial statements are contained in the Audit Report that is transmitted to the National Assembly for her oversight function. But these findings are mostly not used to improve the designing of projects; programmes and policies; resource allocations and operational bottlenecks. Again, there are repeated violations on the same issues by MDAs year after year.

Evaluations are not routinely used to strengthen programme management and support decision making; they are only used for accountability based on evidence. The case peculiar to Nigeria is that audits are done for audit sake; there have been no indictments following the Auditor General's yearly report.

Many Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) do publish analysis of the budget proposals and follow up on the execution of the approved projects through monitoring. Most NGOs working in the Public Finance Management and related thematic area usually analyze the budget estimates, publish their findings and engage the relevant stakeholders on the basis of their findings. Others that work in the Public Procurement thematic area for example, monitor and publish their findings as well.

Government's response to the external analysis of the budget is met with mixed reactions. Most of the time they are defensive and sometimes good recommendations such as sticking to the stipulations of the law on the budget documents timelines are acknowledged and promises are made to implement them. For example, calls have been made for vehicles procurement line items in the budget to be generic in description as stipulated in the Public Procurement Act instead of being branded. The budget still contains these specifics while the BPP maintains that the brandings be removed. Advocacy on the provision of the National Health Act for 1% of the Consolidated Revenue of the Federal Government to be set aside for basic healthcare provision has been responded to by the government as this was reflected in the 2018-2020 MTEF.

Legislative committees obtain and review budget implementation reports from MDAs but there is no evidence that they do analyse the actual spending of the budget and make recommendations for subsequent budgets. Moreso, legislative institutions like National Institute for Legislative Studies (NILS) and National Assembly Budget and Research Office (NABRO) analyse the actual spending, research and give feedbacks to the legislature but there has been no evidence to suggest that their analysis is incorporated into subsequent budgets.

Civil Society Organizations do participate in the budget process by engaging with policy makers at the various stages of the budget cycle. CSOs participate in the budget process and actively monitor spending. They usually work according to their field of specialty and engage stakeholders regarding potential reforms. For example CSJ engages the budget from the formulation and MTEF stage down to monitoring.

Information sources:

The 1999 Constitution of the Federal Republic of Nigeria

Centre for Social Justice (2008), “**Clause by Clause Analysis of the Audit Reform Bill**”

Ogunyemi A. O.2014, “**Auditing and Corruption in Nigeria: A Review of the Legal Weight of the Audit Act of 1956**”.
<https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0ahUKEWjOrJjy9nWAhVPaAKHduqDkwQFgg-MAQ&url=http%3A%2F%2Fwww.iiste.org%2FJournals%2Findex.php%2FHRL%2Farticle%2Fdownload%2F18209%2F18584&usq=AOvVaw1kG06wbE5MZ8IzGaRCPWP2>

Annual Report of the Auditor General for the Federation on the Accounts of the Federation of Nigeria for the Year Ended 31st Dec., 2015. <https://oaugf.ng/index.php/audit-reports>

Auditor General’s Office

Annual Report of the Auditor General for the Federation on the Accounts of the Federation of Nigeria for the Year Ended 31st Dec., 2014.

Annual Report of the Auditor General for the Federation on the Accounts of the Federation of Nigeria for the Year Ended 31st Dec., 2015. See <https://oaugf.ng/index.php/audit-reports>

CSJ (2017), “Review of the 2017-2019 Medium Term Expenditure Framework”. See www.csj-ng.org/?ddownload=2691

Public Procurement Act (2007)

2018 Budget Call Circular

2018-2020 MTEF

CSJ (2017), “Review of the 2017-2019 Medium Term Expenditure Framework”. See www.csj-ng.org/?ddownload=2691

CSJ (2017), “Memorandum on the 2017 Federal Health Budget Estimates”. www.csj-ng.org/?ddownload=3203

9.4.3 Are Public Investment Projects Fully Accounted for And Reported on?

Public investment projects and any related public assets are not fully accounted for, properly recorded and their depreciation recognized in financial statements. On the basis of what appears in the government's financial statement, there is no evidence that this is done. Before the adoption of IPSAS, accounting was on cash basis whereby assets are dispensed of upon acquisition and the matter of depreciation did not arise. With the implementation of IPSAS however, public investment projects and any related public assets are to be fully accounted for, properly recorded and their depreciation recognized in financial statements. Given that IPSAS is yet to be fully implemented, these are yet to be addressed.

On the question regarding the existence of specific reports for projects and programmes, the Project and Performance Audit department in the Auditor General for the Federation Office do general projects' audit which are contained in the Auditor General's Annual Report. However, there seem to be no specific reports for specific projects or programmes of the Federal Government such as the Home Grown School Feeding Programme (HGSFP), a component of the FGN's Social Investment Plans (SIPs) to tackle poverty and improve the education of children. This programme has attracted about N500 billion in the 2016 and 2017 Budgets.

Less than half of the externally funded projects are accounted for in the national budget and included in the government reports. It should be noted however that donor funding organisations do require detailed reports. It should also be noted that the Nigerian government is yet to start including externally funded projects in her reports as at the time of writing this report.

If projects are externally funded, the contracts procured are reported in the different funding agencies' accounting books through reports provided by government agencies. Off-budget expenditures funded by donor partners such as Global Alliance for Vaccines and Immunisation (GAVI) are reported on by the partner(s) in their Annual Financial Reports. In the GAVI Alliance 2016 Financial Report for example, there are details on the recipient country programme expenses; these grants are in the form of vaccine support and cash grants to each recipient country. Non-donor funded budget expenditures that are not covered by the budget are termed "Extra-Budgetary Expenditure". An example of this is in the Part 2 of the 2015 Auditor General's report.

Information sources:

Auditor General for the Federation

GAVI, The Vaccine Alliance, 2016 Annual Financial Report. See www.gavi.org/library/gavi-documents/finance/financial-reports/2016/gavi-alliance-annual-financial-report--2016/

Annual Report of the Auditor-General for the Federation on the Accounts of the Federation of Nigeria for the Year Ended 31st Dec., 2015; Part 2. See [https://oaugf.ng/images/downloads/OAuGF%20Annual%20Report%202015%20\(Part%202\).pdf](https://oaugf.ng/images/downloads/OAuGF%20Annual%20Report%202015%20(Part%202).pdf)

9.4.4 Are there Independent Audits and Evaluations of Public Investment Projects?

Most of the domestically funded projects are monitored and audited. Every budget goes through project and performance audit. Information is scrutinized by the National Bureau of Statistics and the Legislature. But this is not detailed and has not been done routinely.

External audits of major projects are produced in over six months of projects execution and sometimes in one year of projects execution. This is because audits are based on the Accountant General's financial statements which are transmitted to the Auditor General of the Federation six (6) to nine (9) after execution. The Auditor General produces the FGN Annual Audit Report but this report has mostly not been timely. For example, the Audit Report of 2015 was published in 2017 and that of 2016 is yet to be produced as at October 2017.


Information sources:







Annual Report of the Auditor-General for the Federation on the Accounts of the Federation of Nigeria for the Year Ended 31st Dec., 2015; Part 2. See [https://oaugf.ng/images/downloads/OAuGF%20Annual%20Report%202015%20\(Part%202\).pdf](https://oaugf.ng/images/downloads/OAuGF%20Annual%20Report%202015%20(Part%202).pdf)

PRECEPT 10: PRIVATE SECTOR DEVELOPMENT



The government should facilitate private sector investments to diversify the economy and to engage in the extractive sector.

<p>Overall Precept Score</p>	
<p>Precept 10: Investing For Sustainable Development.</p> <p>There is no appreciable improvement in the ease of doing business over the last couple of years, although the government has recently taken steps to facilitate an enabling business environment for a sustainable growth and development of the private sector through the Executive Order No 001 of 2017: 'on the Promotion of Transparency and Efficiency in the Business Environment'. In addition, local content for projects rose considerably in the last couple of years as the implementation of the Nigerian Content Act (2010) that has sought to remove barriers to local participation in extractive continues to gain more traction.</p>	

Overview of the Questions and Ratings	
10.1 PRIVATE SECTOR ENABLING ENVIRONMENT	
10.1.1 Does the government engage with the private sector in a manner that ensures the best interest of the country as a whole, on grounds of economic rationale rather than patronage?	
10.1.2 Does the government identify and address gaps between the country's existing physical infrastructure and the needs of the private sector?	
10.1.3 Does the government identify and address bottlenecks in the construction sector supply?	
10.1.4 Does the government identify and address bottlenecks in the financial system?	
10.1.5 Does the government identify and address weaknesses in the country's health and education levels?	
10.1.6 Does the government identify and address weaknesses in how women are able to fully contribute to the economy?	
10.1.7 Does the government identify and address weaknesses in business regulations?	
10.2 LOCAL CONTENT	
10.2.1 Does the government remove barriers to local participation?	
10.2.2 If the government does employ local content rules, are they consistent with local capacity, do they avoid excessive protection, and guard against corruption?	
10.2.3 Does the government monitor and enforce companies' adherence to local content rules, and the government's own support measures?	

Summary of Key Findings

Private Sector Enabling Environment

- Nigeria's effort to improve the ease of doing business has not improved over the past couple of years. Nigeria's rank under the Ease of Doing Business index has remained 169th in 2016 and 2017 despite an increase in the number of assessed countries. Similar poor results were reflected in the Africa Attractiveness Index which measures the investment attractiveness of 46 African countries and the Resource Governance Index where Nigeria ranked 55th out of 89 countries.
- The Federal Government has devised policies and initiatives to address the infrastructure deficits in country.
- Although banks' NPL profile standing at 14% (2016) is becoming a threat to continued credit availability to support the private sector, however, government has made commitment to enhance asset quality of banks through adequate screening mechanisms so as to reduce NPL to a 'prudential thresholds of 5% by 2020'.
- There is also a framework for the supervision of domestic systemically important banks (D-SIBs) issued by CBN and NDIC to ensure financial stability in Nigeria.
- There is an 'Executive Order on the Promotion of Transparency and Efficiency in the Business Environment' to remove critical bottlenecks and bureaucratic constraints to doing business in Nigeria and committed to increase Nigeria's performance on the World Bank Doing Business Rankings in few years' time.

Local Content

- Nigeria's local content for projects has hovered around 10 percent for a long while but has only risen to 28 percent in the last couple of years as the implementation of the Nigerian Content Act (2010) that has sought to remove barriers to local participation continues to gain more traction.
- Relevant sections of the Act requires implementation consistent with local capacity, however, this is not often followed hence setting the stage for corrupt practices.
- Monitoring compliance to the local content rules appear to be in line with the provisions of the Act, however enforcement of penalties by the Board on defaulters has left a lot to be desired.

10.1 Private Sector Enabling Environment

10.1.1 Does the government engage with the private sector in a manner that ensures the best interest of the country as a whole, on grounds of economic rationale rather than patronage?

The level of private sector participation has increased across various key sectors in Nigeria. The government in driving initiatives to improve industry regulation, fiscal regimes, taxation, and management of the environment and development of host communities, has consulted extensively with the private sector. In developing the Economic Recovery and Growth Plan (ERGP) and the approved National Oil and Gas Policies, the private sector consultation was integral to the process. The ERGP specifically, provides for active participation of private sector and requires government agencies to increase private sector investment especially for infrastructure development.

In addition, a Committee chaired by the Vice President; comprising of key industry leaders was set up to provide strategic leadership for national economic development. Similarly, the Industrial Policy and Competitiveness Advisory Council (IPCAC) was created to ensure wider stakeholder consultation. Over the last couple of years, the Malabu scandal has proven that in some instances, Nigeria may have adopted a culture of patronage.

Information sources:

A Review of the Nigerian MSME Policy Environment. Fate foundation: MSME Report 2015. Pp17.

Industrial Policy and Competitiveness Advisory Council Inaugural Meeting (2017): <http://fmiti.gov.ng/wp-content/uploads/2017/08/Industrial-Council-Inauguration-Speech.pdf>

Economic Recovery & Growth Plan (2017-2020). Pp 15. Available at: <http://www.nationalplanning.gov.ng/images/pub/ERGP%20document%20as%20printed.pdf>

The Assessment of Nigeria's Recent Re-engagement with Industrial Policy: Oxford Department of International Development 2015, Pp 15

10.1.2 Does the government identify and address gaps between the country's existing physical infrastructure and the needs of the private sector?

Current infrastructure stock in Nigeria has been estimated at levels ranging from 20 to 35% of GDP, which is far below the international benchmark of 70% of GDP²⁶. This is reflected in Nigeria's rank of 132 for infrastructure in the 2016-2017 Global Competitiveness Index. Deficits in the transportation and energy sectors have contributed to the slow pace of industrial development and the consequential slow pace of economic growth in Nigeria.

Efforts to tackle infrastructural deficits have been proposed through the National Integrated Infrastructure Master Plan (NIIMP) The Infrastructure Concession Regulatory Commission (ICRC) also implements Nigeria's private public partnership (PPP) strategy to regulate PPP and facilitate projects (examples include light rail system and the Kuje water works both in Abuja, Sagamu – Benin – Asaba highway, Abuja – Kaduna – Kano road, Lagos – Kaduna – KauraNamoda – Nguru rail line, the Port Harcourt – Kafanchan – Maiduguri rail line and the KiriKiri Lighter Terminals 1 and 2)²⁷. The Government also established an Infrastructure Project Development Facility to provide access to project funding. The target is to raise infrastructure stock from its current level of 25% of GDP to a minimum of 70% by 2043²⁸.

A key tool used by the government to identify and address infrastructural gaps is the Nigeria Sovereign Investment Authority is responsible for administering the Nigeria Infrastructure Fund (NIF) designed to enhance infrastructure development with private sector participation for commercial and social benefits. Ultimately the fund is expected to attract FDI and support government the agenda for economic diversification. The fund focuses on enhancing infrastructure investments in the agriculture, healthcare, motorways, power and real estate sectors. The notable infrastructure investments made across these sectors during 2016 include works on the Second Niger Bridge, Lagos University Teaching Hospital (LUTH), establishing the USD200 million Agriculture Fund, USD500 million real estate fund, creating a special purpose vehicle (SPI) to implement the Presidential Fertilizer Initiative etc. However, it should be noted the NSIA though having made huge progress has a very small portfolio assigned to its infrastructure fund which is less than 3% of GDP and thus, not sufficient to by itself reverse the infrastructure deficits in Nigeria.

²⁶http://www.niimp.gov.ng/?page_id=1059

²⁷<http://www.icrc.gov.ng/ppp-contract-disclosure-portal-key-improvement-infrastructure-deficit-nigeria/>

²⁸http://www.niimp.gov.ng/?page_id=1059

Table 1: The Global Competitiveness reports (2015, 2016 and 2017).

Year	2014-2015		2015-2016		2016-2017	
Global Competitiveness Index (GCI) Rank	127/144		124/140		127/138	
GCI Pillars under Consideration	Score(1-7)	Rank/144	Score(1-7)	Rank/140	Score(1-7)	Rank/138
Infrastructures	2.1	134	2.1	133	2.1	132
Macroeconomic environment	4.6	76	4.6	81	4.0	108
Health and Primary Education	3.0	143	2.9	140	2.8	138
Higher Education and Training	2.9	124	2.8	128	2.9	125
Labour Market Efficiency	4.5	40	4.5	35	4.5	37
Financial Market Development	4.1	67	3.8	79	3.7	89

Source: The Global Competitiveness reports (2014-2015, 2015-2016, 2016-2017)

Information sources:

Economic Recovery & Growth Plan (2017-2020). Pp 15. Available at: <http://www.nationalplanning.gov.ng/images/pub/ERGP%20document%20as%20printed.pdf>

“Transportation Infrastructure As A Catalyst For Economic Diversification & Inclusive National Development What Role Can PPPs Play?” Presentation by the Infrastructure Concession Regulatory Commission (ICRC) at the 2017 Engr. Otis Anyaeji Annual Distinguished Lecture by The Nigerian Society Of Engineers (2017).

The Global Competitiveness report 2016-2017 Pp 300 - 310

<http://nsia.com.ng/nigeria-infrastructure-fund/>

<http://nsia.com.ng/wp-content/uploads/2017/09/NSIA-Annual-Report-2016-1.pdf>

<http://www.niimp.gov.ng>

‘The Infrastructure Gap in Nigeria – New Sec Rules to the Rescue?’

http://www.niimp.gov.ng/?page_id=1059

<http://lawsofnigeria.placng.org/laws/INFRASTRUCTURE%20CONCESSION%20REGULATOR%20COMMISSION%20ESTABLISHMENT,%20ETC.pdf>

<http://www.icrc.gov.ng/>

10.1.3 Does the government identify and address bottlenecks in the construction sector supply?

Key challenges faced by Nigeria's construction sector include poor policy and budgetary implementation, opaque public contracting procedures and project abandonment. Efforts by the government to enhance development of Nigeria's infrastructure are expected to have a considerable impact on the construction industry. For many decades, the cement industry lacked the capacity to meet local demand hence huge reliance on importation. This inherently entrenched a regime of commodity scarcity, price hike which also has direct relation with construction costs, all resulting from a situation that has made the supply side so vulnerable to a fluctuating exchange rate. The period between 2015 -2016 marked a significant watershed in the history of Nigeria's cement sub-sector, when local demand rose to 22m tonnes and was met by nearly 100 percent local production with self-sufficiency attained by the end of 2016. This is one appreciable milestone recorded in local cement production (from 11.9million metric tons in 2008 to 31.25 million metric tons in 2016)²⁹ alongside PPP projects that are opening up opportunities for the construction industry.

Socio-economic-wise, the cement sub-sector currently accounts for over 90 percent of the Nigerian mining sector and guarantees around 30,000 direct and two million indirect employments. Similarly, about \$ 2 billion in forex has been conserved on importation³⁰ through the utilisation of locally-sourced raw materials for production.

However, local production of steel as a key material for construction continues to present a challenge to government. Nigeria consumes about 17m tonnes of steel yearly, but its 18 out of 30 steel producers only manufacture around 2.2 million tons/year, thus necessitating import supplement to the tune of ₦3.3bn/year. Bridging the huge deficit in local supply of an important material such as steel, despite investments in rolling mills and large deposits of iron ore, continues to be slightly out of reach for the government.

Construction-sector management and regulation, responsibility for which lies with the Ministry of Power, Works and Housing, has also not been very effective, especially for in terms of issuing licences, leases, permits and approvals, application processes for business permit, residence permit, registration of security, expatriate quota, fiscal approval and technology transfer are complicated and often delayed. According to the World Bank's Doing Business 2017 report (Figure 2), on the Distance to Frontier assessment for 'dealing with construction permits' which seeks to measure the absolute level of regulatory performance over time in a country, Nigeria scores of 49.63%; ranked in the 92 percentile at 174 out of 190 countries. Nevertheless, there are currently well over 125 local construction firms with more than \$10bn in collective assets belonging to Federation of Construction Industry (FOCI) and other multinationals that represent a robust aggregate of service providers waiting to meet the expected growing demand in construction services in years ahead. It is expected that growth in

²⁹ Oxford Business Group (2017)

³⁰ New Telegraph Report (September 2017)

*NIAF : Nigeria Infrastructure Advisory Facility

Nigeria's construction industry will respond to continued drive by government to develop public infrastructure. With support of development partners like DFID, AfDB etc., there are initiatives in place; NIAF 2* (2012-2017) to address bottlenecks to infrastructure and rapid urbanisation and demand for housing through focus on power, capital projects, roads and rail, northern growth, climate change, effective cities. Finally, there is increased budgetary allocation to capital projects with ports (sea and air), roads and dams prioritized for development.

However, attention still needs to be paid to the dearth of technical expertise in this sector that is dominated by foreign companies who still rely heavily on expatriates because local counterparts are either poorly skilled or inexperienced. Also, there exists limitations for project appraisal and trade finance institutions given that specialised project finance are few; shortage of capital and the country's weakened position for attracting foreign investment because of its low sovereign debt ratings and associated risks and uncertainties; and reputation for poor policy implementation that has been attributed to corruption.

Information sources:

'Getting the deal Through, Construction in 31 Jurisdictions worldwide 2015' Pp 4:
<http://geplaw.com/wp-content/uploads/2014/11/CT2015-Nigeria-11.pdf>

<http://niafng.org/wp-content/uploads/2016/01/NIAF2-Overview-2016.pdf>

"<https://newtelegraphonline.com/2017/09/attaining-self-sufficiency-cement-production/>

Doing Business 2017 Pp 229:

<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Full-Report.pdf>

¹ Group Managing Director of Dangote Cement: Onne Van der Weijde in an interview available at <http://sweetcrudereports.com/2017/03/21/nigeria-now-self-sufficiency-in-cement-production/>

<https://www.oxfordbusinessgroup.com/overview/increased-demand-and-investment-have-driven-rapid-expansion-nigerias-construction-sector>

<http://www.minesandsteel.gov.ng/2017/07/19/nigerias-steel-sector-strives/>

<https://guardian.ng/business-services/cement-market-stability/>

10.1.4 Does the government identify and address bottlenecks in the financial system?

Nigeria's financial system was criticized as inefficient and lacking resilience by a PwC report (2015). The set of rules and regulations, financial arrangements, institutions and agents that make up the financial sector have in the last few years been challenged to deliver economic

growth. As the country went into recession in 2016, the intermediation process provided by the Central Bank of Nigeria came under criticism and a dearth of financial resources hampered productive activities of both the public and private sectors. Nigeria's financial system was designed among other things to ensure that viable projects are not frustrated for lack of funds and support integration between agriculture commerce and industry. These functions provide a template against which the system might be assessed. Other indicators include investors' confidence and availability of investible funds. Government efforts have been directed towards achieving this and the Central Bank using a combination of tools has tried to maintain a sound and stable banking system. On their part, financial institutions have been building investor confidence in money markets to mobilize investable funds.

Challenges remain however, and Nigeria on 'Financial Market Development' pillar as shown in Table 1 has been declining in scores and ranking in the last three years. Financial sector evaluation on 'quarter-on-quarter basis shows that growth in the key monetary aggregates decelerated at the end of the first quarter of 2017, reflecting the fall in foreign assets net (NFA), and other assets net (OAN)³¹. However, bank deposit and lending rates trended upward and value of money market assets outstanding increased although this was due largely to the rise in FGN Bonds and Nigerian Treasury Bills. Key financial soundness indicators showed a decline in asset quality as the ratio of non-performing loans (NPLs) to gross loans deteriorated in the second half of 2016 by 2.3 %, compared with the levels at the end-June 2016. Capital adequacy indicators declined marginally, but remained above the regulatory thresholds. Solvency stress test of the banking industry at end-December 2016 showed that the resilience of banks to moderate and severe shocks deteriorated marginally. No significant systemic threats are posed to the sector despite being more exposed to credit concentration and default risks. Therefore despite the challenges facing the sector, it still has the resilience and soundness.

Definitive steps will be taken by government to address challenges and ensure strengthening of the system as made clear in the monetary policy³² that seeks to stabilize the financial system by:

- Strengthening reviews of regular returns, carrying out spot checks, monitoring on-site and off-site of financial institutions and conduct special investigations to ensure a safe, sound and stable financial system
- Deepening financial intermediation to provide credit to the private sector
- Improving asset quality and reduce non-performing loans through proper asset screening to lower NPL as a ratio of total banking system loans from the current level of 12% to the prudential threshold of 5% by 2020
- Continued regular stress tests to detect early bank warning signs on systemic risks, and offer ways to deal with such risks"

CBN Annual Report and Statement of Account (2008), categorizes the Nigerian financial system to comprise: "the Central Bank of Nigeria (CBN), the Nigerian Deposit Insurance

³¹CBN Economic Report Q1 2017

³²encapsulated in the ERGP (2017-2019, Pp. 58)

Corporation (NDIC), the Securities and Exchange Commission (SEC), the National Insurance Commission (NAICOM), the National Pension Commission (NPC), deposit money banks, microfinance banks, finance companies, bureau-de-change, stock exchange, commodity exchange, primary mortgage institutions, development finance institutions, discount houses and insurance companies and registered insurance brokers”.

The framework for the supervision of domestic systemically important banks (D-SIBs) issued by CBN and NDIC in late 2014 to ensure financial stability in Nigeria, stipulates inter alia, ‘higher loss absorbency, more stringent liquidity standards, and quarterly capital and liquidity stress testing’. Through this framework, systemic importance of a Bank is determined by ‘size, interconnectedness, substitutability, complexity of its business model, structure and extent of operations’, and essentially, eight (8) banks being the largest and most complex account for over 70% of the total industry assets. Also, all D-SIBS are mandated to submit yearly Recovery Plans to regulators starting from 1 January 2016.

Overall, banks’ nonperforming loan (NPL) profile standing at 14% (2016) is becoming a threat to continued credit availability to support businesses, however, government has made commitment to enhance asset quality of banks through adequate screening mechanisms so as to reduce NPL to a ‘prudential thresholds of 5% by 2020’. This, among others, is the challenge identified by the government and which efforts to address have been initiated.

Information sources:

‘Getting the deal Through, Construction in 31 Jurisdictions worldwide 2015’ Pp 4:
<http://geplaw.com/wp-content/uploads/2014/11/CT2015-Nigeria-11.pdf>

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<https://www.pwc.com/ng/en/assets/pdf/financial-focus-2015.pdf>

Doing Business 2017 Pp 229:
<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Full-Report.pdf>

¹ Group Managing Director of Dangote Cement: Onne Van der Weijde in an interview available at <http://sweetcrudereports.com/2017/03/21/nigeria-now-self-sufficiency-in-cement-production/>

<https://www.oxfordbusinessgroup.com/overview/increased-demand-and-investment-have-driven-rapid-expansion-nigerias-construction-se++ctor>

<http://www.minesandsteel.gov.ng/2017/07/19/nigerias-steel-sector-strives/>

Central Bank of Nigeria Economic report First Quarter 2017:
<http://www.cbn.gov.ng/out/2017/rsd/cbn%20economic%20report%20for%20first%20quarter%202017.pdf>

10.1.5 Does the government identify and address weaknesses in the country's health and education levels?

National focus for education development is to overcome illiteracy and ignorance as a means of leveling opportunities and removing inequities. Unfortunately, policy direction and implementation has served to create challenges for development. Decline of earnings from oil led to reductions in spending on education and eroded earlier gains. There are wide disparities in educational standards and learning achievement and emphasis on theoretical knowledge at the expense of technical vocational and entrepreneurial education means that the link between education and industry is extremely weak.

An 'Education and Employability Survey report (2014)' conducted by Phillips Consulting revealed as shown in Figure 1 below that employers face some 'major challenges' in filling graduate job vacancies. The report also demonstrated that young people are entering the workforce with inadequate knowledge and skills but with high salary expectations. Employers have low confidence in the future supply of graduates with required skills especially in the area of business awareness and critical and analytical thinking. There are findings in other reports with evidence of acute skill gaps in the core disciplines of science, foreign languages, mathematics and basic technology at the basic and post-basic education levels while special education, computer science, technology, law, engineering, medicine and surgery were identified as domains of skills shortage in tertiary education³³.

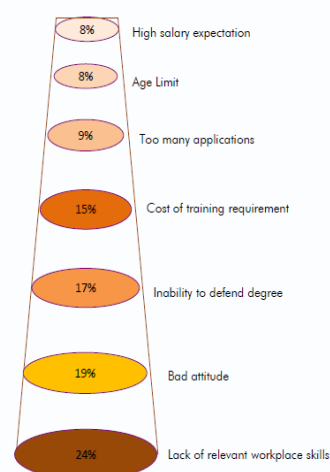


Figure 1 Challenges with graduate recruitment

Challenges with ICT – knowledge and infrastructure – persist in the sector and teachers at all levels, unable to function in the difficult environment easily migrate to other countries, leaving Nigeria's academia critically eroded.

The policy framework for education is weak and education management and funding is convoluted involving more than 20 agencies with overlapping functions. While there is no indication that this will change soon, the ERGP³⁴ is seeking to introduce 21st century skills in the education curriculum and also develop a national manpower policy to match job skill requirements and education programmes. Budgetary allocation to education (From the figure 2 below) rose by 2.71% from ₦443.08bn in 2016 to ₦455.41bn 2017, each represents 6% of the total national appropriation in the two years (₦6.07Trillion and ₦7.298Trillion respectively), which on both occasions (2016 and 2017) fell short of the 26% United Nations benchmark. As a reflection of a poor state of the health sector nationwide, the health indicators in Nigeria have remained well below internationally-set benchmarks. Further to this, overall health system performance ranking of 187/191 by the World Health Organisation (2017) lend credence to the

³³Needs Assessment of Nigerian Education Sector (2014) by IOM Abuja Nigeria

³⁴Economic Recovery and Growth Plan (2017 – 2020)

deplorable state of healthcare delivery in the country. The private health care system provides about 70 percent of healthcare delivery in the country, even though it is largely a poorly regulated sector. This is indicative of a fragmented health sector fraught with poor infrastructure, inadequate and inefficient financing etc. Consequently, government has made efforts to address some of the myriads of challenges in this sector, part of which include the Health Sector Reform Program (HSRP), National Health Policy, National Strategic Health Development Plan (NSHDP), in addition to diseases programmes initiatives. Also, a tripartite collaboration between the Federal Ministry of Health, Nigeria’s Sovereign Wealth Fund, and the Nigeria Sovereign Investment Authority (NSIA) has birthed a nationwide comprehensive healthcare investment programme, with the grand objective of stimulating private sector investment. Upon full realization, it will ‘bridge the healthcare infrastructure gap, contribute to the reduction of the disease burden and facilitate improvement of healthcare in the country’ (This Day Report 2016). One of such initiatives is the Specialist Cardiovascular Hospital in Lagos to be jointly developed by NSIA and Lagos University Teaching Hospital (LUTH). In 2017, the Federal Ministry of Health has also flagged off a special health intervention project ‘Tertiary Health Institution Intervention Project’ to address some of the weaknesses or challenges in the tertiary health sector.

However, much of the challenges in this sector are still reported to persist. There is a lack of strong coordination of the health programmes of government at all levels and those of donor organisations coupled with inefficient systems for monitoring budget execution.

Huge gaps exist between the scale of health needs and the level of public sector finance for health care at all tiers of government.

Despite, budgetary allocations to the health sector rising by 18.9% from ₦ 250.06bn in 2016 to ₦308.46bn in 2017, for the 2017 fiscal year, the health allocation still represents 4.17% of the total budget while the 2016 amount represented 4.13% of the year’s national budget. The health allocations as a percent of the total budget for the two years are well below the 15% health annual budgetary allocation recommended by the Abuja Declaration of African Union.

Benchmarked against international standards, Nigeria’s allocation to education and health are low. It is compounded by weak management within the sector even with private sector participation. Poor sector performance is evident in the ‘Health and Primary Education’ pillar ranking from Table 1 where the country ranked the poorest in the last two years and second poorest in 2014. With world’s highest number of out-of-school children – 10.5 million (UNICEF 2015) in Nigeria, this year-on-year outrageously poor record is not unexpected. Further, on ‘Higher Education and

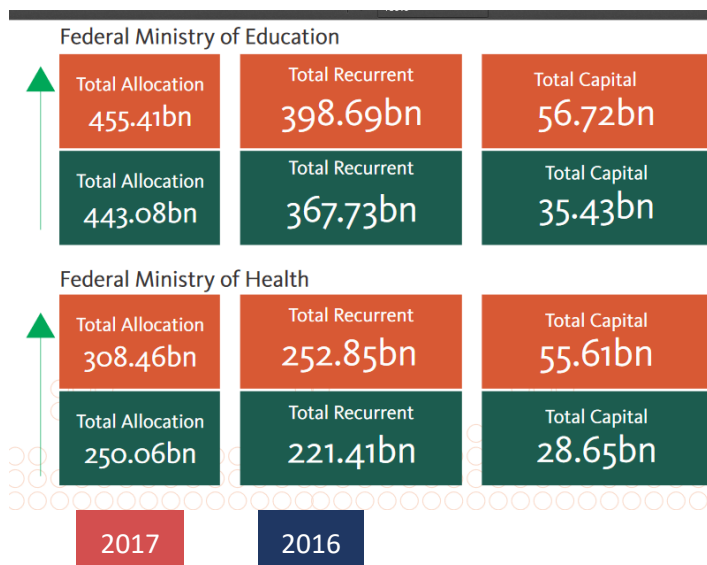


Figure 2 Budget provision of Education and Health Ministry for 2016 and 2017 Fiscal Years (Source: BudgiT)

Training’ pillar, the abysmal ranking in the last three years speaks volume of the educational system of the country and also the poor budgetary provisions over the course of the same period.

Information sources:

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<https://reliefweb.int/report/nigeria/needs-assessment-nigerian-education-sector>

http://www.ng.undp.org/content/dam/nigeria/docs/MDGs/Nigeria_MDG_Report%202015%20Full%20Report.pdf

<http://www.who.int/healthinfo/paper30.pdf>

<http://www.gamji.com/article6000/NEWS7105.htm>

The National Strategic Health Development Plan Framework (2009-2015). Pp2

<https://www.thisdaylive.com/index.php/2016/05/19/fg-nsia-launch-healthcare-investments-across-nigeria/>

10.1.6. Does the government identify and address weaknesses in how women are able to fully contribute to the economy?

A National Gender policy was established in 2006 with several objectives among which includes:

- ♦ Increase the participation of women in leadership and decision-making.
- ♦ Contribute towards women’s empowerment and the eradication of unequal gender power relations in the workplace and economy in trade unions and in broader society.

(FMWACD 2006: XIX)

This policy is expected to help achieve ‘gender mainstreaming and women’s human rights’ which have spurred successive administrations towards integrating women into development policies.

Strategies set to achieve the policy objectives include the following:

- 1) Policy partnership and programme reforms through mainstreaming of gender concerns at all levels
- 2) Gender education and capacity building to enhance necessary technical expertise and positive gender culture
- 3) Legislative reforms to guarantee gender justice and respect for human rights
- 4) Economic reforms for enhanced productivity and sustainable development especially that which address the needs of women and children and others vulnerable groups.

(FMWASD, 2006:31).

Despite this, it has been reported that ‘discrimination, inequalities continue unabated in National, state socio-economic and political spheres’ (Dickson E.E et al. 2016). This is manifested as indicated below. In 2015, the national labour force participation rate of women and men in the ages 15-64 years was 74.7 percent. The proportion of men was 82.6 percent while women accounted for 78.4 percent. (Figure 3)

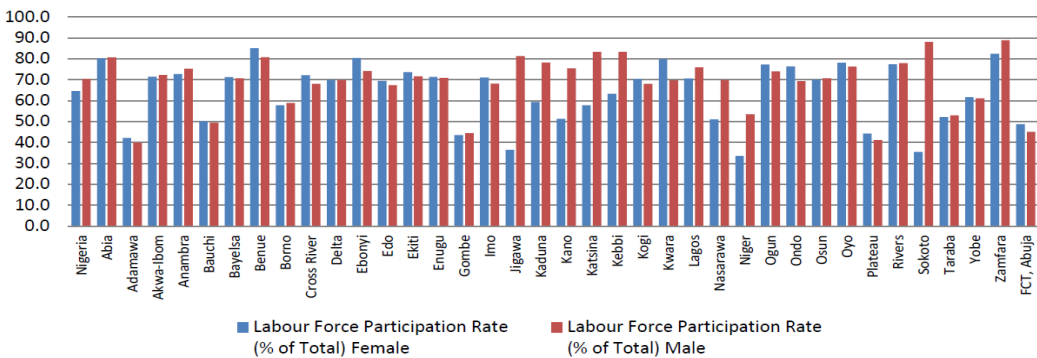


Figure 3: Labour Force Participation Rate in Nigeria by State and Sex. Source: NBS 2016

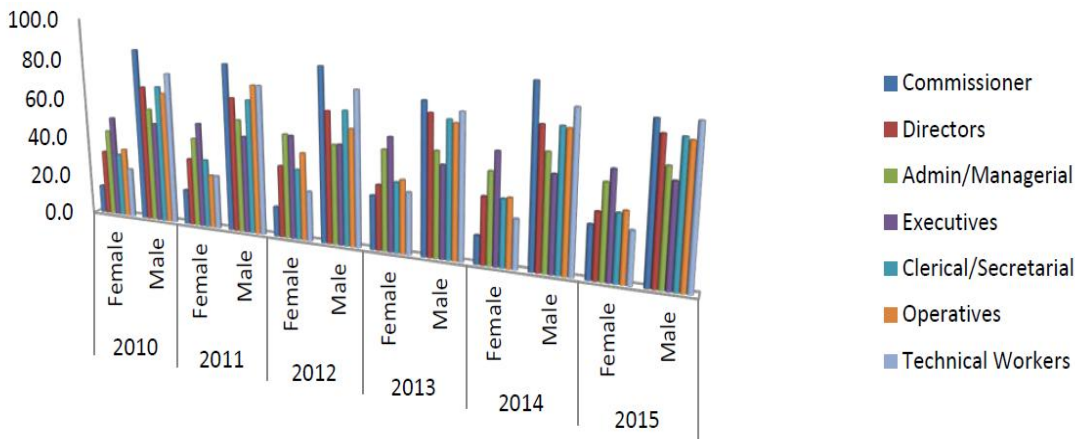


Figure 4: Distribution of Staff in State Employment by Cadre, Year and Sex. Source: NBS 2016

Similarly, for the period, 2010-2015, on the average, 72.3 percent of senior positions in State Civil Service were occupied by men compared to 27.7 percent occupied by women.

Furthermore, women continue to be under-represented at levels of government. In 2015, representation at the national assembly has 94.3 percent of seats occupied by men compared to 5.7 percent occupied by women. Women underrepresentation is even starker at the state and local government levels. This is essentially the same in the judiciary (Judges and Lawyers) at both national and subnational levels.

Evidently, in spite of the National Gender Policy and its objectives, the above weaknesses are still inherent in the system and also the national budget in the last few years have been described as 'gender blind' and that 'no gender analysis has been done in a long time'.

Information sources:

Statistical Report on Women and Men in Nigeria 2015: National Bureau of Statistics (2016)

Dickson E.E, Jacob I.O, Francis A.B (2016): Strategies for Achieving National Gender Policy in Nigeria: A critical Analysis. Pp 3.

Federal Ministry of Women Affairs and Social Development, Abuja 2006, National Gender Policy

National Gender Policy Strategic Framework (implementation Plan) Federal Republic of Nigeria 2008-2013. Available online at <http://extwprlegs1.fao.org/docs/pdf/nig151427.pdf>

<http://www.thewomenstorch.com/2017/05/30/the-nigerian-budget-is-gender-blind/>

Barbara BARUNGI, Ojijo ODHIAMBO, Robert ASOGWA. (2017): Nigeria: African Economic Outlook







www.africaneconomicoutlook.org/sites/default/files/2017.../NIGERIA_EN_2017.pdf

10.1.7 Does the government identify and address weaknesses in business regulations?

The National Investment Promotion Corporation (NIPC) coordinates all investment promotion activities in the country and the Act creating it allows one hundred per cent firm ownership by foreigners except in some key sectors like the Oil and Gas etc. Besides the Nigerian Investment Promotion Commission (NIPC) Act, CAP N117, LFN 2004 (NIPC Act), the other law regulating foreign investment in Nigeria is the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, CAP F34, LFN 2004 (Forex Act). Similar laws regulating corporate business include: the Companies and Allied Matters Act CAP C20, Laws of the Federation of Nigeria (LFN) 2004, the National Office of Technology Acquisition and Promotion Act CAP N62, LFN 2004 (NOTAP Act); the Companies Income (Amendment) Tax Act 2007, Capital Gains Tax Act CAP C1.

However, provisions and suitability of these regulations among several other factors affecting business environment leaves much to be desired going by the country’s ranking on the World Bank’s Doing Business 2016 and 2017 as shown in the Table 2 below. Nigeria ranks 169th in both years’ overall assessments and while there has been marginal improvement on some indices, performance on ‘Ease of Paying Taxes, Strength of Investor Protection, Ease of Registering Property’ are poorer than in the previous year. In the like manner, the country dropped from 15th position in 2016 to 17th in 2017 on the Africa Attractive Index (2017) as indicated in Figure 5 below. Further evidence to poor business environment in Nigeria is indicated by the Resource Governance Index (2017), which among other things gives indication on ‘enabling environment’ (31/100). Nigeria Ranks 55th with a ‘poor’ index score of 42/100, translating to a country that ‘has established some minimal procedures and practices to govern resources, but elements necessary to ensure society benefits are missing’.

Table 2: World Bank Doing Business reports 2016 and 2017. Source: Doing Business Reports (2016 and 2017)

Item	2016 report	2017 report	Status Improvement
	Rank/189	Rank/190	
Overall Distance to Frontier score (0-100)	44.69%	44.63%	
Ease of Doing Business	169 th	169 th	
Ease of Starting Business	139 th	138 th	
Ease of Dealing with Construction Permits	175 th	174 th	
Ease of Getting Electricity	182 th	180 th	
Ease of registering property	181 th	182 th	

Ease of getting Credit	59 th	44 th	↑
Strength of Investor Protection	20 th	32 th	↓
Ease of Paying Taxes	181 th	182 th	↓
Ease of Trading Across Borders	182 th	181 th	↑
Ease of Enforcing Contracts	143 th	139 th	↑
Ease of Resolving Insolvency	143 th	140 th	↑

Country	Overall			Macro-economic resilience	Market size	Business enablement	Investment in infrastructure and logistics	Economic diversification	Governance and human development	
	Rank of 2017	Rank of 2016	Change in ranking							
Morocco	1	2	↓	1	18	9	3	4	5	8
Kenya	2	4	↓	2	2	8	10	16	10	16
South Africa	2	1	↑	-1	33	5	6	1	2	6
Ghana	4	6	↓	2	17	11	8	7	14	7
Tanzania	5	12	↓	7	1	4	18	18	23	16
Uganda	6	13	↓	7	4	10	11	24	8	23
Cote d'Ivoire	7	9	↓	2	3	13	16	11	18	22
Mauritius	8	5	↑	-3	20	39	1	8	1	1
Senegal	9	11	↓	2	12	16	23	17	4	12
Botswana	10	7	↑	-3	9	31	2	5	32	2
Egypt	11	3	↑	-8	42	3	15	2	7	13
Rwanda	12	9	↑	-3	8	32	4	22	15	9
Tunisia	13	8	↑	-5	38	22	14	6	3	4
Namibia	14	18	↓	4	22	32	5	10	25	4
Algeria	15	16	↓	1	28	6	36	3	28	11
Zambia	16	17	↓	1	24	15	7	31	26	10
Nigeria	17	15	↑	-2	16	1	33	14	33	24
Cape Verde	18	23	↓	5	30	42	13	13	10	3
Cameroon	19	22	↓	3	11	14	35	23	21	31
Ethiopia	20	14	↑	-6	10	12	38	36	16	26
Burkina Faso	21	21	0	0	7	22	22	29	35	21

Figure 5: Ranking of Countries on AAI 2017 Source: EY's Attractiveness Program Africa May 2017 (pp 16).

The government's quest to enhance transparency and efficiency in the business environment for the overarching purpose of facilitating 'the ease of doing business in the country' has led to the introduction of an Executive Order No 001 of 2017: 'on the Promotion of Transparency and Efficiency in the Business Environment'. Its core mandates are to: 'remove critical bottlenecks and bureaucratic constraints' to doing business in Nigeria and envisioned to move Nigeria 20

places upwards in the World Bank Doing Business Rankings. A 60-day National Action Plan report card of the Enabling Business Environment Secretariat (from February to April 2017) reveals a 70% improvement level on the overall reform initiative priority areas of the Presidential Enabling Business Environment Council. Among these priority areas, efforts to streamline procedures and improve timelines for business to get connected to the grid i.e. Getting Electricity recorded a 100% improvement, while the Registering Property measured by the number of days to secure construction permit has reduced from 42 to 20 and has the lowest improvement rate of 33%.

Information sources:

[http://www.ey.com/Publication/vwLUAssets/ey-attractiveness-program-africa-2017-connectivity-redefined/\\$FILE/ey-attractiveness-program-africa-2017-connectivity-redefined.pdf](http://www.ey.com/Publication/vwLUAssets/ey-attractiveness-program-africa-2017-connectivity-redefined/$FILE/ey-attractiveness-program-africa-2017-connectivity-redefined.pdf)

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<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB16-Full-Report.pdf>

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<https://resourcegovernance.org/sites/default/files/documents/2017-resource-governance-index.pdf>

10.2 Local Content

10.2.1 Does the government remove barriers to local participation?

Certain barriers have been identified as mitigating against local participation especially in the Oil and Gas industry and these include “capital (for investments and lines of credit for their operations), competence (technological and managerial areas) and delivery possibilities (‘if the previous exist in the first place) ” (Vaaland T.I et.al 2012).

In the area of capital, government’s quest to remove such barriers informed the initiative of Nigerian Content Intervention (NCI) Fund aimed at assisting local contractors’ access to funds to finance their projects. This is an implementation of Section 104-(1) of the Nigerian Oil and Gas Industry Content Development Act 2010 No. 2 which provides that ‘a Fund to be known as the Nigerian Content Development Fund (‘the Fund’) is established for purposes of funding the implementation of Nigerian content development in the Nigeria oil and gas industry.’ Access to this fund however, has recorded little success as only a handful of beneficiaries – companies/operators (Lagos Deep Offshore Logistics, LADOL, Starz and Vandrezzer)³⁵ have been documented till date. This has been ascribed to lack of framework to guide repayment/refund. (NCDMB Press Release 2017)

Similarly, the Oil and Gas industry currently enjoys the highest share of total credit (30.02 percent) in classification of private sector credit in Nigeria, however, banks nonperforming loan profile standing at 14% (2016) is becoming a threat to continued loan availability. To address this, the government has made commitments to improve the asset quality of banks by conducting adequate screening mechanisms so as to reduce NPL to a ‘prudential threshold of 5% by 2020’. This when achieved, should empower the banks to give local businesses greater access to loans.

Further, to address competence barriers, part of the government’s efforts which is also an initiative of the Local Content Act is the establishment of the ‘Research & Development Council’ to see to integrating research initiatives of stakeholders for tangible and beneficial outcomes. Similar schemes also include the establishment of ‘Equipment Components Manufacturing Initiative’ that promotes local manufacturing of equipment components, spare parts and accessories for the oil and gas industry. So largely, government has put machinery in motion through the Local Content Act at removing barriers to local participation.

³⁵ Simi Wabote – Executive Secretary NCDMB

Information sources:

Terje I. Vaaland, Alabi S. O. Soneye and Richard A. Owusu (2012): Local content and struggling suppliers: A network analysis of Nigerian oil and gas industry. Pp. 5

⁶<http://ncdmb.gov.ng/2017/05/why-local-content-in-nigerias-oil-gas-industry-is-low-executive-secretary-ncdmb/>

<http://ncdmb.gov.ng/2017/09/oil-industry-to-get-research-development-council-ncdmb/>

<http://www.ncdmb.gov.ng/lcdm/LocalContentDigestQ32017.pdf>

<http://ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf>

<http://www.cbn.gov.ng/out/2017/rsd/cbn%20economic%20report%20for%20first%20quarter%202017.pdf>

10.2.2 If the government does employ local content rules, are they consistent with local capacity, do they avoid excessive protection, and guard against corruption?

The Section 3 of the Nigerian Oil and Gas Industry Content Development Act (2010) states as follows:

- 1) Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and all projects for which contract is to be awarded in the Nigerian oil and gas industry subject to the fulfillment of such conditions as may be specified by the Minister.

With respect to bid evaluation, Sections 12, 13, 15 and 16 highlight the main criteria which the Board will consider when conducting the review of the bidding process with emphasis on – Nigerian manufactured goods, Nigerian services and Nigerian indigenous contractors and companies – as long as ‘the goods meet specifications and there is capacity to carry out the project/contract being bid for’. The above provisions and others will guide against excessive protection where there is inadequate capacity to meet the minimum percentage targets of Nigerian Content, as the ‘Minister may authorize the continued importation of the relevant items and such approval by the Minister shall not exceed 3 years from the commencement of the Act.’ The Act also encourages collaboration between the Federal Ministry of Industry, Trade and Investment and the Board to ‘participate in the processing of expatriate quotas for cases involving the oil and gas industry’. From the foregoing therefore, it is obvious the Local Content Act implementation seeks to ensure industry efficiency while also promoting local capacity. A stakeholder informed that ‘Nigeria’s local content for projects has been stuck at around 10 percent for decades³⁶ but currently (2017), Nigerian Content is around 28 percent³⁷ and this is said to take into account the Egina FPSO project where a portion of the topsides fabrication and

³⁶ Amy Jadesimi, Managing Director of LADOL

³⁷ Simbi Wabote – Executive Secretary NCDMB

integration has been completed in Nigeria since 2015 by SHI-MCI³⁸. Anticipated scheduled delivery of the \$16 billion Egina project is in the second half of 2018.

Information sources:

<http://www.opts-ng.com/index.php/knowledgebase/nigerian-content-act>

<http://www.offshore-mag.com/articles/print/volume-75/issue-9/engineering-construction-installation/lagos-base-targeting-major-increase-in-local-content-for-egina-topsides.html>

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Review of Nigeria's Local Content Legislation. Akindelano Legal Practitioners. Available online at: www.akindelano.com

<http://ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf>

10.2.3 Does the government monitor and enforce companies' adherence to local content rules, and the government's own support measures?

The government through the Nigerian Content Development and Monitoring Board ("the Board" –established in accordance with this Local Content Act) is empowered to guide, monitor, coordinate and implement the provisions of the Act establishing it. The Nigerian Oil and Gas Development Law 2010 defines local content as “the quantum of composite value added to or created in Nigeria through utilization of Nigerian resources and services in the petroleum industry resulting in the development of indigenous capability without compromising quality, health, safety and environmental standards. The general essence of the Nigerian Content is to ensure that:

‘all regulatory authorities, operators, contractors, sub-contractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian Oil and Gas Industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution.’

Its enforcement procedure stipulates that:

‘before the award of any contract, all new projects must have Nigerian content commitments aimed at compliance with stipulated Schedule in the NC Act including provision for deduction of 1% of every contract as contribution to the Nigerian Content Development Fund (NCDF). All contracts will be monitored for performance at intervals by Nigerian Content Development and Monitoring Board.’ Also, ‘Contravention of the provisions of the Act in the execution of any

³⁸ Samsung Heavy Industries – Mega Construction Integration Free Zone, (SMI-MCI FZE), jointly established by Samsung Heavy Industries (SHI) for TOTAL Oil Exploration and LADOL Integrated Logistics Enterprise as Local Partner.

project in the industry constitutes an offence with penalties ranging from payment of a 5% fine of the project sum or project cancellation.'

To achieve this, the Board has adopted some enforcement strategies. The initial strategy employed was a 'Carrot & Stick Approach' which utilised a 'guidance and collaborative' method which took into consideration the challenges faced by operators that hampered absolute compliance with new law. This was largely described as inefficient and cast aspersion on the ability of the Board to adequately enforce the laws. The Board has however highlighted a stage-by-stage enforcement strategy which it described as 'Gloves Off Approach'. Under this new penalty enforcement regime, punitive actions are initiated at the instance when flagrant non-compliance activities are observed and the following stages are involved.

Stage 1: Defaulting party blacklisted from participating in bidding and tendering processes.

Stage 2: Processes for Sanctions are initiated.

Furthermore, 'the Board' has a Monitoring and Evaluation (MED) process as stipulated by Sections 59, 70c and j of the Act, which involves intervention monitoring, compliance monitoring and performance monitoring and whose scope covers (i) Upstream Operators (Multinationals and indigenous) – E&P Activities and JV assets, (ii) Midstream & Downstream Operators (refinery and Petrochemicals, gas gathering and LPGs, LNGs, product Distribution and retail Services, Crude Oil Offtakers), (iii) Services Providers (multinationals and Indigenous) – Onshore/Offshore, EPCI, etc., and (iv) Linkage Sectors.

Compliance monitoring by the Board is aimed at ensuring timely submission of statutory reports stipulated in the NOGICD Act. This also involves a review of reports submitted to ensure they meet Nigerian Content requirements. Performance Monitoring by the Board is required to ascertain the level of compliance with the approved commitments i.e. documents companies are required to adhere to within a particular period. Examples of such documents include: Nigerian Content Compliance Certificate (NCCC) per project, Nigerian Content Equipment Certification (NCEC) per equipment, Expatriate Quota Understudy Plan etc. (Financial, insurance & legal Services, R&D Development, Capacity Development Initiatives).

Information sources:

TundeAdelana (2016): The Nigerian Content Development & Monitoring Board (NCDMB) "Local Content Implementation: Contracting and Monitoring" (2016).

<http://www.oandopl.com/wpcontent/uploads/Overview%20Nigerian%20Contact%20Act.pdf>

<http://tpsni.com/ncc.html>












Nigerian Content Implementation Framework 2017.

PRECEPT 11: ROLE OF EXTRACTIVE COMPANIES



Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.

Overall Precept Score	
<p>Precept 11: Role of Extractive Companies</p> <p>There have been some improvements in this regard. Multinational oil companies have taken active steps to engage with host communities and contribute to national development. Although community participation in form of public hearings is a due diligence requirement of the Environmental Impact Assessment (EIA) process, there are however challenges with community capacity to contribute given their limited knowledge and understanding. Local content promotion policies have been integrated into the oil industry as a way of maximizing benefits from the industry beyond direct revenue payments. Regulations that mandate disclosure of contract agreements between oil companies and the government are not fully adhered to. Therefore, it is difficult to correctly measure the amount of taxes and royalties that accrue to the government through contracts and licences.</p>	●

Overview of questions and ratings	
11.1 TRUST	
11.1.1 Do oil companies support the meaningful participation of affected communities in decision-making on projects?	
11.1.2 Do companies ensure that stakeholder expectations are realistic?	
11.1.3 Do companies proactively disclose key information?	
11.1.4 Do companies ensure that security arrangements relating to resource projects do not use excessive force?	
11.1.5 Do companies respect the rights of indigenous people?	
11.2 SUSTAINABLE DEVELOPMENT	
11.2.1 Do oil companies effectively mitigate the environmental, social and health impacts of resource projects?	
11.2.2 Do companies work to identify national and local development priorities and concerns, and measure progress against them?	
11.3 CORPORATE INTEGRITY	
11.3.1 Do oil companies have clear internal policies relating to corruption?	
11.3.2 Do oil companies meet their fiscal obligations?	
11.3.3 Do companies avoid seeking exemptions from their legal and regulatory obligations?	
11.3.4 Do companies ensure that corporate integrity applies to partners, contractors and subcontractors?	

Summary of Key Findings

Trust

- Efforts are being made by oil companies to promote community involvement in decision-making processes. There are however challenges with community capacity to contribute given their limited knowledge.
- In many local communities, oil companies have been foisted with the role of government and are expected to meet demands for infrastructural development and provision of social services.
- Nigerian law on security of oil and gas as a national resource is very clear. There is zero tolerance of illegal refining, oil theft and sabotage of oil infrastructure. There are however no provisions to protect host communities from unnecessary military interventions that may involve curtailment of movement and minor civic freedoms.

Sustainable Development

- Enforcement of environmental regulations still remains lax in Nigeria due to technical capacity gaps in monitoring and evaluation, lack of financial resources and overlapping responsibilities between agencies and ministries.
- Most companies have consistently discharged their Corporate Social Responsibility (CSR) and local content obligations to their host communities in form of job opportunities, social investment initiatives, entrepreneurial programmes and scholarships.

Corporate Integrity

- Information on beneficial ownership of companies, licenses and contracts are still not publicly available. Disclosing necessary financial information provides a mechanism that enables companies to be held accountable for their business activities and whether the company is contributing socioeconomically in a manner that is at par with the level of profit it makes from its country operations.
- Most companies comply with tax and royalty obligations; however, details of such payments are not publicly available. Therefore, it is difficult for host communities and other stakeholders to monitor the monies that should be received for community development projects.
- Most oil companies have clear code of conduct principles that serve to discourage corrupt practices. These principles apply to regular employees as well as top management and third-party contractors.

11.1 Trust

11.1.1 Do oil companies support the meaningful participation of affected communities in decision-making on projects?

National laws³⁹ and practice impose limits on community participation in oil sector activities and contributions to projects that directly affect lives and livelihoods often come after decisions have been taken and contracts signed. Community participation in form of public hearings is a due diligence requirement of the Environmental Impact Assessment (EIA) process. There are however challenges with community capacity to contribute given their limited knowledge and understanding.

Acknowledging the long-standing challenge with participation, the Petroleum Host Communities Bill, expected to be passed into law shortly as one of the components of the Petroleum Industry Bill (PIB), makes provisions for community participation and for a benefits-sharing structure that includes host communities. Other attempts by the government to facilitate community participation include passing the Nigerian Oil and Gas Industry Content Development Act. Very few members of host communities have been able to avail themselves of the provisions of this law however because they are mostly impoverished from long-term degradation of their environment, have not had equitable access to health and education and in a vicious circle continue to suffer the negative effects of International Oil Companies' approach to doing business in Nigeria.

Oil companies adopt a narrow view of corporate social responsibility, eschewing the broader interpretation of productive relationships that establishes them as trusted partners for the sustainable management of an endogenous resource, by mostly implementing isolated, low impact intervention projects. Even these are designed to the exclusion of local communities whose opportunity for contribution is limited to town hall meetings to announce imminent projects. In addition, community consultations by oil companies when they take place are with village chiefs and elders who are not legitimate representatives and unable to present concerns of directly affected locals. As a result, some compensation programmes may have little or no impact on the local community. An absence of trusted grievance mechanisms that can be used by members of local communities often fosters discontentment which has been known to escalate into full blown conflict and provide oil companies with a legal reason to deploy security forces backed by government.

Although implementation of the Global Memorandum of Understanding (GMOU) between oil companies and host communities has improved community participation in terms of ownership of development projects, unbalanced representation, especially of women and youths, have led to communal tensions. According to a report by the Foundation for Partnership Initiatives in the

³⁹Ownership of petroleum resources and land on which it is found is vested in the Federal Government as a trustee for the Nigerian people.

Niger Delta (PIND), women's needs and concerns are seldom integrated into decision-making processes due to socio-cultural norms that inhibit the participation of women in public life. They are therefore excluded from community funds and other settlement benefits. Progress is being made in this area through advocacy programs that aim to transform gender norms and empower women.

Information sources:

Gender assessment in the Niger Delta region of Nigeria (2011). Partnership Initiatives in the Niger Delta (PIND) and Center for Development and Population Activities (CEDPA). Available at <http://pindfoundation.org/download/46696/> Last accessed on 23-10-2017

11.1.2 Do companies ensure that stakeholder expectations are realistic?

While agreements between government and oil companies clearly outline expectations and are guided by laws and regulations, government and oil company responsibilities to host communities are not as clear. Though the Ministry of Niger Delta Affairs and the Niger Delta Development Commission have published strategies and outlined plans to facilitate development of host communities, these plans lack coordination and are therefore difficult to implement. There are laws that make interference with the business of petroleum prospecting, mining, distribution and sale a crime; but the application of the same laws and ways in which the activities and actions of community members may violate them remain subjective and are guided by official discretion.

In host communities, oil companies as the only visible beacons for development are often appropriated as government and early attempts to contribute to local development by directly addressing community needs for social amenities only result in elevated expectations. Challenges also stem from low levels of understanding of government arrangements with operators and information provided by politicians and other actors that have intentionally convinced host communities that they own the oil and gas resources. There is extensive evidence to show the effects of oil exploration on host community lives and livelihoods and many attribute economic challenges to degradation of the environment.

Expectations of host communities are not uniform and range from entitlement to employment in oil companies to extensive infrastructural development. Increasing requests from host communities have been for the clean-up of the environment but there have also been requests for business opportunities and for public services to make their environment conducive for living and for doing business. Unfortunately, requests are not coordinated and continue to drive restiveness in the Niger Delta.

Mechanisms for community relations established by companies are perceived by community representatives as discriminatory and ineffective. Principally, they avail of established but flawed socio-political structures in communities. Most oil companies have adopted a process for establishing Global Memorandum of Understanding working with regional development councils on which local governments are represented. These have not been very successful not only due to weakened capacity of local governments but also because they are accused of selective patronage. Government and company websites are the primary channels for providing information to the public and these contain no information relevant to community development or remediation for perceived grievances even when provided. There is also very little community awareness about current projects and interventions or about plans for new development. Transactions with government and with community leaders appear to be shrouded in secrecy and this creates a challenge for managing expectations especially given the multiple informal channels for passing information to the community.

Laws and regulations that have been publicised by government as being to support and promote community interests are not provided in language and formats easily understood by local communities and some of them have helped to raise expectations both from government and from oil companies. Managing local communities' expectations about wealth sharing and provision of socioeconomic opportunities is an integral part of the concept of social license to operate and helps to protect the corporate reputation of oil companies.

Information sources:

<https://www.chevron.com/-/media/chevron/stories/documents/nigeria-case-study-GMoU.pdf>

<http://www.shell.com.ng/sustainability/communities/gmou.html>

11.1.3 Do companies proactively disclose key information?

The 2007 Nigeria Extractive Industries Transparency Initiative (NEITI) Act provides the framework for transparency and accountability by imposing reporting and disclosure obligations on all extractive companies. NEITI's audits have however been limited to tracking financial and physical flows within the oil and gas industry and have focused primarily on the Nigerian National Petroleum Corporation. Industry standards require oil and gas companies to make specific economic, environmental and social disclosures including EIA reports, royalties, taxes, and compensation funds to host communities. There are also disclosure requirements for stakeholder engagements; however, companies operating in Nigeria's oil and gas industry do not demonstrate evidence of voluntary compliance with these standards. While disclosure requirements are not spelt out in the NEITI Act or other published regulations, aspects are covered by requirements for environment and social impact assessments implemented by the Department for Petroleum Resources. For the issuance of licenses and permits, NAPIMS (National Petroleum Investment Management Services) and NIPLEX (Nigerian Petroleum

Exchange) have regulations that make it mandatory to provide information about names of partners, contractors and subcontractors working on projects in the country.

There are critical shortcomings for environmental mitigation and management as there is no clearly defined accountability framework of legal regime for disclosure. That the environmental protection law agency is stripped of its power to act in the oil and gas sector has created a gap for environmental monitoring and reporting. The National Oil Spill Detection and Response Agency (NOSDRA), which was specifically established to serve this function for the oil and gas sector sets no standard and makes it mandatory for information that comes to the agency's knowledge to be kept confidential.

There has been improvement with disclosures of revenues earned from oil exploration activities and recently established laws created digital repositories for easily accessible data on exploration and production managed by the Department for Petroleum Resources. With the establishment of NAPIMS and NIPEX, information about oil and gas contracts and licenses are more easily accessible although not routinely published.

Information sources:

National Oil Spill Detection and Response Agency (2006) Act

National Data Repository Regulations 2007. See
<http://www.nassniq.org/document/download/5873>

11.1.4 Do companies ensure that security arrangements relating to resource projects do not use excessive force?

A significant volume of oil and gas exploration in Nigeria has been moved off-shore and may be responsible for muted conflict in the region. However, military operation (*Operation Pulo Shield*) deployed in the area since 2004 have remained to “counter insurgency, illegal oil bunkering, piracy, kidnapping and hostage taking in the creeks and coastal areas of Niger Delta and adjoining states’. To protect their installations and personnel, oil companies employ private arms bearing security.

Government policy on security of oil and gas as a national resource is very clear. There is zero tolerance of any form of threat to national revenues and militias and unreasonably clamorous youth groups continue to attract military response from government, the latest being *Operation Crocodile Smile* in 2016 to address reports of cultism, kidnap and armed robbery in the Niger Delta. The effect on local communities is a curtailment of movement and minor civic freedoms.

Information sources:

Afeno Super Odomovo: "Insurgency, Counter-Insurgency and Human Rights Violations in Nigeria" in The Age of Human Rights Journal, 3 (December 2014) pp. 46-62 ISSN: 2340-9592

<https://www.hrw.org/news/2017/01/12/nigeria-disturbing-intolerance-dissent>

<http://www.nta.ng/news/security-news/20160917-update-operation-crocodile-smile-23-militants-killed-in-niger-delta/>

11.1.5 Do companies respect the rights of indigenous people?

Despite ownership of petroleum resources and land being vested in government⁴⁰, it remains an unresolved issue as communities in the Niger Delta continue to insist that exploration rights were granted to oil companies without their informed consent or participation in the decision process. Government efforts at redress include the derivation formula for resource allocation. A Ministry was established to facilitate development of the nine states of the Niger Delta; and the Niger Delta Development Commission, a parastatal under the Ministry was created in response to requests by the people as a coordinated mechanism for interface with government and oil companies. Apart from an undated regional master plan published on the Commission's website and reports of mainly infrastructural projects, there are no indications of how interests and concerns of the people of the Niger Delta are managed or mediated.

Community focused investments and activities of oil and gas companies have sometimes had adverse environment and social impacts, including conflict. There are no clear or standardised mitigation plans or safeguards. Research has shown that the focus of GMoU is mainly on CSR projects, with little attention on mitigation of environmental impacts. Evidence suggests that companies operating in Nigeria show little respect for host communities and their environment, preferring to limit themselves to agreements signed with the government, the contents of which are not accessible to communities or their legitimate representatives.

Information sources:

<http://www.nddc.gov.ng/masterplan.html>

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Hoben, M., Kovick D., Plumb, D. and Wright, J. (2012). Corporate and Community engagement in the Niger Delta: Lessons learned from Chevron Nigeria Limited's GMoU Process. Available at https://commdev.org/userfiles/GMoU_case_final_11.20.pdf

⁴⁰Section 44(3) of the Constitution of the Federal republic of Nigeria

11.2 Sustainable Development

11.2.1 Do oil companies effectively mitigate the environmental, social and health impacts of resource projects?

The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), laid out by the Department of Petroleum Resources (DPR) details procedures for the management and remediation of oil contaminated areas. The National Oil Spill Detection and Response Agency (NOSDRA) is responsible for ensuring compliance with environmental legislation related to the oil and gas industry, as well as detection and response to oil spills. In accordance with Nigerian law, Environmental, Social and Health Impact Assessments (EIAs) are required for all development projects. The aim is to assess the environment and social impacts of exploration and production activities, evaluate alternatives as well as put in place appropriate plans to reduce negative impacts to the barest minimum. The EIA report is usually subject to public display and technical review by the Federal Ministry of Environment and Department of Petroleum Resources (DPR) prior to approval.

Although these regulatory frameworks exist, a standardized monitoring and compliance mechanism through which oil companies are held accountable for mitigation strategies is absent. Therefore, there are still reports of serious environmental damage, destruction of livelihood sources and aquatic life which is blamed largely on ineffective government monitoring and evaluation channels. In some cases, negative environmental impacts may not entirely be the fault of oil companies. Aside from operational spills, illegal refining, oil theft and sabotage of facilities are major causes of environmental damage. In a report by Shell Petroleum Development Company (SPDC), unauthorized third-party interference with pipelines and other infrastructure was said to be responsible for around 85% of all oil spill incidents from Shell facilities in 2015. It should be noted however that due to poor monitoring on the part of the government, the reported cause of a spill is largely dependent on oil companies' assessment of the spill incident. It is then possible that the percentage of spill incidents caused by third-party pollution may be exaggerated. According to the report, Shell is unable to remediate some spill-impacted areas because communities occasionally deny them access to verify the spill and stop the leakage.

Nigeria has a plethora of laws to ensure mitigation of negative impacts from exploratory activities; however, bureaucracy is complex and confused and the sector suffers a dearth of knowledge and skills. Most government agencies cannot afford basic logistics for routine inspections and rely heavily on support from oil companies. Licenses and operating agreements contain explicit standards but often give government broad discretionary powers, especially for managing communities. The DPR currently holds all licenses and also has direct responsibility for environmental protection and management in the oil sector but has reported little to nil effect. NOSDRA also does minimal reporting of scale of oil spills or agreements reached for clean-up.

Remediation activities for oil spills are sporadic and non-comprehensive although oil companies claim to adhere to industry standards especially for carrying out environmental impact assessments and there is no evidence that they use appropriate technology to ensure mitigation. Civil society groups believe that oil companies do not give consideration to or try to prevent negative effects of their activities and point to extensive damage to the environment and livelihoods as evidence of poor environmental risk management. However, they acknowledge that community members may not have access to health or education without the intervention of the oil companies but maintain that the presence of the military in the region is a disadvantage.

It was impossible to determine whether companies have emergency response programmes but government relies on NEMA for that function. Nigeria had one of the world's highest gas flare rates but NNPC announced in October 2017 that the rate is now 12% translating to 919.73mmscfd after concerted interventions implemented in collaboration with stakeholders. It is expected that continued reduction will alleviate some of the environmental and health challenges suffered by local communities. All told, there is no comprehensive mechanism for holding stakeholders to account.

Information sources:

<http://www.shell.com.ng/sustainability/environment/nigeria-environmental-challenges.html>

<http://nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/869/Nigerias-Gas-Flare-Rate-now-12-Per-cent.aspx>

11.2.2 Do companies work to identify national and local development priorities and concerns, and measure progress against them?

Local content promotion policies have been integrated into the oil industry as a way of maximizing benefits from the industry beyond direct revenue payments. These policies require foreign investors to source a certain percentage of goods and services from local producers, with the aim of supporting the growth of local manufacturing and services through linkages along the value chain. Oil and gas sector activities can be leveraged to provide employment opportunities and economic growth by integrating local businesses into their supply chains. For example, the Russian government mandated that at least 70% of the workers in a Shell project, as well as materials and services used should be Russian-sourced. The Nigerian Content Development and Monitoring Board (NCDMB) mandate is to promote in-country capacity development in the oil and gas industry. However, the National Content Act is somewhat ambiguous in that it does not clearly define and measure 'local content'; and the Nigerian government is ineffective in enforcing the Act, therefore most international oil companies pay little or no attention to it.

Apart from poor monitoring mechanisms in enforcing the National Local Content Act, a major issue is the fact oil sector employment opportunities are relatively limited, and many jobs require a certain level of skill and expertise which many indigenous people lack. Development of beneficial linkages between the oil and non-oil sectors, and provision of oil industry-related goods and services offer numerous possibilities for resource-driven economic and human capital development. Opportunities for cross-sector collaborations include investments in business, commerce, education, technical and vocational training; and companies are finding ways to provide these services. For example Chevron, through the Partnership Initiatives for the Niger Delta (PIND) set up a poultry business managed by local poultry farmers in Ondo and Warri that supply a chicken processing plant; the Emerald Energy Institute of the University of Port-Harcourt is funded by Emerald Energy Resources Limited, an indigenous energy firm; and the Centre for Gas, Refining and Petrochemicals, a training and research hub for refining activities in the same university is funded by NLNG. According to a Shell Report, 96% of their employees are Nigerians, and 94% of contracts awarded in 2016, valued at \$0.74billion, were to Nigerian companies. Through these and other avenues, some companies have consistently discharged their Corporate Social Responsibility (CSR) and local content obligations to their host communities in form of job opportunities, social investment initiatives, entrepreneurial programmes and scholarships. What is lacking is a reporting mechanism. There is also limited capacity in communities to participate effectively and government agencies and community structures are too weak to receive meaningful social investment.

Information sources:

<https://www.sec.gov/Archives/edgar/data/1306965/000116854806000092/gazprom.html>

<http://ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf>

Ferguson, J. (2005): Seeing like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa. In: *American Anthropologist*, 107(3), 377-382.

Jesse Ovadia (2015). The role of local content policies in natural resource-based development. Available at

http://www.oefse.at/fileadmin/content/Downloads/Publikationen/Oepol/Artikel2015/Teil1_03_Ovadia.pdf

<http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/social-investment.html>

http://cdn.exxonmobil.com/~media/global/files/nigeria/nnpc_mpn-jv--55-years-of-delivering-value-to-akwa-ibom-state.pdf

<http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/nigerian-content-development.html>

11.3 Corporate Integrity

11.3.1 Do oil companies have clear internal policies relating to corruption?

There are strategic vulnerabilities in Nigeria's oil and gas sector that present opportunities for corruption. Bureaucratic inefficiencies in government are a primary area of concern and are often availed by oil companies to influence contracts, unfairly lower fees, levies and taxes, bias application of regulations or frustrate formation of unions by domestic oil and gas workers. In this way oil companies accrue benefits from ambiguous laws, ineffective enforcement of environmental regulations or financial agreements, and use corrupt means to obtain beneficial agreements. In a report by Transparency International evaluating the transparency of corporate reporting and disclosure practices, major companies were scored based on their anti-corruption programmes, organizational transparency and country-by-country reporting. On a scale of 0-10 (0 being least transparent and 10 most transparent), ENI was scored 7.3, Shell scored 4.4, ExxonMobil 4.1. The report notes that while most oil companies have anti-corruption policies and programmes in place, financial information for each country of operation as well as political contributions and knowledge of their corporate holdings was not publicly available.

Most oil sector activities in Nigeria are governed by contracts that are shrouded in secrecy. There are no regulations that mandate disclosure of contract agreements between oil companies and the government. Therefore, it is difficult to correctly measure the amount of taxes and royalties that accrue to the government through operation contracts and licenses. Disclosing necessary financial information provides a mechanism that enables companies to be held accountable for their business activities within the country and whether the company is contributing socioeconomically in a manner that is at par with the level of profit it makes from its country operations. It also provides a means of tackling tax avoidance and monitoring revenue payments.

In the absence of published grievance and complaints mechanisms accessible to local communities, it is difficult to monitor misconduct or fraudulent activities of oil company staff. In addition, oil and gas companies hire third parties to manage local transactions and many of these are acknowledged to have off the record dealings with government officials. There are other opportunities for corruption stemming from procurement contracts, use of contract or outsourced staff not bound by the company's code of conduct, etc. An example is the recent (August, 2017) allegation of the Minister of State for Petroleum against the Group Managing Director of the Nigerian National Petroleum Corporation relating to the award of contracts without following due legal and procurement requirements. Industry practice is for a comprehensive assessment of the company's vulnerability to risk to be carried but there are no reports of such assessments carried out by companies operating in Nigeria.

Information sources:

Moses, J. W. and Letnes, B. (2017). Managing resource abundance and wealth: The Norwegian Experience. Oxford University Press.

Transparency International (2014). Transparency in Corporate Reporting: Assessing the World's Largest Companies.

<https://www.vanguardngr.com/2017/10/re-allegations-lack-adherence-due-process-nnpc-contract-awards/>

<http://csj-ng.org/blog/press-statement-minister-of-state-petroleum-resources-dr-ibe-kachikwus-allegations-against-the-managing-director-of-nnpc-needs-to-be-investigated/>

11.3.2 Do oil companies meet their fiscal obligations?

Extractive companies have been observed to comply with not only tax, royalty and equity obligations, but also with policies and practices of benefit sharing agreements between them, the government and the host communities. However, details of such payments are not publicly available. Extraction of such information from oil companies is usually a long and difficult process filled with administrative bottlenecks.

Development projects are usually channelled through the government, a tradition that the proposed Host Community component of the Petroleum Industry Bill (PIB) seeks to reverse. Under the Host Community Bill, local governments where resource projects are located are entitled to receive:

- 10% of the total amount paid to the State Government in accordance with the derivation formula
- 20% of royalties paid by oil companies
- 50% of the amount paid to the government for pipeline rights of way.

These monies are to be held in trust by the local government of these communities and are to be used solely for the direct benefit of the communities within which facilities are located.

The Petroleum Industry Fiscal Bill effectively repeals the Petroleum Profit Tax Act (PPTA). In its place, the Petroleum Fiscal Bill introduces the Hydrocarbon Tax, a resource tax imposed on companies engaged in upstream petroleum operations, with the following features:

- The tax is payable on a company's profits for each accounting period.
- Oil companies must pay Companies Income Tax (from which they are presently exempted).
- The rate is dependent on fluctuations in oil prices so as to capture any windfall profits.

The extractive companies have also made significant efforts at creating broader social benefits from infrastructure investment under their corporate social responsibility (CSR) initiatives, as well as occasional support for communities by involving them in decision-making.

Information sources:

Esan, W., Salawu, D., Ihenetu-Geoffrey, C. and Ajayi, O. (2014). Oil and gas regulation in Nigeria: the Petroleum Industry Bill. Available at [https://uk.practicallaw.thomsonreuters.com/4-575-4365?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/4-575-4365?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)
<https://www.pwc.com/ng/en/assets/pdf/tax-watch-march-2017-draft-npfp.pdf>
<http://www.petroleumindustrybill.com/pib-summary/part-viii-provisions-on-taxation-in-the-petroleum-industry/#.WiqwrlWnHIU>

11.3.3 Do companies avoid seeking exemptions from their legal and regulatory obligations?

In order to cushion the effect of the high capital costs of petroleum operations, certain tax incentives such as *Allowable deductions* and *Capital allowances* are accruable to oil companies. Aside from these allowances, Nigeria loses several billions of dollars every year due to lax tax legislations that have aided tax avoidance by companies. For example, a company that has been granted tax holidays for a 3-year period may continue to enjoy tax incentives beyond the allotted time unnoticed due to inefficiencies of the Tax Board. Some other companies renew tax incentives without following due procedures. A variety of schemes, such as under-reporting actual revenue, and evasion of profit tax by over-reporting production costs, have been used by companies to evade taxes. According to Komisar (2006), wealthy and influential companies avail of the blurred lines between *tax evasion* and *tax avoidance*, and use their power to legalize non-payment of taxes and constrain enforcement agencies from conducting investigation and prosecution.

In some cases, oil companies may be perceived as attempting to avoid fulfilling their legal or regulatory obligations. For example, the practice of gas flaring in the Niger Delta has continued despite numerous protests because oil companies have used their influence to shift the deadlines to put a stop to the practice several times. Trade liberalization policies have enabled multinational oil companies to benefit from tax exemptions and other financial incentives. In turn, the amount of corporate taxes paid by oil companies has substantially decreased.

Information sources:

Idubor et al. (2015). Appraising taxation and the Nigerian oil industry. *Journal of Law, Policy and Globalization*, 37:188-197. Available at <http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/22561/26020>
<http://visar.csustan.edu/aaba/Bakre2006.pdf>
<https://www.pwc.com/ng/en/assets/pdf/tax-bite-march-2015.pdf>
 Otusanya, O. J. (2011). The role of multinational companies in tax evasion and tax avoidance:

Information sources:

The case of Nigeria. <https://doi.org/10.1016/j.cpa.2010.10.005>

Komisar, L. (2006). Citigroup: a culture and history of tax evasion, The Public Eye on Davos. Tax Justice Network.

11.3.4. Do companies ensure that their corporate integrity policies apply to partners, contractors and subcontractors?

For companies listed on the Nigerian Stock Exchange (NSE), it is stated in the NSE Rulebook that information concerning the company such as financials, annual reports and company directors as well as beneficial ownership be fully disclosed. According to a 2015 report by Ernst and Young, “revenues, expenses, gains, losses, net income or loss, and other comprehensive income shall be reported in the consolidated financial statements at the consolidated amounts, which include the amounts attributable to the owners of the parent and the non-controlling interest”.

Most oil companies have clearly defined business principles and code of conduct that specify standards by which managers, third-party contractors and other employees are supposed to conduct business.

Information sources:

Rulebook of the Nigerian Stock Exchange <http://www.nse.com.ng/regulation-site/Documents/The%20NSE%20RuleBook%202015.pdf>

<http://www.nse.com.ng/Listings-site/listing-your-company/listing-requirements>

[http://www.ey.com/Publication/vwLUAssets/FinancialReportingDevelopments_BB1577_ConsolidatedFinancialStatements_8December2015/\\$FILE/FinancialReportingDevelopments_BB1577_ConsolidatedFinancialStatements_8December2015.pdf](http://www.ey.com/Publication/vwLUAssets/FinancialReportingDevelopments_BB1577_ConsolidatedFinancialStatements_8December2015/$FILE/FinancialReportingDevelopments_BB1577_ConsolidatedFinancialStatements_8December2015.pdf)

Precept 12: ROLE OF INTERNATIONAL COMMUNITY



Governments and international organizations should promote an upward harmonization of standards to support sustainable development

<p>Overall Precept Score</p>	
<p>Precept 12: Role of international community</p> <p>While some progress has been noted in the period under review, there have equally been some notable setbacks. In the European Union, significant traction towards increased extractive sector disclosure seem to have been eclipsed by the repeal of the Dodd Frank Act in the United States, effectively withdrawing the US from the EITI and paving the way for increased secrecy.</p> <p>A key concern in the period however, is not so much the absence of frameworks to ensure the protection of human, environmental, health and social rights, but that these frameworks supported and promoted by the international community have fail to translate into substantial action in Nigeria</p>	<p>●</p>

Overview of the Questions and Ratings	
12.1 TRANSPARENCY	
12.1.1 Do home governments require companies to disclose comprehensive information relating to resource projects?	
12.1.2 Do lenders require companies to disclose comprehensive information about the resource projects they finance?	
12.2 HUMAN RIGHTS AND ENVIRONMENTAL, SOCIAL AND HEALTH PROTECTION	
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Summary of Key Findings

Transparency

Significant progress has been recorded in actions of key players in the international community to ensure transparency in the extractive sector. The European Union has established the Accounting Directives demanding extractive companies that have member states as their home to report payments they make to host governments. Reporting is to be carried out on a project by project basis, where payments have been attributed to specific projects. The Directive goes further to require all EU member states to transpose it by 26 November, 2015. The home countries in this study have all done so.

While the above achievement furthers the cause of Transparency, in the United State there has been an unfortunate roll back. The Dodd-Frank Act which was a legislation introduced in the US in 2010 making it mandatory in Section 1504 for companies publicly traded in the US to declare how much they pay governments in taxes, royalties and other similar fees relevant to exploration, extraction and other activities, has ceased to exist. After just a year of finalizing the rules that make it effective, the US Congress in January 2017 employing the Congressional Review Act, voted to repeal Section 1504 of the Dodd Frank Act. This is a major step towards secrecy that will foster corruption by enabling companies and governments to hide their payments.

Home governments, key financial institution and the oil companies have all indicated significant support for transparency mostly through the EITI process. Overtly, this indicates a commitment to transparency. However, this has not translated into improved openness or availability of information. Actual compliance with the fundamental principles remains low and the sector still remains one of the most opaque in Nigeria.

Human Rights and Environmental, Social and Health Protection

The international community has established meaningful frameworks to safeguard environmental, human and health rights. The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises has developed a useful and functional framework- the National Action Point - for addressing cases of violations in compliant in home countries. Similarly, the OECD has also produced a Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, meant to ensure that resource projects benefit from engagements with all relevant stakeholders to avoid possible abuses.

The United Nations Guiding Principles on Business and Human Rights which was adopted in 2011 as a global framework to set standards and ensure that business practices are carried out in conformity with acceptable principles of human rights received a significant boost with the introduction of a Reporting Framework in 2015 as a guide for companies to report on human rights issues in line with their responsibility to respect human rights.

However, despite these and other provisions as well as pronouncements by the focal

extractive companies to abide by principles contained in these documents, actual implementation has been rather dismal. Available evidence indicated that effort of international community actor to hold companies accountable on these grounds are at best ineffective. In the review period, there was a significant setback in this regard when a High Court sitting in the United Kingdom ruled that 'Royal Dutch Shell' could not be held responsible for the actions of its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Limited (SPDC), after two Niger Delta communities devastated by oil spills brought suits against Shell in the United Kingdom for oil spills that occurred in Nigeria.

Corruption and Illicit Financial Flows

In the period under review, there were some important policy improvements in international community efforts to combat corruption and illicit financial flows. The European Union on the 26 June 2015 delivered the 4th Anti-Money Laundering Directive which amends taking into account 40 additional recommendations adopted by the Financial Action Task Force. The United Kingdom and France have both transposed this direct.

In the United States, Senators Marco Rubio and Ron Wyden jointly introduced Senate Bill 1717, entitled the "**Corporate Transparency Act of 2017**". When passed, the Act would require the collection of beneficial ownership information for corporations and limited liability companies formed or registered in the United States. A companion bill was introduced in the House of Representatives on June 28, 2017, by Representative Carolyn B. Maloney (D-NY), and was referred to the House Committee on Financial Services.

12.1 Transparency

12.1.1 Do home governments require companies to disclose comprehensive information relating to resource projects?

This research focuses on five of the largest oil exploration companies operating in Nigeria. Shell is the largest operator of the Nigeria Joint Venture partnership and has its registered office in the United Kingdom and headquarters in the Netherlands. The United States is home to both Chevron. Total is based in France while Eni-Agip has Italy as its home country.

- In 2010 the United States introduced a landmark legislation called the Dodd-Frank Act which makes it mandatory in Section 1504 for companies publicly traded in the US to declare how much they pay governments in taxes, royalties and other similar fees relevant to exploration, extraction and other activities. To activate the provisions of the Act, the US Securities and Exchange Commission (SEC) issued a rule in 2012 setting down compliance procedures. However, according to Oxfam America, oil giants including Exxon, Chevron and Shell supported a litigation which overturned the enforceability of the SEC rules. In 2014, Oxfam America instituted and won another suit against SEC forcing it to institute the rules. However, after just a year of finalizing the rules, the US Congress in January 2017 employing the Congressional Review Act, voted to repeal Section 1504 of the Dodd Frank Act. This is a major step towards secrecy. It has been argued that the repeal, will foster corruption by enabling companies and governments to hide their payments. In comparison to the progressive status reported in the 2012 and 2014 Benchmarking Exercise Reports, this is a significant setback. The action of the US Congress has equally raised negative concerns about the commitment of the country towards the implementation of the EITI, with some saying that it remains part of the transparency framework only in name. There is significant concern about the effect this roll back could have on the EU Transparency Directive given the fact that it was inspired by the Dodd Frank Act.
- In 2004, the European Union Parliament adopted a pioneering Transparency Directive, requiring issuers of securities traded on regulated markets within the EU to ensure appropriate transparency through regular flow of financial information. In 2013, citing some inadequacies and 'notification gaps', the directive was amended.
- Alongside the EU Accounting Directive, the European Union demands extractive companies to report payments they make to government. According to the Directives, reporting will also be carried out on a project by project basis, where payments have been attributed to specific projects. The Directives apply to all limited liability companies which are registered in the European Economic Area (EEA) as well as all companies listed on EU regulated markets, even if they are not registered in the EEA. Companies are to report all payments broken down by country and by projects including production

entitlements, taxes levied on the income, production or profits of companies, royalties, dividends, signature, discovery and production bonuses, license fees, rental fees, entry fees and other considerations for licenses and/or concessions; and payments for infrastructure improvements. The Directive goes further to require all EU member states to transpose it by 26 November, 2015.

- In fulfilling the obligations of the Directive, United Kingdom established 2 regulations enforcing the reporting requirements. Similarly, between 2015 and 2016, the Italian securities market regulator, Commissione Nazionale per le Società e la Borsa (CONSOB), announced amendments to CONSOB Regulation No. 11971 of May 14, 1999, aimed at creating the needed frameworks for implementing the Transparency Directives.
- The Extractive Industries Transparency Initiative, EITI is a global standard established in 2003 to promote and support transparency in resource-rich countries through the full publication and verification of payments by companies to government from the oil, gas, and mining sectors. The EITI has been signed on to by 52 countries including Nigeria and the home countries of the extractive companies in focus- the United States, United Kingdom, France and Italy. By signing on to the EITI and its principles, these countries have shown reasonable commitment towards supporting extractive industry transparency.
- It is also important to note that among the world's 80 largest companies supporting the EITI are Shell, Total, Agip-Eni, Exxon-Mobil and Chevron. However, this support may not have translated into more willingness on the part of the companies to abide by disclosure requirements. According to ***Transparency in Corporate Reporting: Assessing the World's Largest Companies (2014)***, a publication of Transparency International; Shell, Total, Eni-Agip Exxon-Mobil and Chevron were among the least inclined to reveal information relevant to their financial dealings abroad. According to the report, on the subject of Country by Country Disclosure, out of a possible 100 score, Eni scored 22, Exxon Mobile scored 4, Shell and Chevron scored 2, while Total scored just 1. While there have been no new assessment reports, some industry experts believe not much has changed in 2017.

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12.1.2 Do lenders require companies to disclose comprehensive information about the resource projects they finance?

- The World Bank has routinely supported the establishment of transparency and accountability frameworks in Nigeria. It supported the Extractive Industries Transparency Initiative (EITI) through the Multi Donor Trust Fund which it administered. The Fund supports the implementation of EITI in countries that have joined it, including Nigeria. When the Fund came to a close in 2015, its role was replaced by the Extractives Global Programmatic Support (EGPS) still under the management of the World Bank. This program supports key extractives governance sector changes through reforms along the EI value chain. Through this facility, technical and financial assistance is provided to governments (including Nigeria's) to implement the EITI. The World Bank also supports a host of actions at national and sub national levels in Nigeria aimed at entrenching transparency and accountability in the management of revenues.
- The World Bank's International Financial Corporation Sustainability Framework spells out the Bank's commitments to good environmental and social policies as well as support for measures to ensure transparency and accountability. The Framework provides an Access to information policy through which information regarding investments is made available in a timely manner, and has become one of the most widespread international standard for good corporate practices.
- In 2013, the African Development Bank, ADP created the African Natural Resources Center (ANRC), as a framework to support African countries in the management of Natural resources. According to the ANRC, its mandate is to ***“assist African countries maximize development outcomes derived from Africa's natural resources by boosting their capacity to achieve inclusive and sustained growth from natural resources”***.
- As part of efforts to ensure best practices in the management of extractives and full disclosure, the ANRC has developed a Draft Strategy for 2015-2020, which is still at the consultation stages and open for public comments. ***It is important to note that the draft strategy document proposes amongst others that the Centre “will be***

accountable for managing relations with global organizations on resource governance, such as EITI, and the Natural Resources Governance Institute (NRGI), custodian of the Natural Resource Charter...”.When the Strategy document comes into force, there is expectation that it will stipulate and enforce the disclosure of resource projects being financed by the Bank and its partners.

- The International Monetary Fund (IMF) has published 3 important documents that have proved useful in setting standards for the management of extractive sector revenues. The first is the Guide on Resource Revenue Transparency, which was updated in 2007; The other is the Fiscal Transparency Code also updated in the same year and the Manual on Fiscal Transparency. The Guide on Resource Revenue Transparency is part of the IMF's framework on best practices in fiscal transparency especially as it relates to the management of natural resource revenues. The Guide was produced in the understanding that the management of resource revenues poses exceptional challenges for countries that depend on them for revenues. The Guide has been utilized by stakeholders of the Extractive Industries Transparency Initiative (EITI), and other key actors.

The Fiscal Transparency Code is a standard developed by the IMF for the disclosure of public finance information by states. The Code comprises a set of principles built around four pillars (i) fiscal reporting;

- (ii) fiscal forecasting and budgeting;
- (iii) fiscal risk analysis and management; and
- (iv) resource revenue management.

The Code promotes transparency through highlighting levels of achievement and indicating milestones towards full compliance. While the Pillars I, II, and III have been issued, Pillar IV is still at the consultation phase with the expectation that a final version will be released in 2017. Compliance with the Code is further guided and judged through the IMF's Fiscal Transparency Evaluations which assesses the fiscal transparency practices of states against standards set by the Code, as well as show state fiscal transparency reform priorities and action plans towards addressing them. These Evaluations are carried out at the invitation of the states as the IMF's support towards entrenching resource management transparency.

The Manual on Fiscal Transparency produced by the IMF specifies guidelines on the implementation of the principles of the Fiscal Transparency Code. It explains the principles of the Code in clear details, and also draws on experiences in member countries to illustrate a range of practical approaches. Currently, the Fiscal Transparency Manual is being revised.

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12.2 Human Rights and Environmental, Social and Health

12.2.1 Do home governments expect companies to respect human rights and the highest standards of environmental, social and health protection?

- The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises provides a framework for addressing issues of human rights and environmental concerns involving multinational companies operating in or from countries adhering to the Declaration. While the Guideline is legally nonbinding, it nonetheless provides recommendations on principles and standards for responsible business conduct for these companies, and equally creates a system- the National Action Point - for addressing cases of violations in compliant countries. Italy, USA, France and UK are key members of the OECD and have established functional National Action Points that entertain complaints bordering on the activities of multinational companies. Between 2000 and 2017, hundreds of cases have been received with appreciable resolution records.

The OECD has also produced a Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, meant to ensure that resource projects benefit from engagements with all relevant stakeholders to avoid possible abuses.

- The Voluntary Principles on Security and Human Rights is a set of guidelines established in 2000 and designed specifically to foster respect for human rights in extractive sector operations. Participants in the Voluntary Principles initiative include governments, companies, and NGOs who subscribe to its ideals and work to ensure compliance. The Voluntary Principles are a potentially effective tool for the observation of human rights in places where oil companies cite their operations. In 2015, participants in the initiative include 9 national governments, 27 companies, and 10 non-governmental organizations. Of the 5 multinational oil companies under focus in this study, Eni-Agip is the only company that has not signed on to the Principles as a supporting organization. Again, all the home countries in focus have signed on to the Voluntary Principles except Italy. For the UK and US, this indicates their interest in ensuring that resource projects comply with recognized human rights standards. Despite extractive companies expressing their support to the Voluntary Principles, their actual compliance is dismal. Expert respondents and community members in extractive locations insist that in real life, companies do not conform to the stipulations of the principles.
- The United Nations Guiding Principles on Business and Human Rights adopted in 2011 is a global framework developed to set standards and ensure that business practices are carried out in conformity with acceptable principles of human rights. The UNGP

highlights 3 key pillars for businesses and states to implement the framework. These are;

1. The state duty to protect human rights
2. The corporate responsibility to respect human rights
3. Access to remedy for victims of business-related abuses

To ascertain the level of compliance with the Principles, a Reporting Framework was developed in 2015 as a guide for companies to report on human rights issues in line with their responsibility to respect human rights. While the principles have enjoyed wide support and citation even by the focal countries of this exercise, the actual level of utilization is uncertain. Interviews and reports indicate that since the launch of the Principle and the follow up Reporting Framework, no improvements have been recorded in regard to human rights by extractive companies in Nigeria. Some civil society organizations believe that the principles have had no impact on the responsiveness of companies to pollution and rights abuses. Indeed, such abuses may have even worsened.

Eni-Agip, Shell, Chevron, Total and Exxon Mobil in their various published policies and principles on human rights, express commitments to the International Labour Organization's Fundamental Principles and Rights at Work, the United Nations Universal Declaration of Human Rights and a host of other international frameworks on human rights. These frameworks have also been ratified by their various home countries. This indicates that the home countries expect the various extractive companies to operate in line with the relevant human rights provisions.

- However, despite the avowed commitments of the focal extractive companies and their different home governments to respect and protect human rights, available evidence indicates that in practice, this is not the case. Several expert respondents could not cite any instances where home governments have held extractive companies liable in cases of human rights violations. One such instance where this was tested was the Kiobel versus Shell case. In 2002, Shell was sued by the wife of one of nine executed Ogoni activists and members of the Movement for the Survival of the Ogoni People, Mrs. Esther Kiobel. The suit alleged that Shell, through its Nigerian subsidiary Shell Petroleum Development Company (SPDC) of Nigeria, provided support to Nigerian troops that violated the rights of indigenous people, therefore the company was complicit in the commission of torture, extrajudicial killing and other violations pursuant to the Alien Tort Claims Act (ATCA) ; a law enacted by the United States in 1789. In its defense, Shell argued that as a corporation it cannot be held responsible for human rights violations abroad and that the Alien Tort Claims Act does not apply to it. After 11 years of legal contestation that went up to the US Supreme Court, it was held that shell was not liable because the ATCA did not apply to conduct outside of the United States.
- On at least two more instances, the judicial system of home countries failed to hold oil companies accountable for human rights abuses committed in host countries. In *Wiwa vs Shell*, Shell was charged with '*complicity in egregious human rights abuses against*

Ogoni people in Nigeria. According to the suit, the company *‘financed, armed, and otherwise colluded with the Nigerian military forces that used deadly force and conducted massive, brutal raids against the Ogoni, with a motive of restarting oil operations on Ogoni territory.’*

- The suit was filed by the Center for Constitutional Rights and Earth Rights International in 1996. The next 12 years after filing was spent attending to petitions by Shell asking the court not to hear the case. In 2009, it was decided that the case could be heard. On the 8th of June 2009, before the trial could commence, Shell opted to settle out of court. It provided a total of \$15.5 million to compensate the plaintiffs, establish a trust for the benefit of the Ogoni people, and cover some of the legal costs and fees incurred in the course of the case. In 2008, a similar suit against Chevron- Bowoto v. Chevron- was instituted in the United States. It was subsequently dismissed.
- More recently in 2017, in what seems a significant setback for citizens of host countries seeking human and environmental rights enforcement in home countries of extractive companies, a High Court sitting in the United Kingdom ruled that ‘Royal Dutch Shell’ could not be held responsible for the actions of its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Limited (SPDC). Two Niger Delta communities devastated by oil spills cannot pursue their case against Shell in the United Kingdom for oil spills that occurred in Nigeria. Two Niger Delta Communities, Ogale and Bille-locations where the 2011 UNEP reported alarming water contaminations, had sued the company separately for environmental abuses and loss of livelihoods in 2016. In its defense, Shell objected to the jurisdiction of the UK court arguing that since the case concerned Nigerian plaintiffs and a Nigerian company, the appropriate place to hear it was in Nigeria. The Court upheld Shell’s application. Respondents now fear that this ruling could form a precedent that will allow extractive companies escape their liabilities by claiming it is not responsible for the actions of their subsidiaries, even when those subsidiaries report to them, act in their interest and generate profits for them. Amnesty International described the ruling as having the potential to rob communities of justice in the only place they could possibly find such and allow multinational operate with impunity abroad.
- Two landmark cases however indicate rare instances where home countries have held extractive companies liable for abuses committed in host countries. In 2008, four Nigerians and an international environment focused campaign group, Friends of the Earth, filed claims against environmental pollution by Shell. In a ruling in 2013, the District Court in the Hague, Netherlands ruled that a farmer whose livelihood source had been polluted, Mr. Friday Akpan should be compensated by Shell. However, other claimants were dismissed for lack of merit.
- In 2015, Shell agreed on a 55 million Pounds settlement with the Bodo Community in Nigeria’s Niger Delta over two oil spills that occurred in 2008 and 2009 due to corrosion of oil pipelines owned by the company. Preliminary legal investigations carried out

between April and May 2014 revealed that Shell had not taken adequate measures to prevent the spills from happening and as such could be held responsible. While the case was due to go to court in mid 2015, Shell in its characteristic manner opted to settle out of court with a 55 million pound compensation to 15,000 litigants from Bodo Community, and a promise to clean the spill. Up till the time of this research, the clean-up had not commenced.

- The International community and especially countries that are home to extractive companies have made key commitments to environmental protection. One such commitment is the Rio Declaration on Environment and Development. The Declaration is a short document adopted at the 1992 UN Earth Summit in Rio, setting down principles which recognize the importance of environmental protection and goes ahead to set down guidelines for doing so. The Declaration has become the benchmark and standard upon which member countries craft their own domestic environmental policies. The United States, United Kingdom, Italy and France have all ratified the Declaration.
- An important instrument established by home countries to ensure that environmental and social standards are maintained is the EU non-financial reporting Directive 2014/95/EU. The Directive requires large companies to publish regular reports on the social and environmental impacts of their activities. The objective is to increase the transparency of EU companies especially with regard to performance on environmental and social matters. Under the Directive, affected companies will be obligated to disclose information on the implementation of policies on the following;
 1. environmental protection
 2. social responsibility and treatment of employees
 3. respect for human rights
 4. anti-corruption and bribery
 5. diversity on company boards (in terms of age, gender, educational and professional background)

When this Directive does come into effect in 2018, it could provide the opportunity for host governments, civil society organizations and other stakeholders to compare claims made by extractive companies and what is actually obtainable in their operations. Currently, in Nigeria, all the extractive companies continue to pollute the environments through many oil spills as well as routine gas flaring.

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12.2.2 Do donors support host states to fulfill their duty to protect human rights and environmental, social and health standards, and ensure company compliance with human rights standards?

In terms of support for host governments to fulfil their duty to protect standards of human rights, and environmental, social and health protection, as well as ensure company compliance with human rights standards, the role of Donors has been mostly positive. Majority of respondents believe that international donor agencies have in fact invested energy and resources in financial and technical assistance aimed at strengthening the capacity of the government of Nigeria to protect the human, environmental and social rights of the people. There is evidence of this support. However, key respondents state that this support while potentially useful, has often not translated into the desired action on the part of government's. A good example of support to the government of Nigeria is the United Nations Environment Programme (UNEP) report on Ogoniland in 2011. The independent assessment of water and soil samples which led to the report was embarked upon after a request was made by the government of Nigeria. However, despite completing its assessment and releasing its report complete with recommendations on next steps in 2011, no actual clean-up of oil contamination, as recommended by UNEP has started after 6 years. While there has been some institutional strengthening to support the start of the clean-up through the creation of a Hydrocarbon Pollution Restoration Programme (HYPREP), and the release of \$10 million out of the expected \$1 billion, several respondents say this is too little given the time which has elapsed. The situation is compounded by the fact that pollution continues in the sites even after the report, and livelihood and drinking water

alternatives which the report recommends, are still yet to be implemented. On many occasions, the Nigerian government has not been willing to ensure that the environmental, health and human rights of its people are protected during extractive activities.

Information sources:

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12.2.3 Do lenders require the companies they finance to respect human rights and the highest standards of environmental, social and health protection?

- The World Bank's International Financial Corporation Sustainability Framework contains important commitments on the respect of human, social and environmental rights. According to IFC, its Sustainability Framework '***promotes sound environmental and social practices, encourages transparency and accountability, and contributes to positive development impacts.***' The current Framework adopted in 2012 was revised from an earlier 2006 version.

The Sustainability Framework states;

The Policy on Environmental and Social Sustainability, which defines IFC's commitments to environmental and social sustainability.

The Performance Standards, which define clients' responsibilities for managing their environmental and social risks.

As promising as the framework is, it has come under severe criticism especially relating to how its practices have instead engendered the type of problems it set out to address. A 2015 Oxfam Issue Briefing titled ***The Suffering of Others*** narrates how the third party financing model which is promoted by the IFC may have failed to ensure the protection of rights as well the highest standards of transparency.

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12.3 Corruption and Illicit Financial Flows

12.3.1 Do home governments maintain effective anti- corruption measures to reduce and prevent bribery and corruption?

- Home countries have also enacted specific accountability and anti-corruption laws to check the conduct of companies affiliated with them in their dealings in host countries. In the United States for instance, the Foreign Corrupt Practices Act (FCPA) of 1977, as amended has the aims to make it *'unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining businesses'*.

According to the United States Department of Justice, with the enactment of certain amendments in 1998, the anti-bribery provisions of the FCPA now also apply to foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States.

The Act equally requires companies whose securities are listed in the United States to meet its accounting provisions. These accounting provisions, which were designed to operate in tandem with the anti-bribery provisions of the FCPA, require corporations covered by the provisions to (a) make and keep books and records that accurately and fairly reflect the transactions of the corporation and (b) devise and maintain an adequate system of internal accounting controls. According to the US government, since 2009, it has resolved 'criminal cases against more than 50 corporations worldwide with penalties of approximately \$3 billion, and it has convicted more than 50 individuals, including CEOs, CFOs, and other high-level corporate executives, for FCPA and FCPA-related crimes.'

- Efforts by home governments of extractive companies to combat corruption by companies domiciled in their territories has seen the introduction of some far reaching initiatives aimed at curtailing bribery, illicit financial flow, tax evasion and encouraging financial information disclosure. In the United States, the Kleptocracy Asset Recovery Initiative established in 2010 by the Department of Justice seeks to bring about forfeiture of proceeds of corruption by foreign public officials and, where appropriate, to use those recovered assets to benefit the people harmed by these acts of corruption and abuse of office. This Initiative achieves this objective collaboration with the government of the host countries. Since its establishment, Nigeria has been a major beneficiary of the initiative; in fact the first case of the Initiative was that of DiepreyeAlamieyeseigha former sub national governor of Bayelsa State in Nigeria's Niger Delta. The Initiative has also been instrumental in the recovery of assets stolen by former military Head of State Sani Abacha. It is also within the provisions of the Kleptocracy Asset Recovery Initiative that a lawsuit was brought in 2015 against former Nigerian Petroleum Minister, Diezani Alison Madueke seeking to recover over \$144 million paid to the Minister in bribes. The

lawsuit which was filed in a federal court in Houston, alleging bribery for the award of lucrative contracts.

- The European Union on the 26 June 2015 delivered the 4th Anti-Money Laundering Directive (EU) No. 2015/849. The Directive which amends an earlier one takes into account 40 additional recommendations adopted by the Financial Action Task Force. Member states of the EU were mandated to Transpose the directive to their respective national laws by the 26th of June 2017.
- The United Kingdom became the first EU country to transpose the law making it mandatory for companies to disclose the ultimate beneficial owners of companies incorporated in the UK. Under the directive, Companies must keep a register of persons or entities that have significant control over them. *'On April 5, 2017, the government published a "call for evidence" inviting comments on proposals for a new public register that would record information about the beneficial ownership not only of overseas companies but of any overseas legal entity owning or wanting to buy property in the UK.'*
- In December 2016, Ordinance No. 2016- 1635 was passed in France, to transpose and implement the EU anti money laundering Directive. The Ordinance requires the registration of the beneficial owners of all companies registered in France by 1st August 2017. The Ordinance has the goal of strengthening French anti-money laundering legislation and addressing the financing of terrorism.
- In the United States attention shifted to the subject of beneficial ownership especially examining how the deficit of disclosure frameworks in that regard had contributed to making the US a major destination of illicit wealth. This mostly resulted from some of the high profile disclosures in 2016; notably the Panama Papers and Bahamas leaks. Following these, efforts were made to create the necessary frameworks to ensure proactive disclosure of beneficial owners as noted by the United State Extractive Industries Transparency Initiative (EITI) Beneficial Ownership Road Map. However, the Financial Action Task Force Mutual Evaluation Report of the United States published in 2016 indicated that the existing frameworks on the disclosure of beneficial ownership are faulty. According to the report, the *"lack of timely access to adequate, accurate and current beneficial ownership information remains one of the fundamental gaps in the US context"*. The Report also states that the United States does not go *"far enough to pierce the corporate veil of secrecy, which leaves the US financial system vulnerable to illicit activity and constitutes a significant counter-terrorism financing (CTF) risk."*
- In what seems to be a response to the above noted weakness, US Senators Marco Rubio and Ron Wyden jointly introduced Senate Bill 1717, entitled the **"Corporate Transparency Act of 2017"**. The Act would require the collection of beneficial ownership information for corporations and limited liability companies ("LLCs") formed or registered in the United States. A companion bill was introduced in the House of Representatives on June 28, 2017, by Representative Carolyn B. Maloney (D-NY), and was referred to the House Committee on Financial Services. *"The Act would direct the*

U.S. Department of the Treasury to issue regulations requiring entities formed or registered in the United States to declare their beneficial owners – natural persons who, directly or indirectly, exercise substantial control over the company or have a substantial interest in, or receive substantial economic benefit from, the company. The Act would require that beneficial owners: (i) be identified by name; (ii) disclose a current residential or business street address; and (iii) provide a unique identifying number from a non-expired U.S. passport or a non-expired U.S. driver’s license (foreign persons must provide a copy of their non-expired foreign government-issued passport)”.

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12.3.2 Do international organizations work to reduce illicit financial transactions?

The international community has established important conventions and frameworks at the international and regional levels to tackle corruption and illicit financial transactions. While Nigeria has shown support for these rules, actual in-country use has been very poor. Some of these rules include the following as captured by the 2012 and 2014 Benchmarking Reports;

- The United Nations Convention against Corruption, UNCAC is a UN Convention promoted by the Office on Drugs and Crime (UNODC) and negotiated by member states most of whom have signed on to it, aimed at reducing the occurrence of corruption across country borders. In 2013, the Conference of the States Parties to the United Nations Convention against Corruption, the main policy making body of the Convention extended participation to the private sector. The Convention requires state parties to the

treaty to implement several anti-corruption measures that focus on five main areas: prevention, law enforcement, international cooperation, asset recovery, and technical assistance as well as information exchange. Part of Nigeria's commitment under the UNCAC is to subject itself to periodic peer review of its compliance under the Convention. In 2013, this review exercise was carried out by Lesotho and Montenegro. While scoring Nigeria high on the availability of laws to support the fight against corruption, it scored it low on lack of coordination in anti-corruption efforts. The 2014 Benchmarking Exercise Report stated that with the passing of Nigeria's Freedom of Information Act in 2011, there was a real opportunity for the effectiveness of UNCAC in Nigeria. However, this has not been the case. While the Act exists, its utilization and implementation has been low. At the sub national level, the case is worse. Majority of states have declared that the Act does not apply to them until they choose to domesticate it. In a single year, two Nigerian courts ruled that the Act was both applicable to state and not applicable. In reality, the availability of laws against corruption in Nigeria has hardly translated into serious efforts at tackling the menace.

- The African Union Convention for Preventing and Combating Corruption was established by the African Union in 2003. Nigeria ratified it in 2006. The Convention has the principal objective of promoting the development of African Countries through the prevention, detection, punishment and eradication of corruption and related offences in the public and private sectors; as well as harmonize member state policies to achieve this. However, as noted in the 2012 and 2014 Benchmarking Exercise reports, the AU CPCC has not been effective in addressing corruption.
- Similarly, the ECOWAS Protocol on the Fight against Corruption established in 2001 with the same objectives as the AU CPCC has equally not lived up to its potential.
- A more active regional framework for combating corruption is perhaps the Inter-Governmental Action Group against Money Laundering in West Africa, GIABA. Established in 1999 by ECOWAS, the group aims at the protection of West African economies and financial systems against Money Laundering. Despite the traction it has generated, experts are of the opinion that it has not done enough to reduce money laundering and illicit financial flows in the sub region.
- The Stolen Asset Recovery Initiative (StAR) is perhaps one of the most effective frameworks for the recovery of stolen assets on a global scale. The initiative is a collaboration between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) aimed at ending safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets. Nigeria has been one of the attention of the initiative. In all, there have been 33 cases involving the recovery of Nigeria's stolen assets. These cases range from those against former military head of state; Sani Abacha to those brought in the UK and the US against

Former Delta governor James Ibori. Some of these cases are still ongoing at the time of this research. While this initiative has been mostly hailed as being a worthy example of the support of the international community in combating corruption, it has received criticism for the slow pace of recovery. This is particularly significant given the fact that most of the stolen assets being pursued for recovery are located in key international community countries- United States 65, Switzerland 33 and the United Kingdom 26.

- The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its member jurisdictions. The Task Force exists to set standards and facilitate the implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. As a policy making framework, the FATF support countries to carry out reforms and actions needed to achieve its goals. The 2014 benchmarking Exercise Report records that as at 2012, FATF deemed Nigeria to not have made significant progress with its overall anti-money-laundering agenda. This assessment may have worsened. Nigeria currently faces possible suspension and expulsion by an ancillary group of the FATF, the Egmont Group which is a body of 154 financial intelligence units (FIUs) across the world providing exchange of expertise and financial intelligence to combat money laundering and terrorist financing. The Group mandates countries to establish a financial intelligence unit that serves as a national centre for the receipt and analysis of (1) suspicious transaction reports; and (2) other information relevant to money laundering, associated predicate offences and financing of terrorism, and for the dissemination of the results of that analysis. The Group provides members access to banking details of people under investigation in all of the participating countries. (It is important to note that US, UK, France and Italy are members of the Egmont Group). Nigeria began receiving criticism on account of leakages of secure information relating to cases under investigation, and its failure to make the Nigeria Financial Intelligence Unit autonomous as required by the Group. The Unit is currently embedded in the Economic and Financial Crimes Commission. Suspension or expulsion will mean that Nigeria can no longer access secure information or enjoy global assistance in its fight against corruption and repatriation of stolen assets and resources.
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was launched in 1997, with the aim of dis-incentivizing and criminalizing the bribery of foreign public officials in international business transactions. The 2014 Benchmarking Exercise reported that the monitoring mechanisms of the OECD ABC are fairly weak, and lacks a sanction mechanism and a strong sectoral focus. Its utilization depends principally on national legal instruments, some of which are either too slow or complex.
- The African Development Bank's Integrity and Anti-Corruption Department was created specifically to address issues related to corruption in financial dealing in member states. The body has the mandate to **'carry out independent investigations into allegations**

of corruption, fraud and other sanctionable practices in Bank Group Financed Operations'. The Anti-Corruption Department also *“develops preventive measures to proactively reduce the potential for corruption, fraud, misconduct and other sanctionable practices within Bank Group Financed Operations”*.

- However there have been some positive changes especially in strengthening local actors and institutions to take action against corruption through the United Nations Global Compact (UNGC). The 2017 United Nations Global Compact Progress Report indicates strong growth in the number of companies with policies related to Human Rights and Anti-Corruption so that now over 90% of companies that have joined the UN Global Compact have policies in place on all the UN Global Compact Ten Principles of responsible business. However, there are challenges in turning policies into action, with a significantly lower number of companies setting targets, conducting impact assessments or monitoring performance.
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