

2019
BENCHMARKING
EXERCISE
REPORT



DECEMBER 2019

RESEARCH PARTNERS



| | | |
|------------|---|---------------|
| PRECEPT 1 | Strategy, legal framework, and institutions | CPPA |
| PRECEPT 2 | Transparency and accountability | CPPA |
| PRECEPT 3 | Exploration, licensing, and monitoring operations | CPPA |
| PRECEPT 4 | Taxation and other company payments | CSJ |
| PRECEPT 5 | Local impacts | CSSD |
| PRECEPT 6 | State-owned enterprises | CSEA |
| PRECEPT 7 | Investing for growth | CSEA |
| PRECEPT 8 | Expenditure volatility | CSEA |
| PRECEPT 9 | Public spending | CSJ |
| PRECEPT 10 | Private sector development | CPPA |
| PRECEPT 11 | Role of extractive companies | CSSD |
| PRECEPT 12 | Role of international community | Social Action |

Table of contents

| | |
|--|-----|
| LIST OF ABBREVIATIONS | 4 |
| ABOUT THE NIGERIAN NATURAL RESOURCE CHARTER (NNRC) | 10 |
| OVERALL PRECEPT SCORES..... | 13 |
| PRECEPT 1: STRATEGY, LEGAL, AND INSTITUTIONAL FRAMEWORK..... | 17 |
| 1.1 Fundamentals of resource endowments | 20 |
| 1.2 Resource strategy | 29 |
| PRECEPT 2: TRANSPARENCY AND ACCOUNTABILITY | 40 |
| 2.1 Transparency | 43 |
| 2.2 Official oversight | 51 |
| 2.3 Communication and public oversight..... | 60 |
| PRECEPT 3: EXPLORATION, LICENSING, AND MONITORING OPERATIONS | 66 |
| 3.1 Licence planning..... | 70 |
| 3.2 Awarding resource licences..... | 75 |
| 3.3 Monitoring operations..... | 80 |
| PRECEPT 4: TAXATION AND OTHER COMPANY PAYMENTS | 83 |
| 4.1 Setting fiscal terms | 87 |
| 4.2 Legal framework of fiscal terms | 97 |
| 4.3 Tax administration | 99 |
| 4.4 Accountability and transparency of fiscal regimes..... | 105 |
| PRECEPT 5: MANAGING LOCAL IMPACTS..... | 109 |
| 5.1 Trust..... | 114 |
| 5.2 Impact assessment | 122 |
| 5.3 Cost mitigation | 124 |
| 5.4 Local benefits..... | 133 |
| PRECEPT 6: STATE-OWNED ENTERPRISES: NNPC | 135 |
| 6.1 SOE role and funding..... | 138 |
| 6.2 SOE corporate governance | 142 |
| 6.3 SOE transparency and accountability..... | 144 |
| PRECEPT 7: INVESTING FOR GROWTH..... | 148 |
| 7.1 Current and future needs..... | 151 |
| 7.2 Absorptive capacity | 160 |

| | |
|---|-----|
| PRECEPT 8: EXPENDITURE VOLATILITY | 164 |
| PRECEPT 9: PUBLIC SPENDING | 173 |
| 9.1 Public spending planning..... | 179 |
| 9.2 Revenue distribution..... | 186 |
| 9.3 Revenue and project execution..... | 193 |
| 9.4 Accounting, reporting, and oversight of public spending | 200 |
| PRECEPT 10: PRIVATE SECTOR DEVELOPMENT | 206 |
| 10.1 Private sector enabling environment | 209 |
| 10.2 Local content | 224 |
| PRECEPT 11: ROLE OF EXTRACTIVE COMPANIES | 228 |
| 11.1 Trust..... | 231 |
| 11.2 Sustainable development | 238 |
| 11.3 Corporate integrity..... | 240 |
| PRECEPT 12: ROLE OF INTERNATIONAL COMMUNITY | 245 |
| 12.1 Transparency..... | 246 |
| 12.2 Human rights and environmental, social and health protection | 246 |
| 12.3 Corruption and illicit financial flows..... | 246 |

LIST OF ABBREVIATIONS

| | |
|---------|--|
| AA | Annual Allowance |
| ACU | Average Capacity Utilisation |
| AG | Associated Gas |
| ATM | Average Time-To-Maturity |
| BER | Benchmarking Exercise Report |
| BHCPF | National Basic Healthcare Provision Fund |
| BIR | Budget Implementation Report |
| BOI | Bank of Industry |
| BOR | Beneficial Ownership Register |
| BPP | Bureau of Public Procurement |
| BSF | Budget Support Facility |
| CAC | Corporate Affairs Commission |
| CAMA | Company and Allied Matters Act |
| CBCR | Country-By-Country Reporting |
| CBN | Central Bank of Nigeria |
| CIT | Corporate Income Tax |
| CITA | Companies Income Tax Act |
| CNOOC | China National Offshore Oil Corporation |
| CordAid | Catholic Organization for Relief and Development Aid |
| CPPA | Centre for Public Policy Alternatives |
| CSEA | Centre for the Study of the Economies of Africa |
| CSJ | Centre for Social Justice |
| CSSD | Centre for Social Studies and Development |
| CSO | Civil Society Organisation |
| CU | Capacity Utilisation |
| DFID | UK Department for International Development |

| | |
|---------|--|
| DMO | Debt Management Office |
| DOFMC | Downstream Operations and Financial Monitoring Centre |
| DPR | Department of Petroleum Resources |
| DSA | Debt Sustainability Analysis |
| EAU | Environmental Audit |
| EBITDA | Earnings before Interest, Tax, Depreciation and Amortization |
| ECA | Excess Crude Account |
| ECOWAS | Economic Community of West African States |
| EFCC | Economic and Financial Crimes Commission |
| EGASPIN | Environmental Guidelines and Standards for the Petroleum Industry in Nigeria |
| EIA | Environmental Impact Assessment |
| EITI | Extractive Industry Transparency Initiative |
| ERGP | Economic Recovery and Growth Plan |
| ESHRIA | Environmental Social and Human Rights Impact Assessment |
| FAAC | Federation Account Allocation Committee |
| FCPA | Foreign Corrupt Practices Act |
| FCT | Federal Capital Territory |
| FDI | Foreign Direct Investment |
| FDP | Field Development Plans |
| FEC | Federal Executive Council |
| FEPA | Federal Environmental Protection Agency |
| FIRS | Federal Inland Revenue Services |
| FIU | Financial Intelligence Unit |
| FMOJ | Federal Ministry of Justice |
| FOI | Freedom of Information |
| FPSO | Floating Production Storage and Offloading |
| FRA | Fiscal Responsibility Act |

| | |
|---------|---|
| GAVI | Global Alliance for Vaccines and Immunisation |
| GDP | Gross Domestic Product |
| GIFMIS | Government Integrated Financial Monitoring Information System |
| GMD | Group Managing Director |
| GMOU | Global Memorandum of Understanding |
| GOE | Government-Owned Enterprise |
| HYPREP | Hydrocarbon Pollution Remediation Project |
| ICPC | Independent Corrupt Practices and Other Related Offences Commission |
| ICT | Information and Communication Technology |
| IDSL | Integrated Data Services Limited |
| IFC | International Finance Corporation |
| IGR | Internally Generated Revenue |
| IIAG | Ibrahim Index of African Governance |
| IJV | Incorporated Joint Venture |
| IMF | International Monetary Fund |
| IOC | International Oil Company |
| JTF | Joint Task Force |
| JV | Joint Venture |
| LNG | Liquefied Natural Gas |
| LPG | Liquefied Petroleum Gas |
| MBPD | Million Barrels Per Day |
| MDA | Ministries, Departments, and Agencies |
| MMbbbls | Million Barrels |
| MOU | Memorandum of Understanding |
| MRA | Media Rights Agenda |
| MTEF | Medium-Term Expenditure Framework |
| MTSS | Medium-Term Sector Strategies |

| | |
|--------|---|
| MTPA | Million Tonnes Per Annum |
| NAG | Non-Associated Gas |
| NAOC | Nigerian AGIP Oil Company |
| NAP | National Action Plan |
| NAPIMS | National Petroleum Investment Management Services |
| NBS | National Bureau of Statistics |
| NCC | National Communications Commission |
| NCDMB | Nigerian Content Development and Monitoring Board |
| NDDC | Niger Delta Development Commission |
| NDR | National Data Repository |
| NEEDS | National Economic Empowerment and Development Strategy |
| NEITI | Nigerian Extractive Industry Transparency Initiative |
| NFIU | Nigeria Financial Intelligence Unit |
| NGFCP | Nigeria Gas Flare Commercialisation Programme |
| NGP | National Gas Policy |
| NHIS | National Health Insurance Scheme |
| NILDS | National Institute for Legislative and Democratic Studies |
| NIMASA | Nigerian Maritime Administration and Safety Agency |
| NIP | National Implementation Plan |
| NIRP | National Industrial Revolution Plan |
| NLNG | Nigeria Liquefied Natural Gas |
| NNPC | Nigerian National Petroleum Corporation |
| NNRC | Nigerian Natural Resource Charter |
| NOCOPO | Nigeria Open Contracting Portal |
| NOGIAR | Nigerian Oil and Gas Industry Annual Report |
| NOGICD | Nigerian Oil and Gas Industry Content Development |
| NOSDRA | National Oil Spill Detection and Response Agency |

| | |
|-------|---|
| NPC | National Petroleum Company |
| NPDC | National Petroleum Development Corporation |
| NPFP | National Petroleum Fiscal Policy |
| NPP | National Petroleum Policy |
| NPRC | National Petroleum Regulatory Commission |
| NRC | Natural Resource Charter |
| NRGI | Natural Resource Governance Institute |
| NSIA | Nigerian Sovereign Investment Authority |
| OAGF | Office of the Accountant General of the Federation |
| OECD | Organization for Economic Cooperation and Development |
| OEL | Oil Exploration Licence |
| OGP | Open Government Partnership |
| OML | Oil Mining Licence |
| OPEC | Organization of Petroleum Exporting Countries |
| OPFR | Oil Price-Based Fiscal Rule |
| OPL | Oil Prospecting Licence |
| PEF | Petroleum Equalisation Fund |
| PEBEC | Presidential Enabling Business Environment Council |
| PIA | Petroleum Investment Allowance |
| PIB | Petroleum Industry Bills |
| PIAB | Petroleum Industry Administrative Bill |
| PIGB | Petroleum Industry Governance Bill |
| PLAC | Policy and Legal Advocacy Centre |
| PPMC | Pipelines and Product Marketing Company |
| PPPRA | Petroleum Products Pricing Regulatory Agency |
| PPT | Petroleum Profit Tax |
| PPTA | Petroleum Profit Tax Act |
| PSC | Production Sharing Contract |

| | |
|--------|---|
| PTDF | Petroleum Technology Development Fund |
| QCE | Qualifying Capital Expenditure |
| RGI | Revenue Governance Index |
| RMAFC | Revenue Mobilisation Allocation and Fiscal Commission |
| RRT | Resource Rent Tax |
| RSC | Risk Service Contract |
| SA | Social Action |
| SCFD | Standard Cubic Feet Per Day |
| SEC | Securities and Exchange Commission |
| SIA | Strategic Impact Assessment |
| SIP | Social Investment Programme |
| SNEPCO | Shell Nigeria Exploration and Production Company |
| SPDC | Shell Petroleum Development Company |
| SRO | Sole Risk Operator |
| STAR | Stolen Asset Recovery |
| SWF | Sovereign Wealth Fund |
| SWV | Service Wide Votes |
| TCF | Trillion Cubic Feet |
| TSA | Treasury Single Account |
| UNEP | United Nations Environment Programme |
| UNGP | United Nations Guiding Principles |
| UNODC | United Nations Office on Drugs and Crime |
| VAT | Value Added Tax |
| ZBB | Zero Based Budgeting |

ABOUT THE NIGERIA NATURAL RESOURCE CHARTER

A 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 12 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 NRC?

The charter does not prescribe specific approaches, but instead identifies 12 broad 'precepts' that 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 realise 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: *Expenditure volatility*:** 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 organisations should promote an upward harmonisation of standards to support sustainable development.

About the Benchmarking Exercise Report (BER)

This report is the fourth in a series of BERs produced by the NNRC carried out to provide an assessment of the governance of Nigeria's petroleum wealth. Three previous exercises were conducted and published in 2012, 2014, and 2017 respectively. This BER uses the NRC framework developed by a diverse set of internationally renowned experts on natural resource management to conduct detailed and contextual assessments of the country's oil and gas industry. 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 2019 edition, the NNRC entered into a partnership with a consortium of Civil Society Organisations (CSOs) comprising of the Centre for Public Policy Alternatives (CPPA), We the People: Centre for Social Studies and Development (CSSD), 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, and 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 2019 benchmarking exercise was carried out by CPPA, CSJ, CSEA, We the People CSSD, and SA on behalf of the NNRC.

Oversight and coordination was provided by the Programme Coordinator of the NNRC, Tengi Goerge-Ikoli.

| Expert panel | Expertise | Expert panel | Expertise |
|-------------------------|-------------------|-------------------------|-----------------|
| Mr Odein Ajumogobia | Upstream issues | Mr Tunji Lardner | Social issues |
| Prof. Asisi Asobie | Social issues | Mrs Lois Machunga | Upstream issues |
| Dr Otivelgbuzor | Social issues | Prof. Adeola Adenikinju | Public finance |
| Mr Ademola Adeyemi-Bero | Upstream issues | Prof. Akpan Ekpo | Public finance |
| Mr Osten Olorunsola | Upstream issues | Prof. Ukoha Ukiwo | Public finance |
| Ms Ronke Onadeko | Downstream issues | Dr (Mrs) Oby Ezekwesili | 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 was 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, CSOs, research institutions, and industry experts.

A combination of qualitative and quantitative analysis was used to examine data collected from the various sources, which served to strengthen or weaken the initially conceived hypothesis. Further triangulation of the developed hypothesis allowed existing concepts or positions to be refuted or reinforced.

Responses were also 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 benchmarking 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.

Finally, the research findings were further scrutinised by various stakeholder groups, subject matter experts, and the expert advisory panel as part of validation and scoring workshops. This subjected the results to additional analysis and resulted in a well-rounded assessment of the sector.

For the 2019 edition, the overall precept colours based on the traffic light system remain the same as the last BER; however, directional arrows have been reintroduced to signify notable developments that have occurred during the review period. Upward- (↑) and downward- (↓) facing arrows indicate positive and negative changes respectively. An equal to (=) sign means no significant change occurred during the review period.

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 the government. This BER 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

Gaps remain in the institutional and legal frameworks of the oil and gas sector, as none of the components of PIB or CAMA (as well as other critical pieces of legislation) have been signed into law. Deteriorating domestic refining capacity over the past few years makes the reduction of petroleum product imports less likely. While NEITI released a publicly available BOR (a step towards transparency), the lack of appropriate legislation (CAMA) to back the BOR threatens its efficacy. The government is, however, taking steps to implement a gas commercialisation programme to reduce gas flaring and emission levels.



Precept 2: Transparency and accountability

Notable changes were observed regarding the disclosure of oil and gas related data, which now cover more data points, although timeliness can be improved. More agencies under the Ministry of Petroleum Resources also disseminate updated data through their website as opposed to the previous benchmarking cycle, when some agencies lacked functional websites. In addition, although legal backing to enforce compliance is yet to be enacted, a BOR has been released by NEITI. However, during the period under review, transformative and anticipated legislation and amendments expected to improve access to information and disclosures such as PIGB, CAMA, the Whistle-Blowers Protection Bill and the Witness Protection Programme Bill suffered major setbacks and are yet to become law. Civic and press freedoms were also threatened, with journalists and activists subjected to undue harassment, unlawful arrests, and detention by law enforcement agents.



Precept 3: Exploration, licensing, and monitoring operations

No significant improvements since 2017; some developments with the collection and disclosure of data were observed. Still, critical anticipated legislation and amendments to existing laws that would enshrine sustainable and equitable licencing practices in the oil and gas sector did not become law during the review period. These include the Petroleum Industry Administrative Bill (PIAB) and the Environmental Impact Assessment EIA Act. The Petroleum Minister still retains discretionary powers over the award of licences and attempts to limit those powers were thwarted by the withheld assent to the Petroleum Industry Governance Bill (PIGB).



No major bid rounds were conducted during the review period; the absence of much-needed reforms backed by legislation implies that the licensing process could still be abused.

Precept 4: Taxation and other company payments

There have been some changes since the 2017 Benchmarking Exercise. Nigeria continues to operate both a licensing and a contractual regime. The government has not totally minimised the use of costly and non-essential investment incentives although there have been recent amendments to the Deep Offshore and Inland Basins PSC Act of 2004. Reforms to the legal framework and fiscal terms to improve accountability are still required. The extractive companies still face multiple taxes and levies while access to direct information on fiscal terms in oil and gas contracts remains difficult to obtain.



Precept 5: Local impacts

No remarkable changes have occurred since the 2017 BER. Key legislation to ensure the participation of communities, protect the environment, mitigate costs, respect rights, and ensure that communities benefit from extractive projects suffered setbacks in the period. Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA) processes are still weak; the government agencies responsible for enforcing compliance with regulations are still performing below average; and the mechanisms to ensure community trust is gained are largely ineffective principally on account government institutional weaknesses. Nigeria’s ranking on local impacts falls far below NRC recommendations.



Precept 6: State-owned enterprises

Change in the Nigerian National Petroleum Corporation (NNPC)’s leadership in the review period has not altered the corporation’s recent practice of disclosing selective unaudited operational and financial information. However, the lack of legal provisions mandating such practices raises sustainability concerns. Furthermore, stalled petroleum industry reform in the 8th National Assembly leaves firmly left in place several factors limiting NNPC’s ability to operate transparently with the objective of being commercially viable in a competitive environment. However, changes to NNPC’s funding arrangement has improved its ability to meet its joint venture capital obligations.



Precept 7: Investing for Growth

A key essence of petroleum resource management is to satisfy today’s needs while ensuring sufficient savings for future generations and a rainy day. Unfortunately, the resource revenue distribution remains skewed in favour of the current generation. The share of capital expenditure is low and the debt–revenue ratio has increased to 293%, exceeding the 250% level recommended for optimal fiscal sustainability. This development implies a high financial burden for future generations. The existing fiscal frameworks are comprehensive and emphasise long-term fiscal sustainability. However, selective compliance at the federal level and the outright absence of fiscal rules at the sub-national level has affected the effectiveness of the fiscal framework. However, a key area of improvement is observed regarding the monetary policy. Monetary authority interventions have stemmed the negative impact of revenue dependence by moderating



inflation and exchange rates. This has stabilized the economy and enhanced the economic recovery process, but weakness at the fiscal end has generated a sub-optimal economic growth.

Precept 8: Stabilising expenditure

Government expenditure has been on an upward trajectory, with the recurrent component dominating the expenditure profile. The increase in capital expenditure was mainly from debts for infrastructure financing. The debt has also been used in smoothing the domestic spending due to revenue volatility. However, there are substantial gaps in compliance with fiscal measures to improve savings from resource revenue. The Sovereign Wealth Fund (SWF), despite its transparent and effective management as well as the increase in the total seed capital, it is still grossly underfunded as compared with Norway with around \$1 trillion. By implication, the SWF’s primary objectives and functions of economic stabilization through diversification and wealth generation for future generations may be underachieved.



Precept 9: Public spending

There has been no significant improvement in performance against the NRC benchmark since 2017. Capital expenditure allocation has been on the increase in nominal terms since 2016, reflecting the reflationary policy of the federal government. However, without full implementation as has perennially been the case, the objectives of the Economic Recovery and Growth Plan (ERGP) on increasing capital projects’ allocations and also to improving the quality of capital spending, with a view to attaining a ratio of capital expenditure to total budget of 30% to 35% cannot said to have been met. Revenue generation shortfall has been identified as one of the key causes of the budget realism challenge. The enacted Audit Service Commission Reform Bill (2018) by the 8th National Assembly was neither assented to nor declined assent by the President.



Precept 10: Private sector development

There have been no overall changes in the outcome of government’s efforts to improve the performance of the private sector in the country between 2017 and 2019. Nigeria recorded improvement in the Doing Business ranking, but reforms are yet to include all stakeholders in the informal sector, while infrastructural deficits remain the largest bottlenecks to doing business in the country. The government has taken notable steps to improve access to healthcare, although investment in human capital is yet to translate to tangible outcomes in human capital indices. Despite affirmative action, the share of women occupying decision making positions has reduced in the last few years. Nonetheless, steps towards ensuring that women are able to participate in the economy are being implemented. The country also recorded notable developments in Nigerian content participation in the oil and gas industry.



Precept 11: Role of extractive companies

There were improvements in this regard in the period under review. Notably, multinational oil companies have continued to initiate programmes and interventions to engage affected communities and contribute to national development. However, the level of engagement with affected communities is limited by the fact that Nigeria’s EIA Act and other legislations do not specifically make such engagements a mandatory requirement. Even when communities attempt to utilise the limited opening for public participation in the EIA Act, they are confronted with systemic challenges including their capacity to engage and contribute given their limited knowledge and understanding.

In terms of benefit transfers, local content promotion policies have been integrated into oil industry practices as a way of ensuring that locals and the national interest benefits from the oil industry beyond direct revenue payments. However, the extent of compliance and enforcement is still substantially limited.

The main oil companies operating in Nigeria have all produced strict policies on corporate integrity, especially against corruption. Measures have been put in place to ensure these policies are relevant to all staff and partners of the companies.



Precept 12: Role of the international community


Despite the roll-back from the repeal of the Dodd-Frank Act in 2017, there have been some significant improvements in the efforts by international community in promoting upward harmonisation of standards to support sustainable development in resource countries. While the 2017 the NNRC report noted lack of enforcement mechanism in the standards promoted by the international community, the 2019 Benchmarking Exercise Report (BER) revealed significant efforts at ensuring compliance of resource projects to international best practices and standards with mechanisms to monitor implementation.



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.







| | |
|---|---|
| <p>Overall precept score</p> | |
| <p>Precept 1: Strategy, legal, and institutional framework</p> <p>Gaps remain in the institutional and legal frameworks of the oil and gas sector, as none of the components of PIB or CAMA (as well as other critical pieces of legislation) have been signed into law. Deteriorating domestic refining capacity over the past few years makes the reduction of petroleum product imports less likely. While NEITI released a publicly available BOR (a step towards transparency), the lack of appropriate legislation (CAMA) to back the BOR threatens its efficacy. The government is, however, taking steps to implement a gas commercialisation programme to reduce gas flaring and emission levels.</p> |  |

Overview of the questions and ratings

1.1 FUNDAMENTALS OF THE RESOURCE ENDOWMENT

| | |
|---|---|
| 1.1.1 Has the government clearly established who owns oil and gas resources and is this accepted by all? |  |
| 1.1.2 Does the government have a well-informed understanding of the country's oil and gas endowments as a finite asset? |  |
| 1.1.3 Does the government have a realistic and sound understanding of how dependent the country is on oil and gas 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 implementation of 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 the 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 recognises the Federal Government as the trustee of natural resources. However, there are continuous agitations on the part of host communities for control and more benefits from resource extraction.
- To increase the transparency on ownership of companies operating in the oil and gas industry, a beneficial ownership register (BOR) has been released by NEITI, although appropriate legislation backing the BOR is yet to be enacted.
- The government has made a move towards reducing the negative effects of exploitation through a gas commercialisation programme aimed at reducing flared gas. However, progress on the clean-up of oil spills in Ogoni Land in Rivers State has not gained much traction partly because of the inadequate capacity of the project handlers.

Resource strategy

- Between 2017 and 2019, average capacity utilisation (ACU) in domestic crude oil refineries worsened, dropping from 8% in 2017 to less than 4% during the first seven months of 2019. This is a long way from achieving the government's set targets to reduce petroleum products imports by 60% in 2018 and become a net exporter of refined petroleum by 2020. At the current pace, the government is unlikely to achieve the latter. The oil sector and economic performance also fell short of benchmarks specified in policy documents—evidence of inadequate planning and analysis put into the formulation of strategy documents by state actors supports this.
- Gaps still exist in the institutional and legal frameworks of the oil and gas sector. The non-passage of PIB creates a further setback for reform in the sector.

1.1 Fundamentals of resource endowments

1.1.1 Has the government clearly established who owns oil and gas resources and is this accepted by all?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Legal provisions recognise the Federal Government as the trustee of natural resources on behalf of the citizens of Nigeria. According to Chapter IV, Section 44(3) of the Constitution of the Federal Republic of Nigeria (1999), 'the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.' Section 1(1) of the Petroleum Act (1969) also states that 'the entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.'

Notwithstanding, enduring neglect of host communities in the Niger Delta by successive governments at all levels (federal, state, and local) has resulted in distrust, restiveness, and attendant conflict. The communities challenge the revenue-sharing formula for the oil and gas proceeds that accrue to them. Revenue generated from oil companies is remitted to the Federal Government, which in turn redistributes the revenue through federal allocations and special mechanisms such as the derivation formula, which currently stands at 13%. Other sources of conflict include (but are not limited to) destroyed livelihoods resulting from oil spillage and issues of beneficial ownership, whereby ownership of oil and gas companies are shrouded in secrecy.

Since 2016, Nigeria is committed to transparency and accountability in the extractives sector through the Open Government Partnership (OGP) initiative, such as establishing a BOR and open contracting in priority Ministries, Departments, and Agencies (MDA) such as Petroleum, Power, Transportation, Works, Agriculture, Health, Education, Niger Delta, Environment, and Solid Minerals. So far, plans are underway by the Corporate Affairs Commission (CAC) to establish the BOR, the implementation of which will be preceded by amendment of the 1990 CAMA. In May 2018, a new CAMA incorporating beneficial ownership was passed by the Senate but is yet to be signed by the President. Nevertheless, the Department of Petroleum Resources (DPR) in partnership with NEITI has developed a BOR launched in December 2019. Ahead of the anticipated release of a comprehensive BOR by DPR, a register for the oil and gas sector was launched on 12 December 2019 by NEITI. The register shows ownership information about some oil and gas companies and assets in the country. Enforcing compliance on all companies operating in Nigeria's oil and gas industry to disclose beneficial owners may be a challenge, however, due to the absence of legal backing as a result of the delay in amending CAMA.

Finally, the Nigeria Open Contracting Portal (NOCOPO)—dedicated to ‘increased disclosure of procurement information to all stakeholders’—is purportedly fully operational and run by the Bureau of Public Procurement (BPP). Procuring entities are expected to upload their procurement information to the platform for ease of accessibility by citizens, CSOs, and the private sector, although compliance by requisite public institutions is low.

Information sources

Federal Republic of Nigeria (1999) Constitution: available at https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf

Petroleum Act (1969): available at <https://resourcegovernance.org/analysis-tools/publications/nigeria-1969-petroleum-act>

PIGB (declined assent): available at www.petroleumindustrybill.com/2018/08/28/buhari-rejects-the-pigb/#more-1063

<https://punchng.com/restructuring-will-restore-niger-deltas-stolen-wealth-pandef/>

<https://punchng.com/niger-delta-community-seeks-local-protection-of-pipelines/>

www.vanguardngr.com/2018/06/1006354/

<https://home.kpmg/ng/en/home/insights/2018/11/Key-highlights-of-the-Companies-and-Allied-Matters-Act-Bill-2018.html>

www.opengovpartnership.org/stories/lessons-from-reformers-nigerias-push-for-beneficial-ownership-transparency-in-procurement-and-in-the-extractives-sector/

<http://bo.neiti.gov.ng/>

Extract of interview with Akinwunmi Oke, Advocacy Coordinator, CordAid Nigeria

1.1.2 Does the government have a well-informed understanding of the country’s oil and gas endowments as a finite asset?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Publicly available information suggests that the government is well-informed about the country’s oil and gas endowments. This is communicated through publications by DPR and NNPC and its subsidiaries, the Central Bank of Nigeria (CBN), the National Bureau of Statistics (NBS), and NEITI.

An examination of the 2018 Nigerian Oil and Gas Industry Annual Report (NOGIAR) showed that there are 387 oil blocks available for development with 174 allocated and 213 unallocated blocks,

implying that a considerable resource potential remains untapped (Table 1.1). For natural gas reserves, there was a decrease in the volume of non-associated gas (NAG) from 102.73 trillion cubic feet (TCF) in 2017 to 98.81 TCF in 2018, while there was an increase in the volume of associated gas (AG) from 96.36 TCF in 2017 to 101.98 TCF in 2018, which was enough to marginally increase the total gas volume (Table 1.2).

Table 1.1 Status of oil blocks as at December 2018

| S/N | Basin | Allocated | | Open | Total number of blocks |
|-----|---------------------------------|-------------------------------|--------------------------|------------|------------------------|
| | | Oil Prospecting Licence (OPL) | Oil Mining Licence (OML) | | |
| 1 | Anambra | 6 | 1 | 12 | 19 |
| 2 | Benin | 3 | 1 | 6 | 10 |
| 3 | Benue Trough | 2 | 0 | 41 | 43 |
| 4 | Bida | 0 | 0 | 17 | 17 |
| 5 | Chad | 6 | 0 | 40 | 46 |
| 6 | Niger Delta (onshore) | 13 | 56 | 5 | 74 |
| 7 | Niger Delta (Continental Shelf) | 12 | 37 | 6 | 55 |
| 8 | Niger Delta (offshore) | 19 | 18 | 58 | 95 |
| 9 | Sokoto | 0 | 0 | 28 | 28 |
| | Total | 61 | 113 | 213 | 387 |

Source: DPR (2018) NOGIAR

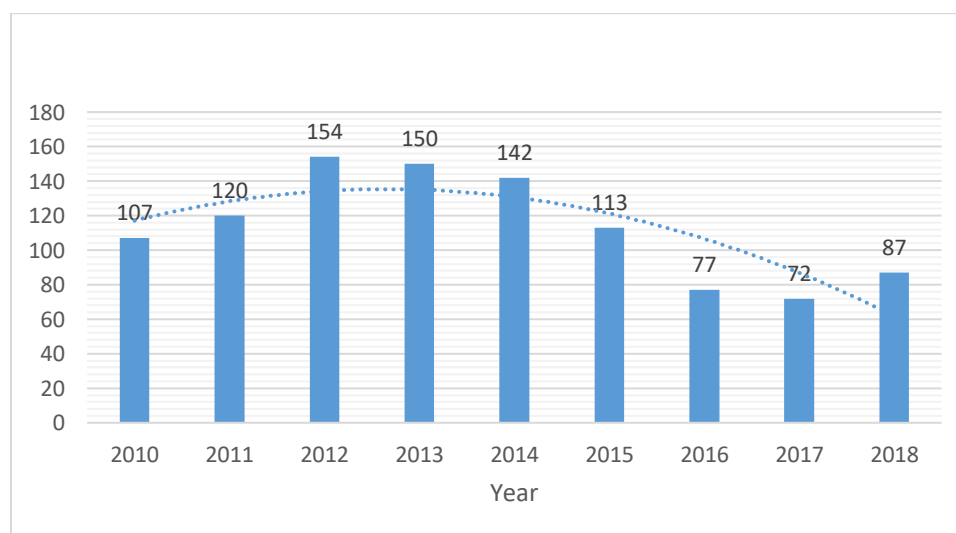


Figure 1.1 Number of wells drilled
Source: DPR (2018) NOGIAR

The government’s drive to expand the oil reserve base and its limit on production is influenced primarily by the need to generate revenue, but also more significantly by internal security

challenges and external factors in the international crude oil market. While the government has struggled to successfully curb security risks in oil-producing and frontier regions, developments in the global crude oil market are largely beyond the country's control. The government had earlier set a target to increase the country's crude oil reserves to 40 billion barrels by 2010, but set a new target year of 2020 in 2017 when it failed. According to available data from DPR, oil reserves have remained relatively stagnant at around 37 billion barrels, indicating an insignificant net addition to reserves. To achieve the set target, the government needed a net addition to reserves of 3 billion barrels of crude oil within three years, which has proven difficult to achieve. Given indications¹ that the target will not be met in 2020, the government with its partners (indigenous and multinational oil companies) have reviewed the target year again to 2023.

The outcome of exploratory activities appears to be a mixed bag. On the one hand, progress is being made at the Aje field located at OML 113 in Lagos, with ongoing production, reduction in operating expenses, and potential additional financing to develop more wells. Commercialised in 2016, two wells (Aje 4 and Aje 5) are reported to be producing volumes of oil beyond initial projections, up to a combined total of 1.2 million barrels (MMbbls) of oil. In contrast, exploratory activities in the northern part of the country have not yielded tangible results despite huge investments. In 2013, the Chairman of the Northern Economic Summit claimed that the Federal Government had expended about NGN 27 billion through the NNPC on exploratory activities in the Lake Chad Basin (although there are no publicly available documents to confirm the actual cost of the exploratory activities). Even after exploration briefly resumed in 2016, there were no commercial finds of hydrocarbon deposits to justify the government's decision to return to that region for oil and gas exploration or the amount of money spent on the exploratory activities.

In October 2019, the Federal Government announced the discovery of hydrocarbon deposits in the Kolmani River II Well in the Upper Benue Trough, the Gongola Basin, and the northeast part of the country. The news was, however, met with scepticism, as the estimate of oil reserves is yet to be disclosed. According to the NNPC, computation of the volume of reserves is still ongoing. Nevertheless, in the case that the deposits are confirmed to be commercially viable, industry stakeholders caution against the attendant negative social and environmental impacts likely to result if the resources are not managed properly like those in the Niger Delta. The government has also made public its intentions to extend exploratory activities to other geopolitical regions of the country, for example the Sokoto and Bida Basins.

While it is evident that the government is equipped with technical knowledge of resource endowments, the foregoing also suggests that this knowledge is not reinforced with pragmatic decision making for the benefit of the country. Implementation of policies appears to be politically motivated rather than economically justified.

Table 1.2 Oil and gas reserves

¹ Suboptimal progress exploratory activities (Table 1.2).

| | Oil reserves (MMbbl) | Condensate reserves (MMbbl) | Total (oil + condensates) (MMbbl) | Natural gas reserves (TCF) | | |
|------|----------------------|-----------------------------|-----------------------------------|----------------------------|---------|-----------|
| | | | | AG | NAG | Total gas |
| 2015 | 31,643.91 | 5,418.15 | 37,062.06 | 97.208 | 94.857 | 192.065 |
| 2016 | 31,271.77 | 5,467.41 | 36,739.18 | 97.253 | 101.485 | 198.738 |
| 2017 | 31,419.71 | 5,552.20 | 36,971.91 | 96.36 | 102.730 | 199.090 |
| 2018 | 31,667.75 | 5,334.35 | 37,002.10 | 101.98 | 98.81 | 200.79 |

Source: DPR (2018) NOGIAR

Information sources

DPR (2017) NOGIAR: available at www.dpr.gov.ng/oil-gas-industry-annual-reports-ogiar/

Mele Kyari: We've Made Significant Progress in Frontier Basins Exploration, available at www.nnpcgroup.com/News-and-Media/News/Lists/Posts/Post.aspx?ID=200

NNPC to resume oil search in Chad Basin if it gets security clearance: available at www.nnpcgroup.com/News-and-Media/news/Lists/Posts/Post.aspx?List=20b7f5cf-4d4b-499e-98da-ee0bbdc39041&ID=121&Source=https://www.nnpcgroup.com%2FNews-and-Media%2FNews%2FLists%2FPosts%2FAllPosts%2Easpx&ContentTypeld=0x01100062C684CCEEA2149BAF11615E438EC91

<https://guardian.ng/news/cautious-optimism-greets-oil-discovery-in-gongola-basin/>

NNPC discovers hydrocarbon deposits in Gongola Basin upper trough: available at www.nnpcgroup.com/News-and-Media/news/Lists/Posts/Post.aspx?List=20b7f5cf-4d4b-499e-98da-ee0bbdc39041&ID=228&Source=https://www.nnpcgroup.com%2FNews-and-Media%2FNews%2FLists%2FPosts%2FAllPosts%2Easpx&ContentTypeld=0x01100062C684CCEEA2149BAF11615E438EC91

Nigeria: Aje Partners towards second phase of development: available at www.offshoreenergytoday.com/nigeria-aje-partners-pushing-towards-second-phase-of-development/

www.energymixreport.com/experts-cautious-over-oil-discovery-in-the-north-raise-fears-over-threat-to-agriculture-in-the-region/

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

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

The government has acknowledged the country's excessive dependence on oil and gas resources as articulated in several policy documents such as the National Petroleum Policy (NPP), the Nigeria Gas Policy (NGP), and the ERGP. These policies outline strategies to diversify the country's economy from petroleum while using oil revenue as a tool for economic growth rather than just a source of income. For instance, the ERGP (the strategic policy document of the Federal Government) has an implementation period of four years from 2017 to 2020; it proposes to increase export earnings (and hence government revenue) by an additional NGN 800 billion annually through increased production of crude oil from 2.2 MMbbls per day (mbpd) to 2.5 mbpd. In the same vein, such revenues are planned to be used for diversifying the economy by building on other strategic plans, such as the National Industrial Revolution Plan (NIRP) and the Nigeria Integrated Infrastructure Master Plan.

The government's drive to diversify the economy has triggered reforms in other sectors, such as improving the business environment and making it easier to pay tax (mostly in Kano and Lagos). Consequently, Nigeria has moved several steps up in global rankings of ease of doing business.² In addition, steps were observed to increase the monitoring of the supply and distribution of refined petroleum to have a fair assessment of the country's consumption level. In October 2019, the government reportedly launched the automated Downstream Operations and Financial Monitoring Centre (DOFMC) through NNPC. According to the public affairs unit of the NNPC, DOFMC is part of a five agency operation to 'monitor products supply and distribution across the country and check unwholesome practices with a view to authenticating the actual volume of products imported and consumed in the country.'

While notable steps were observed on the part of the government, challenges exist with the implementation of strategies to achieve policy targets. First, government projections and the milestones outlined in policy and planning documents have been overly ambitious. The success of the ERGP hinged on the Federal Government's projection that non-oil revenue would surpass oil revenue by the end of the implementation period, which is highly impractical. Evidence shows that a substantial share of the country's revenue base has accrued (and still accrues) from resource exports, while non-oil exports have only recorded a slight improvement between 2018 and 2019 Q1 (Table 1.3).

² Nigeria currently ranks 131 (up from 146 in 2018) in the World Bank rankings of ease of doing business, covering a review period of April 2018 to April 2019. Nigeria ranked 145 in 2017.

Table 1.3 Breakdown of exported items by share of total (%)

| | 2016 | 2017 | 2018 | 2019 Q1 |
|--------------------|-------------|-------------|-------------|----------------|
| Crude oil | 82.05 | 81.09 | 81.78 | 74.45 |
| Other oil products | 14.43 | 14.28 | 11.78 | 12.22 |
| Energy goods | 0.01 | 0.27 | 0.23 | 0.23 |
| Manufacturing | 2.15 | 1.71 | 3.48 | 10.19 |
| Solid minerals | 0.13 | 0.57 | 0.35 | 0.20 |
| Raw materials | 0.52 | 0.83 | 0.74 | 0.80 |
| Agriculture | 0.16 | 0.25 | 1.63 | 1.90 |

Source: NBS (2019)

The 2018, the CBN Economic Report also reveals that federally collected revenue, as at 2018 Q4, had fallen by 27.4% below the quarterly budget estimate and by 4.8% in the preceding quarter. This was partly due to a decline in gross oil revenue, which was attributed to shortfalls in crude oil production and exports despite the increase in crude oil price. This implies that total government revenue continues to trace oil revenue, emphasising the country's continued dependence on oil.

Furthermore, the government appears to ignore prevailing internal and external factors while making decisions that are critical for the Nigerian economy. For example, the implementation of the 2019 national budget was benchmarked against a crude oil price of US\$ 60 per barrel and a production volume of 2.3 mbpd. Both estimates were unrealistic for several reasons. Data from NNPC show that the country has consistently been unable to meet its target of 2.3 mbpd on average in daily crude oil production, as the figure has hovered at 2 mbpd between 2018 and 2019. Given the Organization of Petroleum Exporting Countries (OPEC)'s drive to increase crude oil prices, member countries and allies are expected to cut a combined 1.2 mbpd, with Nigeria expected to account for 53,000 barrels per day of total cuts. Coupled with difficulties in increasing production locally even when prices were high, the cuts place further constraints on the government's ability to increase revenue as projected through the sale of larger volumes of crude oil. There is a likelihood that the crude oil price may not rise as desired by OPEC, as it is reluctant to lose market share by allowing further cuts while US companies ramp up shale production and global demand slows due to slowdown in the Chinese economy.

In the middle of all this uncertainty and volatility, the 2019 budget was benchmarked at US\$ 60 dollar per barrel, just US\$ 6 below the prevailing market price for bonny light crude at the time the budget was passed—a precarious position, as described by industry experts. This and the aforementioned factors indicate weak linkages between government planning and prevailing events in the global crude oil market. In August 2019, the price of crude oil fell below the US\$ 60 mark amid fears of a global recession (Figure 1.2) and continued to oscillate about the point into the last quarter of the year.



Figure 1.2 Drop in crude oil price (Bonny Light) (2019), US\$/barrel
 Source: <https://oilprice.com/>

Although the country’s dependence on oil and gas resources has been widely acknowledged, government policies and decisions still need to be driven by evidence and an analysis of all the factors. Forecasts, although subject to review based on prevailing developments, should be realistic and devoid of political sentiments. This would reflect a better understanding of the sector by government actors.

Information sources

CBN Economic Report: available at www.cbn.gov.ng/Out/2019/RSD/CBN%20ECONOMIC%20REPORT%20FOURTH%20QUARTER%20Published1.pdf

Federal Ministry of Budget and Planning (2017) ERGP (2017–2020)

NBS (2019) Foreign Trade Statistics (Q1)

NNPC Monthly Financial and Operations Report, p. 6

NNPC press release, FG Unveils Automated DOFMC to Deepen Oil Sector Transparency

www.cnbc.com/2019/01/18/how-much-oil-each-opec-member-and-allied-nations-intend-to-cut-in-2019.html

www.vanguardngr.com/2018/12/budget-buharis-2-3m-per-barrel-60-dollar-oil-benchmark-not-realistic-expert/

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

The government appears to be making efforts to reduce the negative impacts of exploitation. Under the auspices of the Nigeria Gas Flare Commercialisation Programme (NGFCP), the government recognises that ‘flared gas could be harnessed to stimulate economic growth, drive investments and provide jobs in oil producing communities and indeed for Nigerians through the utilisation of widely available innovative technologies.’ Commercial entities, as well as governments and host communities, are expected to understand conflict dynamics through the adoption of Conflict Sensitive Business Practices, one of which is the Macro-Level Conflict Risk and Impact Assessment. Following an open bidding process, in July 2019, 205 out of 238 companies were cleared to participate in the next stage of bidding for licences to commercialise flared gas in the country.

Similarly, in November 2018, updates were launched to the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) and other regulatory documents—the Regulatory Guidelines on Management of Naturally Occurring Radioactive Materials and the Occupation Health Guidelines and Standards for the Petroleum Industry. EGASPIN, initiated in 1991, was previously revised and updated in 2002 ‘in light of the advancements in the current treatment and pollution control technology.’ EGASPIN is a set of regulations initiated and implemented by DPR to govern health, safety, and environmental activities in the Nigerian oil and gas industry. These regulations are expected to bring firms in the oil and gas industry into compliance and available evidence suggest that they do. However, DPR is considered to lack the capacity to enforce the regulations. Industry experts and observers find that DPR’s role as both a licensing authority and an environmental watchdog is against international best practices, in addition to the confusion caused by the overlapping roles of government agencies.

Failure to comply with EGASPIN attracts such penalties as fines, custodial sentences, revocation of underlying permits, licences, or leases, obligation to pay adequate compensation, and/or obligation to carry out restoration and remediation activities. In the case of Ogoni Land, the recommendations on remediation activities made by the United Nations Environment Programme (UNEP) Report in 2011 are yet to be fully implemented, although the Federal Government officially launched the clean-up process in 2016. The government has since mobilised US\$ 180 million (out of the required amount of US\$ 1 billion) and clean-up is reported to have started through the Hydrocarbon Pollution Remediation Project (HYPREP). However, the effectiveness of the clean-up cannot yet be measured. Meanwhile, local community members are being trained to identify remediation indicators by CSOs. As at August 2019, UNEP had been re-engaged to provide technical support and build the capacities of HYPREP staff.

Through the advocacy efforts of a coalition of CSOs, the government is being made aware of the need to include concerns for human rights, social rights, and health issues in host communities. This is also driven through a call for amendment of the existing EIA Act to include social and human rights components.

Information sources

Environmental Social and Human Rights Impact Assessment (ESHRIA), Coalition Of CSOs Move to Intensify Advocacy on Passage Of Bill: available at www.nationalnetworkonline.com/en/metro/966-eshria-coalition-of-csos-move-to-intensify-advocacy-on-passage-of-bill

www.dpr.gov.ng/document-release-egaspin-2018/

Environmental standards regulation in Nigeria's oil industry still weak: available at www.vanguardngr.com/2018/12/environmental-standards-regulation-in-nigerias-oil-industry-still-weak-report/

UNEP, Ogoni clean-up: It's bad that much time has been lost: available at www.vanguardngr.com/2019/08/ogoni-clean-up-its-bad-that-much-time-has-been-lost-unesp/

Ogoni clean-up begins in two weeks: available at <https://punchng.com/ogoni-clean-up-begins-in-two-weeks/>

<https://cehrd.org.ng/index.php/news/reports/item/200-training-of-community-members-from-gokana-lga-on-remediation-indicators-of-the-ogoni-clean-up>

www.thisdaylive.com/index.php/2019/07/30/fg-plans-hitch-free-allocation-of-gas-flare-sites-to-bidders/

1.2 Resource strategy

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

Old response: Yes/No

New response: No

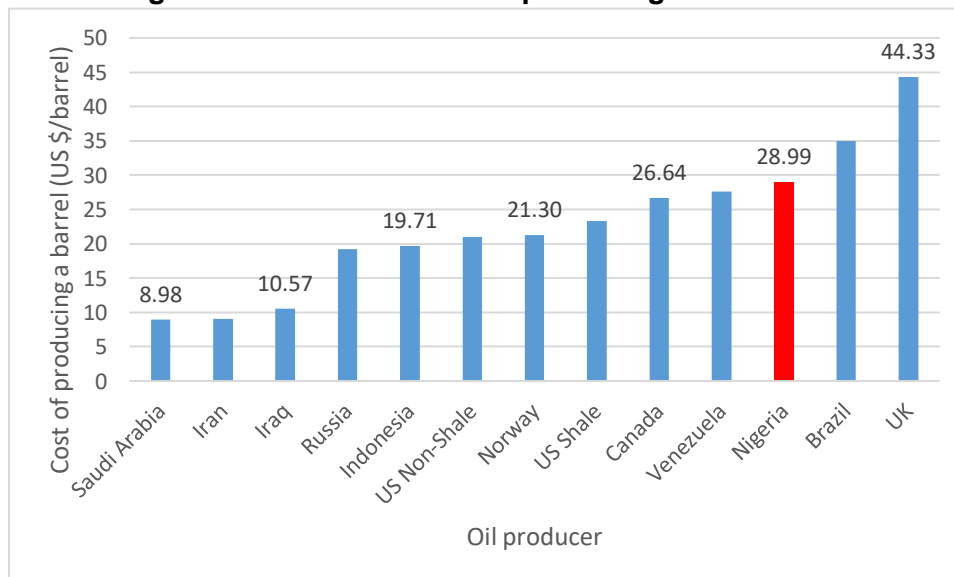
UPDATE STATUS: Additional information included

The NPP and the NGP are drawn from the ERGP, which is expected to run from 2017 to 2020. The ERGP includes goals and strategies as well as an implementation plan for the development of the oil and gas sector with the main objective of increasing production while adding value in the downstream petroleum sector. Specific objectives included a 2018 deadline to ramp up oil production to 2.5 mbpd, reduce the imports of refined petroleum products by 60% in the same year, and become a net exporter by 2020. These milestones were overly ambitious and none of these targets has been met. The ERGP has also simultaneously attempted to expand the power

infrastructure for the purpose of driving economic activities in other sectors by utilising natural gas for electricity generation. So far this has not been very successful. For instance, the development of the 540-megawatt capacity Que Iboe Power Plant, which was to have begun by the end of 2018, could not take off, partly due to persistent cash flow challenges in the Nigerian electricity supply industry.

Similarly, the NPP includes plans to be less dependent on crude oil earnings as a major source of government revenue, to leverage the country’s huge gas reserves to achieve a gas-driven industrial economy, and to increase in-country refining capacity. The NPP runs concurrently with the ERGP, with an expected review by 2020. There is no evidence to suggest that these targets will be achieved by the review date. Moreover, Nigeria extracts oil at a less competitive cost of US\$ 29 per barrel (Figure 1.3), higher than other oil-producing countries in the world and also higher than the cost of producing US shale, as shown in Figure 1.3. However, in Q1 2019, the government claimed (without documentation) that the cost of producing a barrel of crude oil in the country had dropped to US\$ 23, while aiming for a further reduction to US\$ 15. Until such costs are further reduced, the country risks losing oil firms to countries with more competitive costs, and until improvement in refining capacity is achieved, importation of refined petroleum will remain attractive.

Figure 1.3 Estimated cost of producing a barrel of oil



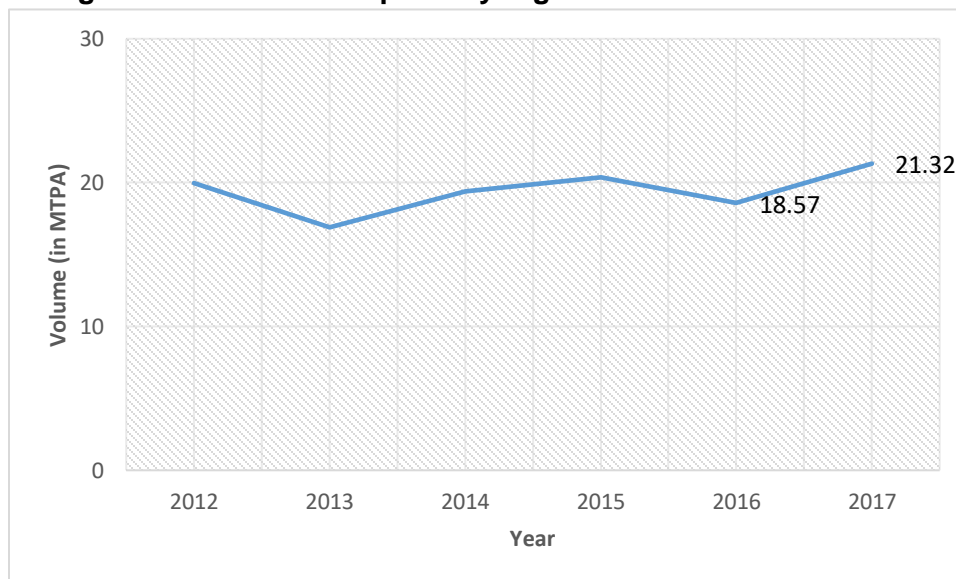
Source: NPP Document (2017)

The NGP acknowledges that the country’s huge gas reserves is projected to last for 102 years beginning from 2015. While identifying the low price of gas in the international market, the government plans to develop the midstream and downstream markets to accelerate the nation’s industrial development and economic recovery (a gas-based industrialisation) through the linkages between the gas sector and the electricity, industrial, agricultural, and transportation sectors. The domestic gas supply obligations mandate that the proportion of gas produced must be ‘sufficient to kick-start domestic market development but not so high that producers see it as

onerous.’ The policy provides that gas producers meet their domestic gas supply obligations before their upstream licences are issued or renewed. As shown in Figure 1.4, Nigeria’s capacity to sustain exports achieved positive results between 2016 and 2017, partly due to a lack of disruption caused by local unrest. As at 2018, daily average domestic gas supply performance was 48.33%, a seven percentage point increase from 2017.

According to the 2018 World Liquefied Natural Gas (LNG) Report (Figure 1.4), the country’s liquefaction capacity is projected to remain at 2017 levels till 2023 despite capacity utilisation (CU) of 97%. An expansion of the Nigeria Liquefied Natural Gas (NLNG) complex is being considered, along with a 10 million tonnes per annum (MTPA) brass LNG project that is undergoing a planning review by partners including NNPC. It is believed that additional investments can only be made upon the signing into law of the institutional and fiscal components of PIGB, which is expected to restructure the oil and gas sector for improved efficiency and better performance.

Figure 1.4 Total LNG exports by Nigeria to the rest of the world



Source: International Gas Union (2018) World LNG Report

Information sources

Federal Ministry of Budget and National Planning (2017) ERGP (2017–2020): available at www.budgetoffice.gov.ng/index.php/economic-recovery-growth-plan-2017-2020/economic-recovery-growth-plan-2017-2020/download

Federal Ministry of Petroleum Resources (2017) NPP: available at www.petroleumindustrybill.com/wp-content/uploads/2017/07/National-Petroleum-Policy-Approved-by-FEC-in-July-2017.pdf

Federal Ministry of Petroleum Resources (2017) NPG: available at www.petroleumindustrybill.com/wp-content/uploads/2017/06/National-Gas-Policy-Approved-By-FEC-in-June-2017.pdf

DPR (2017) NOGIAR: available at www.dpr.gov.ng/oil-gas-industry-annual-reports-ogiar/

World LNG Report (2018) available at www.igu.org/sites/default/files/node-document-field_file/IGU_LNG_2018_0.pdf

Nigeria Boasts Oil Production Cost of \$23 Per Barrel: available at <https://oilprice.com/Energy/Crude-Oil/Nigeria-Boasts-Oil-Production-Cost-of-23-Per-Barrel.html#>

Exclusive: Nigerian energy sector's crippling debts delay next power plant: available at www.reuters.com/article/us-nigeria-power-exclusive/exclusive-nigerian-energy-sectors-crippling-debts-delay-next-power-plant-idUSKCN1OK1IQ

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Nigeria's oil and gas strategy is derived from policies and plans contained in official documents such as the Petroleum Act (1969), the Nigeria Gas Master Plan (2008), the Nigerian Oil and Gas Content Development Act (2010), the NPP (2017), the NGP (2017), and the component parts of PIGB. The ERGP, from which the NPP and NGP derive, has objectives to increase crude oil production to 2.5 mbpd by 2020 and to increase export earnings and government revenues while adding value in the downstream petroleum sector by boosting local refining capacity. With the NGP, the government plans to move the country from a crude oil export-based economy to an attractive oil and gas-based industrial economy. Implementation of these policies is, however, contingent on certain legal, fiscal, and institutional frameworks contained in the component parts of PIB, which are yet to be signed into law.

Some measures are being implemented by the government to ensure that the economy benefits from oil and gas resources over the long term through the Nigerian Content Development and Monitoring Board (NCDMB), empowered by the Nigerian Oil and Gas Industry Content

Development (NOGICD) Act 2010. In 2017, the NCDMB board set out a 10-year strategic roadmap towards increasing Nigerian Content Performance from 28% to 70% by 2027. The 10-year roadmap contains five pillars: Technical Capability Development, Compliance and Enforcement, Enabling Business Environment, Organisation Capability, and Sectorial and Regional Market Linkage. So far, the board has reported progress on three of the five pillars. For instance, on Compliance and Enforcement, it has established seven companies to conduct monitoring and compliance functions throughout the value chain of the oil and gas industry. Meanwhile, the board is seeking an amendment of the NOGICD Act to extend its implementation to other sectors such as Power, Construction, and Information Communication Technology.

Respecting revenue management, the SWF, established in 2012, 'is expected to generate revenue to meet budget shortfalls in the future, provide dedicated funding for development of infrastructure and keep some savings for future generations.' The SWF, which had a total seed fund of US\$ 1.5 billion (as of 2016), had grown by US\$ 350 million as of the first quarter of 2019. The SWF is managed by the Nigerian Sovereign Investment Authority (NSIA), which has a mandate (through the NSIA Act 2011) to receive, manage, and invest three ring-fenced funds—20% of assets are allocated to the Stabilisation Fund; 30% of assets are allocated to the Future Generations Fund; and 50% of assets are allocated to the Nigeria Infrastructure Fund. According to the Linaburg-Maduell Transparency Index, the NSIA has adequate transparency with a score of 9 out of 10.

Information sources

Federal Ministry of Budget and Planning (2017) ERGP

www.petroleumindustrybill.com/

<https://ncdmb.gov.ng/2019/08/ncdmb-ve-laid-foundations-for-10-year-roadmap-wabote/>

<https://ncdmb.gov.ng/2019/06/ncdmb-begins-phase-2-of-bayelsa-oil-and-gas-park/>

CBN (2016) SWF: available at [www.cbn.gov.ng/Out/2016/MPD/UNDERSTANDING%20MONETARY%20POLICY%20SERIES%20NO%202018%20\(2\).pdf](http://www.cbn.gov.ng/Out/2016/MPD/UNDERSTANDING%20MONETARY%20POLICY%20SERIES%20NO%202018%20(2).pdf)

www.swfinstitute.org/research/linaburg-maduell-transparency-index

http://nsia.com.ng/~nsia/sites/default/files/press-release/Press%20Release%20-%202018%20Financial%20Statement_0.pdf

<https://punchng.com/nsia-grows-1-5bn-sovereign-wealth-fund-by-350m/>

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

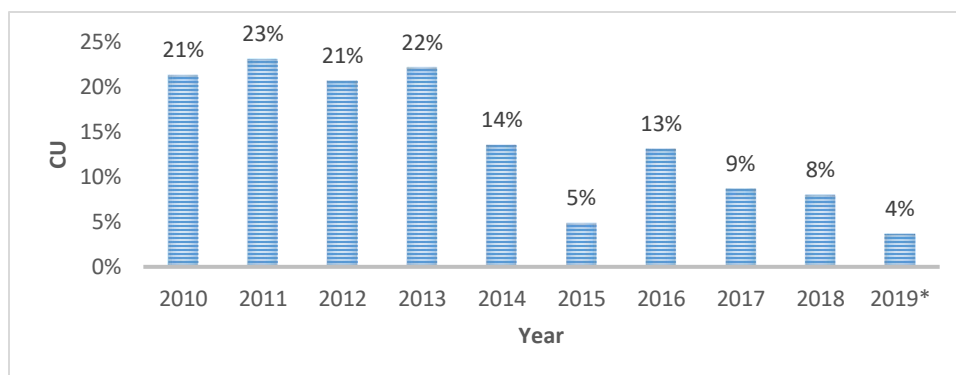
Old response: No
 New response: No

UPDATE STATUS: Some changes observed

The oil and gas strategy contained in policy documents mostly reflects the need to raise revenue to finance government expenditure. Regarding the oil and gas sector, the specific objectives are to urgently increase oil production, to increase demand for gas, and to boost local refining for self-sufficiency. However, increased volume of production is being threatened by sabotage of oil pipelines by members of oil-producing communities. In July 2019, the NNPC reported a record high of 228 pulverised points, representing a 115% increase from the 106 vandalised points recorded in the previous month. This suggests that the challenges faced by host communities are yet to be effectively addressed.

Also, domestic refining capacity has deteriorated over the years (Figure 1.5). In some months, none of the refineries processed any crude oil. In 2018, ACU was 8.02%, with 0% CU recorded in some months. ACU for the first seven months of 2019 stood at 3.68%. In summary, domestic refining capacity worsened between 2017 and 2019. Achieving self-sufficiency in the domestic supply of refined petroleum cannot be overemphasised. This is crucial to saving scarce government revenue, which can then be channelled to other productive sectors of the economy, in addition to saving millions of dollars in keeping imported petroleum products at affordable levels through subsidies. That refinery CU has worsened rather than improved within the period under review suggests that the specific objectives outlined in policy documents were wrongly conceived to begin with or may have been abandoned.

Figure 1.5 Local refining capacity



Sources: NOGIAR (2017–2019);

NNPC Monthly Financial and Operations Report for July 2019

2019*: only the first seven months of 2019 covered in available data were included in the computation

To drive the implementation of NIRP through the ERGP and the NGP, the Nigerian government also plans to promote a gas-based industrialisation by moving the country from an oil-based to a gas-based economy. NNPC projects that the domestic demand for natural gas will rise from 1.5 billion standard cubic feet per day (scfd) to 7.4 billion scfd in 2027. Currently, the domestic gas supply is responsible for a very large proportion of total power generation in the country. For example, the average share of gas supply to power generation between June 2018 and July 2019 accounted for an estimated 77% of power generation. This represented approximately 60.22% of the total gas supply, with the remaining 40% sent to industries.

Additionally, to reduce gas flaring and carbon emissions, the government plans to use Liquefied Petroleum Gas (LPG) in its flared gas volumes to generate about 1,000 megawatts daily of electricity and substitute 200–250 mmscfd of natural gas equivalent in local industries. The average gas flare rate, estimated at 9% (equivalent to 713.08 mmscfd), was relatively stagnant during the period under review. Given the monthly conversation rate, this volume of flared gas has the potential to produce over 2,000 megawatts of electricity per day. Adequate conversion of flared gas to power generation would require additional infrastructure. As mentioned in Section 1.1.4, there are plans to commercialise gas flaring in the country through NGFCP.

These are notable observations in the domestic demand for gas, which (according to the Ministry of Petroleum Resources) has recorded a remarkable increase. In 2018, the Minister of State for Petroleum Resources reportedly noted that the country's domestic consumption of LPG was 420,000 metric tonnes, a 600% increase over the preceding two years, in addition to projections by the NNPC of an almost 400% increase in total gas consumption over the next eight years. However, infrastructural and administrative challenges, as well as illiquidity in the power sector, could present serious setbacks for gas development in the country. The OB3 gas transmission pipeline, also known as the east–west network of the Nigerian gas master plan, with a capacity of 2 billion scfd, was initially slated for completion in July 2017, and reportedly due to be completed in 2019 after several delays. As at the end of the year, there was no official press release indicating that the project had been completed. Similarly, Nigeria's gas flare-out date was reviewed to 2020. That the award of licences to commercialise gas through the NGFCP is yet to be completed makes this deadline less likely. Moreover, a new date by 2030 is being considered under the guise of aligning with global targets. Given the consistent change in timeframe for the delivery of targets, especially on projects critical to government's economic development agenda, there is much doubt that the stated objectives in policy documents will be achieved by 2020 when the implementation timeline elapses.

Information sources

Federal Ministry of Budget and National Planning (2017) ERGP (2017–2020): available at www.budgetoffice.gov.ng/index.php/economic-recovery-growth-plan-2017-2020/economic-recovery-growth-plan-2017-2020/download

NIRP (2014)

DPR (2017) NOGIAR: available at www.dpr.gov.ng/oil-gas-industry-annual-reports-ogiar/

NNPC Monthly Financial and Operations Report

<http://africailgasreport.com/2018/12/gas-monetization/nestoil-delay-pushes-completion-of-ob3-over-into-2019/>

www.energymixreport.com/ob3-gas-pipeline-to-be-completed-by-september-oilserv/

www.nnpcgroup.com/News-and-Media/news/Lists/Posts/Post.aspx?List=20b7f5cf-4d4b-499e-98da-ee0bbdc39041&ID=223&Source=https://www.nnpcgroup.com%2FNews-and-Media%2FNews%2FLists%2FPosts%2FAllPosts%2Easpx&ContentTypeId=0x01100062C684CCEEA2149BAF11615E438EC91

<https://punchng.com/lpg-consumption-grew-by-600-in-two-years-fg/>

<https://allafrica.com/stories/201906040253.html>

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

Old response: No

New response: Yes/No

UPDATE STATUS: Some changes observed

NEITI, with stakeholders spanning across government agencies, extractive companies, the media, and the coalition of CSOs, has continued the process of improving the transparency and accountability of the extractive industries. While NEITI is responsible for providing Audit Reports of financial flows, it lacks the power to prosecute offenders and thus has to defer to other agencies of government such as the Nigeria Police Force, the Economic and Financial Crimes Commission (EFCC), the Federal Ministry of Justice (FMOJ), the Code of Conduct Bureau, the Nigeria Financial Intelligence Unit (NFIU), and the Independent Corrupt Practices and Other Related Offences Commission (ICPC). As at Q1 2019, this relationship is yet to fully manifest.

The 2017 BER noted that, in the past, Nigeria has operated a regime where laws and policies have been enforced without adequate engagement with stakeholders. In recent times, however,

there have been increased consultations with stakeholders, as demonstrated with the various components of PIGB. Public hearings on the bills were held in 2018 and various stakeholders made several inputs on different sections of the bills. For instance, representatives of host communities noted that sections of the proposed Petroleum Industry Host and Impacted Community Bill did not entrench inclusive participation of members of host communities into the Board of Trustees of a Petroleum Host Community Development Trust designed to deliver direct benefits to host communities.

Information sources

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

<https://spacesforchange.org/mobilizing-host-community-participation-in-oil-policy-reform/>

<https://punchng.com/neiti-meets-efcc-police-others-over-oil-frauds/>

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

The NPP and the NGP articulate a vision for the oil and gas sector and sets policy goals, strategies, and an implementation plan for the introduction of an appropriate institutional, legal, regulatory, and commercial framework to resolve the barriers currently affecting investment in the sector. PIB are comprehensive legal frameworks driving the achievement of set objectives in the Nigerian oil and gas sector.

PIGB, a component part of PIB, is expected to replace obsolete laws and ensure efficient and transparent governance of the sector. One of its major objectives is to 'foster a conducive business environment for petroleum industry operations.' Challenges however still face the passage of the bill into law, as the President has withheld assent. This creates a further setback to a piece of legislation that has been in the works for almost two decades.

The other component parts—the Petroleum Industry Fiscal Bill, the Petroleum Industry Administration Bill, and the Petroleum Host and Impacted Communities Development Bill—are yet to pass both chambers of the National Assembly. A major implication of the non-passage of the Petroleum Industry Fiscal Bill is the non-realisation of the fiscal policy objectives of the ERGP,

which are to ‘improve overall Federal Government revenues by increasing revenues from oil production and targeting non-oil revenue sources.’

Information sources

Federal Ministry of Budget and National Planning (2017) ERGP (2017–2020): available at www.budgetoffice.gov.ng/index.php/economic-recovery-growth-plan-2017-2020/economic-recovery-growth-plan-2017-2020/download

The fall and rise of the Nigerian PIGB: available at www.opml.co.uk/blog/nigerian-petroleum-industry-governance-bill

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

Old response: No

New response: No

UPDATE STATUS: Some changes observed

Strategy documents to achieve the objectives of government in the oil and gas sector include the ERGP, the NPP, and the NGP. The institutional framework for implementing these policies comprises of DPR, the NNPC, and the Ministry of Petroleum Resources. The institutional framework predates the ERGP, the NPP, and the NGP, implying it is not drawn from the strategy.

Challenges exist with the present institutional framework. On the one hand, DPR functions as the regulator of the oil and gas industry and is charged with the responsibility of processing all licences and leases and supervising the activities of all companies licenced to operate in the sector, including the NNPC. On the other hand, the NNPC manages the government’s commercial interest in operating assets and also dictates regulatory measures relating to the sector. This consequently results in an overlap of functions between DPR and the NNPC, which creates obstacles for private operators. Such institutional overlap is expected to be addressed by PIGB.

PIGB proposes the establishment of a National Petroleum Regulatory Commission (NPRC), which will take over as the sole regulator, thereby carrying out the functions of DPR and the Petroleum Products Pricing Regulatory Agency (PPPRA). In addition, it seeks to separate regulatory and commercial functions by creating three new agencies—the Nigeria Petroleum Liability Management Company, the Nigerian Petroleum Assets Management Company Limited, and the National Petroleum Company (NPC)—to replace NNPC, consequently eliminating NNPC’s dual role as an operator and as a regulator.

The NPRC is also expected to handle the environmental aspects of the oil and gas industry. Currently, the mandate for ensuring the ‘preparedness, detection, and response to oil spillages in

Nigeria' belongs to the National Oil Spill Detection and Response Agency (NOSDRA). Some stakeholders believe that NOSDRA is better positioned to perform this duty and express worry that it may be eliminated due to the creation of the NPRC.

Information sources

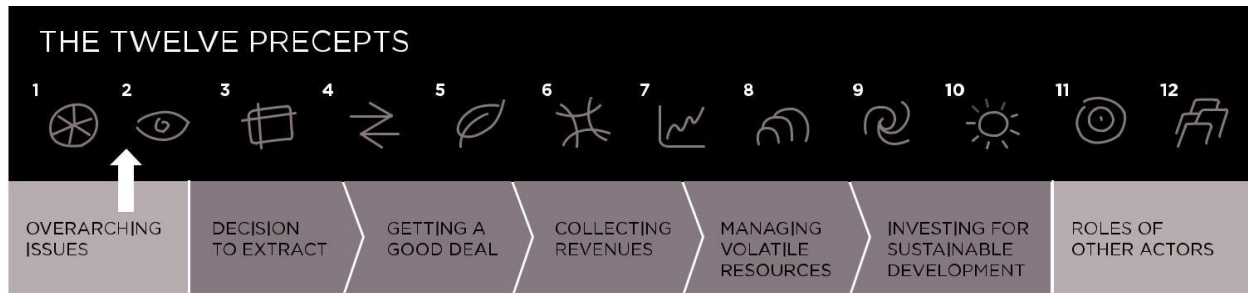
Federal Ministry of Budget and National Planning (2017) ERGP (2017–2020): available at www.budgetoffice.gov.ng/index.php/economic-recovery-growth-plan-2017-2020/economic-recovery-growth-plan-2017-2020/download

www.stakeholderdemocracy.org/wp-content/uploads/2018/12/PIGB-11.12.18-JB.pdf

<https://punchng.com/pigb-stakeholders-worry-over-nosdras-future/>

Harmonised PIGB (2018): available at www.petroleumindustrybill.com

PRECEPT 2: TRANSPARENCY AND ACCOUNTABILITY



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

| | |
|--|--|
| Overall precept score | |
| <p>Precept 2: Transparency and accountability</p> <p>Notable changes were observed regarding the disclosure of oil and gas related data, which now cover more data points, although timeliness can be improved. More agencies under the Ministry of Petroleum Resources also disseminate updated data through their website as opposed to the previous benchmarking cycle, when some agencies lacked functional websites. In addition, although legal backing to enforce compliance is yet to be enacted, a BOR has been released by NEITI. However, during the period under review, transformative and anticipated legislation and amendments expected to improve access to information and disclosures such as PIGB, CAMA, the Whistle-Blowers Protection Bill and the Witness Protection Programme Bill suffered major setbacks and are yet to become law. Civic and press freedoms were also threatened, with journalists and activists subjected to undue harassment, unlawful arrests, and detention by law enforcement agents.</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 oil and gas resource management and are the rules enforced? | |
| 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 oil and gas resource governance? | |
| 2.2.2 Does a national audit office 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 oil and gas resource management? | |
| 2.3.4 Do research institutions carry out independent and high-quality research on oil and gas 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, bills, regulations, and policies governing the oil and gas sector continue to remain accessible to the public via government and non-government channels; however, previously anticipated and critical legislation expected to improve access to sector information and disclosures such as PIGB and CAMA have failed to become law during the review period.
- Marginal improvements observed on the implementation of the Freedom of Information (FOI) Act (2011) were made insignificant by continuous abuse of the act by some public institutions. Nigeria also failed to completely meet OGP commitments detailed in the country's OGP National Action Plan (NAP) 2019.
- Disclosure of data in the petroleum sector improved with increases releases data covering an expanded array of data points, made available through public institutions under the Ministry of Petroleum Resources. In addition, a BOR has been launched by NEITI.

Official oversight

- The legislature is yet to act on the findings of Audit Reports by the Office of the Auditor General of the Federation, while the audit office continues to experience capacity challenges. Public institutions still fail to comply with statutory audit requirements and deadlines.
- Investigations by anti-corruption agencies have continued, with some resulting in convictions, but the Whistle-Blowers Protection Bill and the Witness Protection Bill suffered setbacks, straining the continuous effectiveness of the whistle-blowers policy.

Communication and public oversight

- Civic and political freedoms, as well as the freedom of the press, were severely threatened in the period under review. Some journalists, activists, and media houses were harassed and arrested by security agents. In some cases victims were charged with terrorism and treason.

2.1 Transparency

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

As reported in the 2017 BER, acts, policies, regulations, and guidelines remain accessible through the websites of government agencies. In addition to government platforms, policy documents are also available to the public through non-governmental channels. For example, new amendments to the Deep Offshore and Inland Basin PSC Act 2019 were made available by the government to all stakeholders without restriction. The harmonised PIGB was also passed by the two houses of the National Assembly and can be found at petroleumindustrybill.com, a private, independent platform dedicated to monitoring the progress of PIGB. In addition to laws and bills, order papers, proceedings, and committee reports of the National Assembly are now made available on placng.org, a platform of the Policy and Legal Advocacy Centre (PLAC), an independent, non-partisan, non-profit organisation that works to strengthen democratic governance and citizen participation in Nigeria.

However, some of the challenges recorded in the 2017 BER can still be observed. Mechanisms to facilitate public understanding of content and implications of policies remain weak, hampering participatory monitoring and increased accountability by sector stakeholders. Publicly available information can still be understood only by people with technical knowledge of the extractive sector and efforts by the government to promote inclusive understanding across Nigeria's population with diverse literacy levels and ethno-religious backgrounds remain weak.

Regarding government contracting, current reforms to ensure transparency lie in Nigeria's commitments to the OGP. The BPP, in line with commitments to 'full implementation of Open Contracting and adoption of Open Contracting Data Standard in the public sector', fully launched NOCOPO in 2018. According to the Observatory of Public Sector innovation, 'a Federal Government circular was issued mandating all government MDA to use the portal' and the portal was already being populated with data. BPP has also taken steps to digitise public procurement process, including creating a database for procurement officers, training of procurement officers (which is still ongoing), and the establishment of electronic channels for whistle-blowing.

Other developments, however, indicate that successful implementation of this commitment is yet to fully materialise. For example, as of December 2019, listings from the Federal Ministry of Petroleum Resources could not be located on NOCOPO. This is a setback, as during the 2017 BER procurement contracts from the Ministry of Petroleum Resources were easily found on the

portal. This is crucial because, according to Nigeria's first NAP for implementing OGP, one of the performance indicators for monitoring progress on commitments was the number of projects monitored through the web portal. The absence of contract/procurement information by the Ministry of Petroleum Resources is evidence that the portal is yet to be populated with adequate information even after the implementation deadline has passed. Furthermore, while there is yet to be publicly available information detailing the level of compliance and implementation by MDA with the NOCOPO initiative, the limited entries on the portal and interactions with sector stakeholders suggest that many public institutions across sectors are yet to comply. Engagement with experts indicates that the absence of instruments to enforce compliance among public institutions is partly responsible for the low level of compliance. Control mechanisms such as making procurement by MDA impossible without listing the procurement information on the portal, as well as punitive measures against erring institutions and officials, can only be made effective when backed by the appropriate legislation. Nigeria is currently developing its second NAP for implementing OGP, which will include previous milestones that could not be achieved under the first NAP.

Information sources

<https://oecd-opsi.org/innovations/nigeria-open-contracting-portal-nocopo/>

<https://guardian.ng/business-services/procurement-bureau-kicks-off-electronic-process-to-check-graft-service-delivery/>

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

<https://petroleumresources.gov.ng/>

<https://placng.org/wp/>

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

There is no evidence to support a significant improvement since 2017 in the implementation of rules that enable access to information. Government enforcement of regulatory mechanisms contained in the Freedom of Information (FOI) Act and the Code of Conduct Practice remain weak and (despite provisions for mandatory disclosure of information in the interest of the public) compliance is dismally low, with public institutions impeding the release of information in some cases.

A few positive steps by some public institutions were, however, observed in the period under review. The Code of Conduct Bureau appears to be taking steps to reorient government workers to treat asset declaration as mandatory rather than optional—one of the challenges recorded in the 2017 BER. These steps include publishing information on its website clearly placing the burden of declaration on the official declaring the assets. This may be a signal that ignorance as an excuse by civil and public servants may not be tolerated in the future. Examination of the Code of Conduct Bureau's website also shows that asset declaration forms are available for download and declaration can be done through a portal.

Similar trends were also observed with a few other public institutions, which now feature a dedicated FOI portal on their website for receiving and responding to FOI requests. Engagement with stakeholders suggests this trend could be the result of advocacy by CSOs and the OGP unit at the FMOJ to increase FOI compliance in public institutions. It may also be related to the increase in the submission of FOI reports from 44 public institutions in 2015 to 73 in 2017.

The response by public institutions to implement an FOI portal is, however, discouraging. Established FOI portals may be redundant as they only serve to acknowledge receipt of FOI requests without any subsequent action being taken. For instance, an FOI request was sent to the NNPC regarding the alleged importation of an aged refinery into the country. As of September 2019, the FOI request was yet to be addressed, nine months after it was initiated. According to the FOI director and National Coordinator of OGP Nigeria at the FMOJ, fewer than 20 out of 200 FOI portals targeted for 2018 were established due to a lack of cooperation on the part of MDA. Furthermore, although there has been a marginal increase in the submission of FOI reports in the last two years, the overall response from public institutions (73 out of 900 expected submissions) is still very poor, especially when there are at present over 130 desk officers across MDA responsible for preparing FOI reports. For the year ended 2018, records show that only 70 out of an expected 900 FOI annual reports were submitted by public institutions to the Attorney General.

The abuse of the FOI Act by public institutions, especially those in the oil and gas sector, was further reiterated by the Media Rights Agenda (MRA): an independent, non-governmental, not-for-profit organisation established for the purpose of promoting and protecting media freedom and the freedom of expression in Nigeria. Between 2017 and 2018, the MRA inducted the NNPC, the Petroleum Equalisation Fund (PEF), the Ministry of Petroleum Resources, and DPR into the FOI 'Hall of Shame'—a 'naming and shaming' tactic deployed against erring institutions by the group. The reason given for the inclusion of these institutions was the 'relentless dedication to secrecy and attendant disregard for the Freedom of Information (FOI) Act.' None of the aforementioned inductees into the Hall of Shame, nor any other parastatal under the Ministry of Petroleum Resources, has introduced an FOI portal on their website.

Several challenges impeding the effective implementation of the FOI Act have been outlined in the 2018 FOI annual compliance report prepared by the Attorney General of the Federation and submitted to the National Assembly in March 2019. These challenges include, among others, apathy by operators of the act in public institutions (worsened by ignorance of the provisions of the act) and the lack of systematic record-keeping to facilitate public access and inadequate

funding of FOI activities across government departments. However, one crucial challenge facing implementation stands out. This is the failure of the act to provide for sanctions against non-compliance. This means that the Federal Ministry of Justice (FMOJ), the institution charged with the implementation of the FOI Act, lacks the power to reprimand erring parties for non-submission of FOI reports, consequently hindering effective oversight and enforcement. As a result, the FMOJ is limited to 'naming and shaming' offenders pending the enactment of punitive administrative measures. In addition, existing legislation such as the Official Secret Act (1962) and Section 39(3) of the 1999 Constitution appear to be in conflict with the FOI Act (2011). While the FOI Act provides the citizen with free access to public information, the Official Secret Act and the Constitution provide for the protection of 'sensitive official information'. Experts agree that the FOI Act supersedes the Official Secret Act, but this does not prevent harassment from law enforcement agencies based on the latter. These are examples of some loopholes that need to be addressed to ensure unperturbed access to information.

Information sources

www.icirnigeria.org/only-73-out-of-900-public-institutions-submitted-their-2017-foi-annual-report/

www.justice.gov.ng/index.php/fmoj-compliance-portal#

www.thenigerianvoice.com/news/269315/mra-inducts-department-of-petroleum-resources-into-foi-hall.html

www.mediarightsagenda.org/aboutus.html

www.vanguardngr.com/2018/09/lawyers-divided-over-superiority-of-foi-to-official-secret-act/

FMOJ (2019) 2018 Annual Report on the Implementation of the FOI Act 2011, submitted to the National Assembly by the Attorney General and Honourable Minister of Justice, 28 March 2019: available at www.justice.gov.ng/index.php/fmoj-downloads/reports/fmoj-foia-annual-report

Extract of interview with the National Coordinator, OGP Nigeria, and the Director, FOI unit, FMOJ, Abuja

Extract of interview with the energy desk, Budget, Lagos

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

Effective management of information involves the deployment and use of Information and Communication Technology (ICT) to facilitate e-government procedures, including improving government processes, connecting citizens, and building external relations. This is expected to promote the effectiveness of public sector organisation by improving interagency communication

and collaboration, which consequently helps to improve the services delivered to members of the public. It also improves access to accurate and timely information about public sector activities.

The country has recorded an increase in the use of ICT to facilitate government processes. In the last two years, electronic processing of licences by DPR has been expanded to include more categories of licences and permits, ranging from approvals for constructing and operating oil and gas infrastructure such as depots, refineries, petrochemical plants, and retail stations to licences for providing various forms of technical/engineering services in the oil and gas sector. The department has also launched an ICT-based platform dedicated to monitoring the consumption of refined petroleum products across the country through partnerships with operators in the downstream sector. While these steps might have a positive improvement on government processes and improve the accuracy and timeliness of oil and gas data, there is still room to improve strategies for citizen engagement.

In 2019, NNPC started monthly publications of summarised versions of oil and gas information in national newspapers, with full versions in PDF format available on their website. This was observed in the second quarter of 2019, shortly before the retirement of the former Group Managing Director (GMD) of the corporation, Dr Maikanti Baru. The information provided included data on NNPC operations from Q2 2015 to January 2019. This innovation has been met with scepticism, as industry practitioners question the sustainability of this practice. After all, it would not be the first time the NNPC began publishing information on its website only to discontinue the practice later.

Other government agencies that continue to provide information regarding oil and gas activities include the NCDMB, the PPPRA, NBS, and CBN.

Of concern, however, is the fact that some government agencies lack an efficient email system, resulting in a huge amount of government email work done on third-party accounts and servers such as Google, Yahoo, and Hotmail. This is a paradox, especially when contrasted with the implementation of more complex ICT systems for the purposes of licensing and monitoring. If supply and consumption of oil resources can be monitored remotely using ICT, then a system as basic as effective email communication should not be difficult for the government to maintain. Moreover, hosting government communication on third-party servers poses a security risk to sensitive information, as well as causing concern over potential fraudsters.

Information sources

www.dpr.gov.ng/

www.nnpcgroup.com/NNPC-Business/Business-Information/Pages/Monthly-Performance-Data.aspx

www.nigerianstat.gov.ng/

www.cbn.gov.ng/

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

Old response: No**New response: Yes/No****UPDATE STATUS: Significant changes observed**

With the exception of seismic data, which attracts certain fees, data on the oil and gas sector can be accessed for free through the websites of agencies under the Ministry of Petroleum Resources. These include DPR, NNPC, PPPRA, the NCDMB, and the PEF (Management) Board. Information provided is made available in PDF format only, which on occasion includes scanned versions of hard copies of reports. This falls short of the requirements of open data standards, which stipulate that data should be made available in machine-readable formats such as XLX and OCV to allow easy analysis and scrutiny. Oil and gas data that meet these standards can be found only on the websites of NBS and CBN.

Information sourceswww.dpr.gov.ng/www.nnpcgroup.com/NNPC-Business/Business-Information/Pages/Monthly-Performance-Data.aspxwww.nigerianstat.gov.ng/www.cbn.gov.ng/

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

Old response: No**New response: Yes/No****UPDATE STATUS: Some changes observed**

Information from the government on oil and gas issues is published by NBS, CBN, and parastatals of the Ministry of Petroleum Resources such as DPR, the NNPC, and the PPPRA. These agencies continue to publish information on a regular basis, although timeliness could be improved, especially with DPR, which releases information on an annual basis and several months behind. Reconciliation with oil companies may account for this lag, but release of information over shorter cycles (quarterly or biennially) could essentially reduce the interval between data updates.

More recently, the NNPC has been observed to release information on oil and gas issues on a monthly basis. However, it may be pertinent to allow for additional observation of the corporation over an extended period to establish consistency of reporting and publication. Similarly, the

PPPRA now provides updated information on Petroleum Pricing Templates, supply and distribution, and stock data of various refined petroleum products, while the information on local content participation and compliance status on oil operating firms can be obtained from the NCDMB.

The table below shows some of the oil and gas data made available by various government agencies. As can be seen from the table, data accuracy and timeliness are still of concern; nonetheless, stakeholders agree that the extent of disclosure has improved compared to previous years. The deployment of ICT in information management in the oil and gas sector was carried out partly with the aim of addressing challenges with accuracy and timeliness of reported data. This should produce observable improvements, if any, in the near future.

Table 2.1: Oil and gas data availability and schedule as at November 2019

| S/N | Data | Last update | Expected frequency of update | Date of last published update | Agency | Other reporting agencies |
|-----|--|------------------------|------------------------------|-------------------------------|------------|--------------------------|
| 1 | Oil and gas reserves | 36.97 billion barrels | Annually | 2018* | DPR | |
| 2 | Crude oil production volume | 2.09 mmbd [#] | Monthly | July 2019 | NNPC** | DPR, CBN |
| | National gas production | 8,172.70 mmscfd | Monthly | July 2019 | NNPC** | DPR, CBN |
| 3 | Value of exports | 3.743 mmbd | Monthly | July 2019 | NNPC** | CBN |
| 4 | Average price of bonny light crude | US\$ 63.13/barrel | Monthly | November | CBN | |
| 5 | Revenue from production | NGN 4,252 billion | Monthly | July 2019 | NNPC** | CBN |
| 6 | Average daily prices of refined petroleum products | | Monthly | October 2019 | NBS | |
| 7 | Supply of refined petroleum products | | Daily | November 2019 | PPPRA | NNPC |
| 8 | Bridging claims payment | NGN 1.305 billion | Monthly | October 2016 | PEF Manage | |

| | | | | | | |
|--|--|--|--|--|------------|--|
| | | | | | ment Board | |
|--|--|--|--|--|------------|--|

Additional information can be obtained from the websites of the respective agencies.

Notes to table

* The last update on reserves by DPR was published in the 2017 NOGIAR released in the last quarter of 2018.

** NNPC reports are prepared one month in arrears. Therefore, reports released in July 2019 covered the preceding month (June).

Includes condensates.

At the UK Anti-Corruption Summit in 2016, Nigeria committed to establishing a public register of companies for beneficial ownership. In fulfilling its commitments, the country is pursuing a sectoral plan on beneficial ownership and has produced a road map to require the public disclosure of beneficial owners of oil, gas and mining companies. In addition, CAC, the institution responsible for of managing the register, has sought amendments to the country’s CAMA to include provisions that address beneficial ownership. The amendments are crucial to the success of the register, which aims to provide a legal premise for the public disclosure of beneficial ownership. The amendments were deliberated and passed by the 8th National Assembly and was sent to the President for assent. However, the amendments were not signed into law by the President for unspecified reasons. As a result, the process could not be completed before the assembly was dissolved and replaced with a new one following fresh democratic elections in 2019. This implies that the amendments may have to be deliberated all over again by the 9th Assembly before it can be retransmitted to the executive arm of government for assent.

Notwithstanding, DPR, as part of its obligations in meeting up with OGP commitments, is in the concluding phase of developing a register along with other partners including NEITI. The register was expected to be launched in the last quarter of 2019. This is commendable on the part of the regulator, but without the necessary legal framework to support the register, enforcing compliance may be a major challenge. Notwithstanding this, in December 2019, NEITI launched a version of the register that showed information about the ownership of some oil and gas companies and assets in Nigeria. NEITI’s BOR, available at <http://bo.neiti.gov.ng/>, is expected to be complimented by the more comprehensive register of DPR when it is launched.

In addition, information on budget performance and payments by the MDA of the Federal Government can be accessed at <https://opentreasury.gov.ng/>. Information available through the portal includes summary of flows in and out of the Treasury, with a breakdown of agencies responsible. The Office of the Accountant General of the Federation (OAGF) publishes payments of at least NGN 10 million outlining the MDA responsible, the beneficiary, the purpose, and the amount of each payment, while MDA publish payments above NGN 5 million. This was made possible through the implementation of the Government Integrated Financial Monitoring Information System (GIFMIS), an ICT-based instrument designed to promote transparency in government spending.

Information sourceswww.dpr.gov.ng/www.nnpcgroup.com/www.nigerianstat.gov.ng/www.cbn.gov.ng/<https://pppra.gov.ng/><https://ncdmb.gov.ng/>www.pefmb.gov.ng/?page_id=285<http://bo.neiti.gov.ng/>www.opengovpartnership.org/stories/lessons-from-reformers-nigerias-push-for-beneficial-ownership-transparency-in-procurement-and-in-the-extractives-sector/<https://punchng.com/the-nigerian-beneficial-ownership-journey/><https://guardian.ng/energy/curbing-shell-companies-operations-via-beneficial-ownership-disclosure/>www.premiumtimesng.com/business/business-news/367378-nigeria-set-to-open-extractive-industry-ownership-register-heres-how-it-will-work.html<https://opentreasury.gov.ng/#>

2.2 Official oversight

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

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

Legislative oversight refers to the power of the National Assembly to ‘review, monitor and supervise government agencies, programmes, activities and policy implementation strategies of the executive arm of government.’ The aim is to ensure that the executive arm ‘sustains the principles of good governance and remains responsive, transparent, and accountable to the electorate’. This is provided for by the Nigerian Constitution and is implemented through different committees set up by both houses of the National Assembly—the House of Representatives and the Senate. Instruments such as oversight visits, committee hearings, hearings in plenary session

of the Assembly, commissions of inquiry, public accounts committees, and Audit Reports are available to be deployed and utilised by the legislature in the exercise of their oversight functions.

Both houses of the National Assembly are empowered to create standing or *ad hoc* committees to carry out specific oversight functions. Committees with direct or indirect oversight responsibility of the oil and gas sector in Nigeria include the petroleum committees (upstream and downstream), gas committees, and public accounts committees in both houses. Oversight activities could be political or technical. Political oversight takes place during cross examination when actions of government are scrutinised during public sittings, while technical oversight involves the attention of requisite committees to establish facts and evidence for informed legislative decisions. Both houses of the National Assembly deploy these tools in carrying out oversight of the oil and gas sector. Examples of oversight cases are shown in the tables below.

Table 2.2a: National Assembly oversight relating to performance of MDA in the oil and gas sector (2012/2013)

| S/N | Committee/year | Key findings and outcomes |
|-----|--|--|
| 1 | House Committee on the Niger Delta 2012/2013 | <ul style="list-style-type: none"> Discovered the illegal conduct in activities of the ministry, especially the overestimation of value of work and the award of contracts and approval for upward review of such contracts by almost 100% The committee mandated the ministry to re-award contracts where necessary in case of non-serious contractors and reverse the illegal upward review of contract awarded Resolved all controversies relating to payment of compensation and assurances of competent engineers, as well as strict supervisions and monitoring of projects |
| 2 | House Committee on Gas Resources | <ul style="list-style-type: none"> Inability of NNPC to meet its joint venture (JV) financial obligations Poor funding of DPR regarding capital projects Lack of consultation with DPR by the ministry before capital projects were awarded |
| 3 | House Committee on Petroleum Resources (Downstream) (oversight to NNPC/ Pipelines and Product Marketing Company (PPMC) facilities and private oil companies) | <ul style="list-style-type: none"> Delay in payment of subsidy claims to marketers /importers Incessant act of pipeline vandalism The shallow draft of Calabar river channel does not allow for large vessels to come in Obsolete state of facilities at the Nation's depots Inadequate staff; no recruitment in a long time Inadequate funding of government agencies' Depot Management Areas Cumbersome approval protocol of NNPC/PPMC Low morale of staff of visited depots |
| 4 | Senate Committee on Environment and Ecology | <ul style="list-style-type: none"> Agencies in the sector have overlapping responsibilities on issues connected with the environment Lack of institutional framework/legislation to back up the programmes and policies on the environment |

| | | |
|---|-------------------------------------|---|
| | | <ul style="list-style-type: none"> • Poor budget performance because of poor selection of capital projects, outstanding liabilities, uncompleted projects • Wastage of government resources leading to non-take-off of projects; poor project planning and design |
| 5 | Senate Committee on Public Accounts | <ul style="list-style-type: none"> • Poor administration of the Special Funds Account • Misapplication of monies from the Special Funds Account • No regular reconciliation between the Accountant General of the Federation and CBN |

Source: National Institute for Legislative and Democratic Studies (NILDS)

Table 2.2.1b: Nigeria National Assembly: key probes/investigative public hearings, 2000–2014

| S/No. | Chamber | Description | Year | Major findings and outcomes |
|-------|---------|--|------|---|
| 1. | House | An investigation of the Federal Government of Nigeria's crude oil exports and refined products imports among other oil and gas sectors and industries issues for the period May 1999 to 2000 | 2000 | Revealed that NNPC lost a lot of revenue as a result of not following the statutory empowerment; shoddy financial record-keeping in the NNPC; absence of due process; lack of turn-around maintenance and neglect of refineries, leading to increased importation; illegal sale of petroleum products; pipeline breakage and vandalism. Recommended that NNPC be broken up into two corporations for efficient operation |
| 2. | Senate | Petroleum Technology Development Fund (PTDF) probe | 2007 | Found President Obasanjo guilty of not following due process. Recommended that Vice-President Atiku be sanctioned for diverting and mismanaging public fund. Others were asked to refund money to the Federal Government and face prosecution |
| 3. | House | An investigation of the activities and operations of the NNPC and its subsidiaries from 1999 to 2007 and the right of Nigerians to know | 2008 | The committee uncovered incidences of corruption that included incessant hikes in the price of petroleum products; deliberate and unaccounted increases in the daily quota of petroleum production against OPEC allocation; misappropriated funds for turn-around maintenance; fraudulent allocation of oil blocks; lack of transparency and imprudence in NNPC bills; crude oil theft known as 'smuggling' across Nigeria's porous borders; deliberate delays in discharging petroleum products by ships at the seaports; and the dubious operations of International Oil Companies (IOCs) |
| 4. | House | Closure of Soku Gas Plant | 2009 | The committee revealed a loss of about 80 LNG cargoes, each worth about US\$ 15 million (US\$ 1.2 billion) due to the closure |

| S/No. | Chamber | Description | Year | Major findings and outcomes |
|-------|---------|--|------|--|
| 5. | Senate | Probe of oil subsidy expenditure | 2011 | The committee found that the NNPC was guilty of making double withdrawals and was accountable. The joint committee published the names of beneficiaries of the fuel subsidy scheme operated by government agencies |
| 6. | House | Investigation of the Bonga oil spill | 2012 | The committee found flagrant abuse of the extant environmental laws and the lack of relief materials to those affected |
| 7. | House | Probe of the petroleum product fuel subsidy administration | 2012 | The report of the <i>ad hoc</i> committee stated that the subsidy administration was heavily compromised and exposed massive fraud in the oil sector. It revealed that US\$ 6.8 billion was unaccounted for. It prescribed sanctions to individuals in the government, companies, and organisations involved for various offences including negligence and fraud. It recommended that the Ministry of Petroleum Resources be split into two to ensure effective supervision |
| 8. | House | Probe of remittances by MDA | 2012 | The committee uncovered an NGN 2 trillion fraud in the executive after an investigation into the revenue generation and remittance of 60 MDA of government. This showed the top heads of government MDA generate revenue from their agency's activities running into trillions of naira, but under-declare such revenue while diverting the remainder to other use |
| 9. | Senate | Investigation into allegations of a missing US\$ 49.8 billion in the NNPC account by the former governor of CBN, Mallam Sanusi Lamido Sanusi | 2014 | The committee's report debunked Sanusi's claim and accused him of jumping to hasty conclusions and generating false allegations against the NNPC. The committee also blamed the Ministry of Finance, CBN, and the NNPC for lack of coordination in record-keeping regarding crude oil proceeds and remittances. Consequently, the committee recommended interagency reconciliation meetings between sensitive economic institutions on a regular basis to avoid a similar episode and to ensure that all revenues are properly and legally accounted for |
| 10. | House | Malabu Oil and Gas Limited | 2013 | The house faulted the agreement between Malabu Oil and Gas, Shell Nigeria Exploration and Production Company Ltd (SNEPCO), and Nigeria AGIP Exploration Ltd with the Federal Government acting as obligor and called for the |

| S/No. | Chamber | Description | Year | Major findings and outcomes |
|-------|---------|-------------|------|--|
| | | | | cancellation of OPL 245 recently granted to SNEPCO. It advocated for a new 'Resolution Agreement' in line with the Petroleum Act and the Indigenous Concessions Programme. It further recommended that Nigeria AGIP Exploration Ltd be formally censured or reprimanded for its role in the 'Resolution Agreement' which lacked transparency and did not meet international best business practices. Finally, it called for investigation and prosecution by the Nigerian police force over instances of forgery and alteration of documents by some directors of Malabu Oil and Gas Ltd |

Source: NILDS

In the period under review, cases where top officials in the Ministry of Petroleum Resources and the NNPC were invited by the National Assembly, usually in response to controversies around management of funds, have also been reported by the news media. A recent³ example was a US\$ 3.5 billion subsidy fund allegedly held by the NNPC. Although the allegation was strongly denied and appeared to have been clarified by the National Oil Company and the Ministry of Finance, the case raised speculation about the transparent management of public resources. Consequently, the Senate set up an *ad hoc* committee to investigate the allegations.

Actions related to some oversight cases by the legislature have been observed. In 2018, after several years in the courts, a total fine of US\$ 3.6 billion dollars in compensation as well as punitive damage was levied against SNEPCO. The sanction which followed the Bonga oil spill of December 2011 (No. 6, Table 2.2.1b) was levied by NOSDRA in 2016 and upheld by a federal court in 2018. Investigations showed that the spill was caused by operator error, but SNEPCO refused to accept responsibility and pay the fine. Consequently, a coalition of victims of the spill came together to file a suit against SNEPCO in London. According to Environmental Justice Atlas,⁴ an estimated 168,000 people across 20 communities in Akwa Ibom, Baylesa, and Delta States were affected by the spill.

The report of the 2012 investigative committee on the subsidy by the House of Assembly was taken up by anti-graft agencies, which led to investigations of the indicted parties, some of whom have been convicted by the courts while other cases are still pending. Press releases by the

³ In October 2018, several news media reported on the allegation by the minority leader of the Senate Abiodun Olujimi on a US\$ 3.5 billion subsidy recovery fund managed by the GMD and executive Finance Director of the NNPC.

⁴ Environmental Justice Atlas is a project that documents and catalogues social conflict around environmental issues. It is directed by Leah Temper and Joan Martinez Alier and coordinated by Daniela Del Bene at the Institute of Environmental Science and Technology at the Universitat Autònoma de Barcelona.

EFCC indicate that the convictions attracted sentences ranging from eight to 10 years in prison. An example is the January 2018 Lagos state appeal court judgement against two oil marketers, Emmanuel Morah and George Ogbonna, owners of Rocky Energy Limited, who were sentenced to eight years in prison. The court also ordered that more than NGN 789.6 million that had been fraudulently collected as subsidy claims be refunded to the Federal Government.

The EFCC has also begun investigations into the Malabu oil scandal and, in 2017, reportedly secured a court order for the Federal Government temporarily to seize control of the disputed oil licence (OML 245) from Shell and Eni until investigations were completed. In addition, in October 2019, the EFCC tried to secure arrest warrants against former high-ranking government officials involved in the scandal. The warrants were, however, challenged by the accused parties on technical grounds.

More recently, in May 2019, the report of an investigation by the House of Representatives into oil and gas contracts involving the NNPC/ National Petroleum Investment Management Services (NAPIMS) and oil operating firms was made available to the public. According to the report of the House Committee on Gas, the contracts (OML 53 Upgrade 1, Obite-Ubeta-Rumiji pipeline, and northern option pipeline projects) under review violated provisions of the Procurement Act, contained unapproved cost overruns, violated rules on conflict of interest, and showed characteristics of negligence by the NNPC. Sanctions were consequently recommended to the executive arm of government for implementation. The sanctions include the refund of US\$ 592 million dollars to the Federal Government by TOTAL Exploration and Production Nigeria, and another US\$ 1 million dollars by three top staff of NNPC/NAPIMS responsible for managing the project. Further investigations on the oil operating firm, as well as staff of the NNPC/NAPIMS who were responsible for overseeing the contract, were also recommended by the House of Representatives. These recommendations were transmitted to the executive arm of government for implementation.

The above notwithstanding, in other cases, action to enforce recommendations by the National Assembly appear to be absent or weak. The former President and Vice-President of the country, found guilty of ignoring due process and diverting/mismanaging public funds (respectively) by the Senate in the PTFD probe of 2007, seem to have eluded any sanctions. The 2014 investigation of missing funds in the accounts of the NNPC based on allegations by the former governor of CBN resulted in a forensic audit. The forensic audit revealed that the missing funds were US\$ 1.48 billion rather than the US\$ 49.8 billion as stated in the former governor's initial allegations. The NNPC was instructed to refund the amount, but there is no publicly available evidence of sanctions against the NNPC officials who were responsible for the missing funds in the first place.

On several occasions, the NNPC has been accused of mismanaging revenue or under-remitting to the Federation Account, as seen by the examples in the tables above. The many investigative committees by the legislature have not stopped the corporation from continuing such practices. That the NNPC Act has been cited as an enabler of such behaviour has not led to the amendments of the law provisions contained in the act by the legislature either. Moreover, where recommendations by the legislature were ignored, researchers could not find any record showing

the deployment of sanctions against enforcement institutions for not acting on the recommendations.

In addition, for years the reports by the Office of the Auditor General of the Federation have shown several infractions by public institutions within and outside the oil and gas sector, yet no actions by the National Assembly to discourage the impunity have been observed. Several MDA are notorious for non-compliance in submitting audited accounts within the statutorily required timeframe. There are also no publicly known sanctions by the legislature against such infringements. This is further compounded by the failure of the National Assembly to address violations revealed in NEITI reports focusing specifically on the oil and gas sector and the NNPC. In 2019, RemTrack, an Order Paper advocacy initiative⁵ that tracks the implementation status of remedial issues in NEITI reports, was launched. According to the technology-based platform, as at December 2019, only two issues of underpayments of oil and gas royalties amounting to US\$ 46.674 million and US\$ 19.888 million respectively had been resolved by the accountable entities (DPR and CBN). Several other issues, mostly regarding underpayments, are yet to be resolved.

Information sources

House of Representatives, Federal Republic of Nigeria (2018) 'Report of the Investigative Hearing on the need to investigate the contract for the upgrade of OML 58 upgrade 1, the execution of Obite-Ubeta-Rumiji (OUR) pipeline and the Northern Option Pipeline Project (HR 178/05/2018)',

House of Representatives, Federal Republic of Nigeria (2019) 'Order Paper, Wednesday 22 May 2019',

<https://punchng.com/reps-ask-total-to-refund-592m-to-fg/>

www.vanguardngr.com/2018/11/confusion-over-fuel-subsidy-as-finance-ministry-nnpc-disagree-over-stashed-used-3-5b-dollars/

<https://ejatlas.org/conflict/shell-bonga-oil-spill-nigeria>

www.ft.com/content/fcd50330-e491-11e6-8405-9e5580d6e5fb

PLAC (2016) 'Guide to legislative oversight in the National Assembly', available at <http://placng.org/wp/wp-content/uploads/2016/12/Guide-to-Legislative-Oversight-in-The-National-Assembly-Final-Purple.pdf>

<https://efccnigeria.org/efcc/news/3399-efcc-scores-legal-victory-as-a-court-upholds-judgment-in-n-789-6m-subsidy-case>

www.remtrack.ng/ www.orderpaper.ng/about-us/

⁵ Order Paper Nigeria is a multi-platform organisation dedicated to reporting, tracking, and archiving the activities of the legislature.

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

Old response: No

New response: No

UPDATE STATUS: No observable changes

Challenges highlighted in the 2017 BER regarding the Office of the Auditor General of the Federation and the execution of his duties continue to trail the audit office. Administrative lapses, weak communication and coordination between public institutions, poor compliance by public institutions, and the lack of strong internal controls (as well as poor funding and inadequate staffing of the Audit Office) are persistent. The Audit Office did not receive the financial statements of the Federal Government of Nigeria for the year ended 2017 from OAGF until December 2018. Consequently, the annual Audit Report for the year ended 2017 was not submitted to the National Assembly until July 2019, 10 months behind schedule, and was not made available to the public by the Audit Office until December.

The 2017 report, like preceding reports, still contained unauthorised deductions by revenue generating agencies, including NNPC and DPR. Generally, 265 agencies failed to submit their audited accounts to the Office of the Auditor General of the Federation—worse than the preceding year, 2016, when there had been 160 defaulting agencies. This resulted in NGN 300 billion not being accounted for. Recommendations of sanctions against erring agencies and government officials are yet to be implemented by the National Assembly, and a new audit bill which provides for punitive measures to dissuade non-compliance was not signed into law by the executive arm of the government after it was passed by the National Assembly in January 2019. Before it was passed, the audit bill spent approximately three years between both houses of the National Assembly.

According to the Auditor General, implementation of audit recommendations is still very low. Findings contained in reports led to almost no action by the requisite oversight authorities, consequently losing value and as a result failing to ensure accountability and transparency in public sector finance.

Information sources

Office of the Auditor General of the Federation (2017) Annual Report of the Auditor General for the Federation on the Accounts of the Federation of Nigeria for the Year Ending 31 December 2017

www.oaugf.ng/news1/300-implementation-of-audit-recommendations-still-very-low-augf

<https://punchng.com/senate-passes-audit-service-commission-bill-10-others/>

<https://guardian.ng/news/how-265-government-agencies-violated-fiscal-audit-rules/>

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

Old response: Yes/No**New response: Yes/No****UPDATE STATUS: Additional information included**

Nigeria implemented a whistle-blower policy in 2016 to help the fight against corruption in the country. Gains were recorded almost immediately, with the recovery of stolen public funds amounting to several millions in different currencies reported in the 2017 BER. According to the Africa Centre for Media and Information Literacy, data made available to them by the Ministry of Finance showed that, as at October 2018, the whistle-blower policy had led to the recovery of 'NGN 7.8 billion, US\$ 378 million, and £27,800.' In addition, 'a total of 1,088 tips were received from whistle-blowers, out of which 41 cases were referred to law enforcement agencies, leading to 4 convictions and 12 ongoing prosecutions.' While these may be regarded as successes, some stakeholders have expressed concern over the continued effectiveness of the policy. The policy contains provisions for whistle-blower protection, but certain developments suggest that, in practice, such protections are not always upheld. Cases of victimisation of whistle-blowers have been recorded. The ICPC has also acknowledged some of these cases. These include exposure of the whistle-blower's identity, job loss, threats, and even incarceration.

Moreover, the whistle-blower policy is yet to be backed by effective legislation. The Whistle-Blower Protection Bill and the Witness Protection Programme Bill, designed to provide cover for individuals who expose corrupt practices by public officials, were not concluded before the dissolution of the 8th Assembly in May 2019, resetting the clock on those pieces of legislation. Both bills sailed through their first readings of the House of Representatives in June and July 2019 respectively.

Information sources

www.premiumtimesng.com/features-and-interviews/302641-feature-despite-gains-nigerias-whistleblowing-policy-not-enough-to-fight-corruption.html

www.africmil.org/africmil-media-workshop-on-whistleblowing-policy-whistleblower-protection/

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?

Old response: No

New response: No

UPDATE STATUS: No observable changes

Policy documents such as the NPP and the NGP clearly show the government's acknowledgement of Nigeria's excessive dependence on oil and gas revenue and the need to broaden the economic base of the country to become more diversified and resilient. These documents also indicate that the government recognises the importance of effective communication between state actors and other stakeholders in the oil and gas industry. The Seven Big Wins, the government's short- to medium-term plans for oil sector reform, as well as other policy documents, outlined a list of activities geared towards developing a specific communications policy for managing communication within government (that is between government agencies in the oil and gas sector) and between government and external stakeholders (general public, investors, civil society, donor community, etc.). The 2017 BER also reported that the timetable for these activities indicated that development and implementation of a communications policy was expected to be achieved by 2019. This milestone cannot be confirmed as there is no publicly available information regarding the extent of implementation of the 'Seven Big Wins'.

According to the NPP, communication to external stakeholders 'will take the form of media presentations and interviews, seminars, workshops, newsfeeds, websites, mass media, and the like.' The aforementioned strategy largely refers to ensuring that stakeholders understand the government's policy direction, which at present does little to address the future benefits and costs of extraction of oil and gas resources. Expert opinion suggests the inability of the government to effectively manage expectations is tied to the high cost of governance and exorbitant lifestyle of public officials which is not lost to the public, especially members of oil-producing communities. Recent discoveries, such as that in Lagos State, also appear to exhibit weak efforts at managing expectations and communication with stakeholders. A community relations committee was set up to liaise with oil-producing areas in the state, but not much has been done beyond that. This offers the potential for host communities in Lagos to follow the patterns of non-inclusiveness and consequent restiveness seen in the Niger Delta.

Information sources

Federal Ministry of Petroleum Resources (2017) NPP: available at www.petroleumindustrybill.com/wp-content/uploads/2017/07/National-Petroleum-Policy-Approved-by-FEC-in-July-2017.pdf

Federal Ministry of Petroleum Resources (2017) NPG: available at www.petroleumindustrybill.com/wp-content/uploads/2017/06/National-Gas-Policy-Approved-By-FEC-in-June-2017.pdf

Federal Ministry of Petroleum Resources: 7 Big Wins

<https://governor.lagosstate.gov.ng/2018/01/17/the-inauguration-of-the-lagos-state-oil-producing-areas-community-relations-committee/>

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

Old response: Yes/No

New response: No

UPDATE STATUS: Significant changes observed

While the Constitution of the Federal Republic of Nigeria and Article 19 of the United Nations Universal Declaration of Human Rights, to which Nigeria is a signatory, continue to uphold and protect the freedom of speech and association and the right to peaceful assembly, recent events suggest a complete disregard of these critical pieces of legislation by the Federal Government. In 2017, the NNRC BER reported that Nigeria's internet freedom was described as partly free by Freedom House's Freedom on the Net 2017 report, but that civic and political freedoms in the country were being threatened, although no case specific to the oil and gas sector was recorded over the review period. Sadly, new developments indicate a deterioration in the civic and political rights of individuals.

Online journalists and activists were subjected to extra-legal harassment and intimidation for comments posted on social media which were critical of government officials. In the latest Freedom on the Net report, Nigeria was among the countries with the worst declines in internet freedom. Moreover, the use of force has been deployed on several occasions by law enforcement agencies to suppress or prevent peaceful protests against the government by various groups. In July 2019, violent confrontations between the Nigerian police force and protesters led to the death of a journalist covering the protest.

Unlawful arrest and detentions of individuals as well as extrajudicial killings of suspects by state forces have continued during the review period, while court orders have been subverted or ignored by agencies of the executive arm of government without any consequences. For example, journalist and 2019 presidential candidate Omoyele Sowore was arrested by security forces loyal to the current administration for organising a peaceful protest against bad governance, a constitutionally given right. Outrageous charges levied against him include treason and money laundering. Even after the courts had granted bail, the Department of State Security ignored the

court orders and continued to detain Mr Sowore. This, like many similar cases, is an abuse of the rule of law.

Human rights defenders also faced intimidation for their work during the period under review. According to Amnesty International, social media activists were arrested and detained for calling for investigations into alleged killings and assault of residents of a community who were victims of forced evictions. Criminal charges carrying a three-year prison sentence were also brought against Raymond Gold, a human rights defender, for demanding that an oil company conduct an EIA on activities that harmed the environment.

In 2019, the Senate entertained a broadly worded hate speech bill which (according to critics) could be used by the government to silence online dissent. The bill goes as far as proposing the death penalty as punishment when hate speech results in the death of another person. As at November 2019, the bill, which had been thrown out in 2017 by the previous assembly, had sailed through its second reading in the Senate. A second bill to regulate social media was also introduced in 2019 and also sailed through its second reading. Both bills have attracted stringent condemnation from critics within and outside the government. Various CSOs have protested against both bills, calling the National Assembly to reject any attempt to impede free speech in Nigeria.

In other developments, the *Kiobel v Shell* case resumed on 08 October 2019 at The Hague. Esther Kiobel and three other Nigerian women accused Shell of being complicit in the unlawful arrest, detention, and execution of their husbands who were part of the Ogoni Nine (including Ken-Saro Wiwa) executed by the military administration of Late General Sani Abacha in 1995. The continuation of the case at The Hague marks a turning point in the struggle for justice by the women and could be a step closer to holding the oil giant accountable over its alleged complicity in human rights abuses.

Information sources

<https://freedomhouse.org/report/freedom-net/2018/nigeria>

www.amnesty.org/en/countries/africa/nigeria/report-nigeria/

www.amnesty.org/en/latest/news/2019/10/nigeria-netherlands-kiobel-witness-hearing-key-chance-to-hold-shell-to-account-over-human-rights-abuses/

www.premiumtimesng.com/news/top-news/365603-senator-condemns-anti-social-media-hate-speech-bills-in-strongest-terms.html

www.dw.com/en/nigeria-bill-aims-at-punishing-hate-speech-with-death/a-51419750

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

A 2017 report by Freedom House described Nigeria's civil society as broad and vibrant. Media organisations also provide the public with critical information to hold government actors accountable. For instance, in 2018 Premium Times exposed a high-ranking minister with allegedly forged credentials for the National Youth Service Corps,⁶ which resulted in the resignation of the minister. Charges are, however, yet to be brought against the culprit by the requisite authorities. Similarly, persistent pressure by media and CSOs led to the June 2019 dismissal of the former Executive Secretary of the National Health Insurance Scheme (NHIS) several months after he was exposed for the mismanagement of public funds through his office. His dismissal was delayed in spite of two separate recommendations; the first in 2017 by the director of the Federal Ministry of Health, and the second in December 2018 by a panel set up by the secretary to the Government of the Federation.

New developments, however, threaten freedom of speech and press freedom. Multiple cases of arrests and intimidation of journalists and media outlets have been recorded. In 2018 and 2019, the offices of the Premium Times and the Daily Trust were raided by security forces, resulting in the arrest of some staff and the seizure of equipment. In May 2019, Jones Abiri, publisher of the Weekly Source newspaper, was charged with terrorism, economic sabotage, and fraud under the Cybercrimes, Anti-Sabotage, and Terrorism Prevention Act by the Federal Government, a case for which he was detained without charge by the Department of State Security for two years from July 2016 to August 2018 with no access to lawyers or family members. In June 2019, the Nigerian Broadcasting Corporation withdrew the licence of a major privately owned media house (AIT) for 'inciting and promoting bigoted content generated on social media.' While the government agency explained that the shutdown had been a response to the media house's refusal to comply with regulations and repeated warnings, critics described the sanction as an attempt to suppress 'opposition media'.

Other threats to the civic space in Nigeria include the establishment of some CSOs with the aim of driving the agenda of certain political interest both within and outside government. This has the potential to damage the reputation and integrity of the civil society community and also diminish the trust of civil society actors held by the public.

⁶ A mandatory one-year service given to the country by all Nigerian graduates, with some exceptions (including those who are overage). The minister had a questionable certificate of exemption.

Information sources

www.premiumtimesng.com/investigationspecial-reports/275319-exclusive-finance-minister-kemi-adeosun-skips-nysc-forges-certificate.html

<https://punchng.com/breaking-n919m-fraud-at-last-buhari-sacks-nhis-boss-usman-yusuf/>

<https://reliefweb.int/report/nigeria/you-cannot-muzzle-media-nigerian-journalists-press-freedom-under-buhari>

<https://cpj.org/2019/05/nigeria-charges-jones-abiri-weekly-source-terrorism.php>

<https://cpj.org/2019/07/nigeria-channels-tv-protest-shot-precious-owolabi.php>

www.pulse.ng/news/local/all-you-need-to-know-about-ait-shutdown-by-nbc/bpf2yr4

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

Although local institutions continue to conduct research on a broad range of issues affecting resource governance, capacity challenges still remain. Academic institutions still suffer from inadequate funding and poor sector administration, and market-driven research is still scant. Funding programmes by the government through specialised institutions and programmes are available, although access is a challenge. In view of the prevailing bleak economic condition in the country, support for research by the Nigerian government has been one of the early casualties. State actors perceive research as a social service rather than as a vital instrument for development, which worsens the approach to research by the government.

International donors and oil companies continue to support local research, but uptake of research output by government institutions is still low.

Information sources

<https://ptdf.gov.ng/>

Extracts of Interview with Professor Adeola Adenikinju, Director, Centre for Petroleum, Energy Economics, and Law

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?

Old response: No

New response: No

UPDATE STATUS: No observable changes

Professional bodies and unions in Nigeria have rules in place that promote ethical and responsible practices among their members and hold them to required standards of competency, honesty, integrity, and impartiality.

This stakeholder group also represents a strong force in ensuring accountability and inclusiveness in the implementation of policies by the government and oil and gas companies, especially decisions with potential impacts on workers in the oil and gas sectors.

Available information suggests that unions and professional associations largely focus on the welfare, safety, job security, and career development of their members. There is no publicly available information detailing sanctions deployed by this group of stakeholders against erring members (whether individuals or companies) for violating their professional code of ethics.

While effort is mostly geared towards ensuring that members are not exploited by their employers in the public and private sector, expert opinion also suggests that actions of unions has on occasion been judged to hinder the successful implementation of some reforms, especially those with perceived discomfort to members. For example, downsizing the civil service perceived to be in excess in some ministries or divesting government assets have been opposed by unions over the loss of its members' jobs.

Information sources

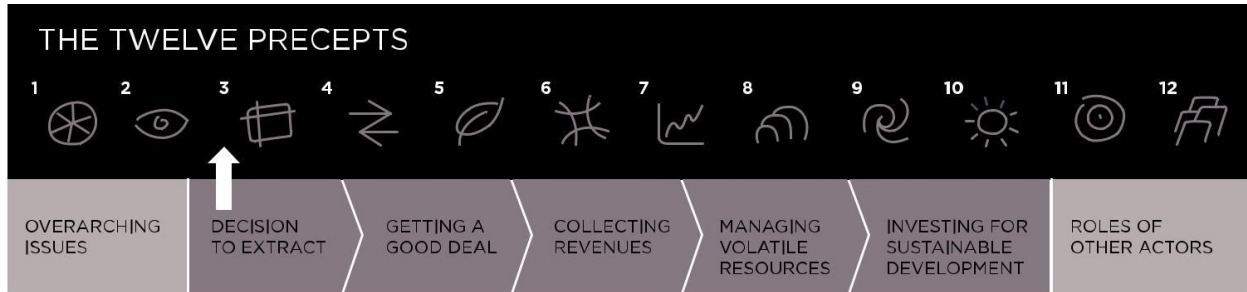
<https://guardian.ng/news/pengassan-opposes-job-losses-in-oil-sector-reforms/>

<https://nupeng.org/2019/07/31/nupeng-puts-members-on-red-alert-over-chevron-nigeria-limited-and-its-contractors-blatant-violation-of-agreement-with-oil-gas-unions/>


<https://theeagleonline.com.ng/nupeng-opposes-sale-of-nnpccs-assets/>

www.dailytrust.com.ng/nupeng-not-opposed-to-downstream-deregulation.html

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 improvements since 2017; some developments with the collection and disclosure of data were observed. Still, critical anticipated legislation and amendments to existing laws that would enshrine sustainable and equitable licencing practices in the oil and gas sector did not become law during the review period. These include the Petroleum Industry Administrative Bill (PIAB) and the Environmental Impact Assessment EIA Act. The Petroleum Minister still retains discretionary powers over the award of licences and attempts to limit those powers were thwarted by the withheld assent to the Petroleum Industry Governance Bill (PIGB).</p> <p>No major bid rounds were conducted during the review period; the absence of much-needed reforms backed by legislation implies that the licensing process could still be abused.</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 (SIA) before allocating licences? |  |
| 3.1.3 Prior to allocating licences, 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 organise licences to ensure that licence 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 licence areas? |  |

3.2 AWARDING RESOURCE LICENCES

| | |
|--|---|
| 3.2.1. Does the government screen licence applicants before allowing applicants to enter a licensing round or negotiation? |  |
| 3.2.2 Does the government use a method of awarding licences 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 licence transfers to the same checks and balances as an initial licence award? |  |
| 3.2.5 Does the government disclose pre- and post-licence 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 lifecycle? |  |

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



Summary of key findings

Licence planning

- The Federal Government facilitates pre-licensing surveys, with operations ongoing in the Gongola Basin of the Upper Benue Trough and northeast Nigeria. The little success of commercial finds of hydrocarbon resources in the region, combined with security challenges and the difficulty of conducting exploration activities in the terrain, informs expert opinion that oil and gas sector decisions are more political than economically strategic.
- Global best practice requires that social, human and health impacts of oil and gas exploration are considered when conducting environmental impact assessments and should be conducted at the policy making stage before licensing begins. In Nigeria however, EIAs continue to be conducted post-licensing by the licensee. Amendments to the EIA Act to make EIAs a prerequisite to licensing as well as to integrate provisions for social, human, and health issues are yet to pass into law.
- Property rights are statutorily protected and instrumental if the need for compensation arises. Measures are in place to ensure that licensing areas do not overlap so as to avoid disputes between licence holders, but there is as yet no legislation to guarantee the transparent award of licences.

Awarding resource licences

- Licence applicants are subject to screening before entering a licensing round or negotiation. The government-issued guidelines contain a set of criteria that bidders must meet at different stages of the licensing process.
- The Minister of Petroleum Resources still retains discretionary powers over the licensing process. PIGB contains provisions limiting such powers, but has suffered setbacks during the period under review. The president, who is also the Minister of Petroleum Resources, refused assent to the bill indicating an inclination to retain the status quo.
- Licence transfers are required to go through the same checks as initial licence awards. Checks are conducted by the party transferring the licence, with oversight and approval by DPR. Details of some transfers made available to the public through the news media suggest the process is open to abuse.

Summary of key findings

Monitoring operations

- The government continues to collect and manage geological and operational data through its agencies, although there is no publicly available evidence to suggest that capacity challenges have been addressed.

3.1 Licence planning

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

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

The Federal Government continues to fund pre-licensing surveys through NNPC and its subsidiary, the Integrated Data Services Limited (IDSL). IDSL conducts seismic surveys and stores the data in the National Data Repository (NDR) of DPR.

Geological information is made available to stakeholders at a cost by DPR. In 2016, surveys resumed in the country's frontier regions, including the Lake Chad Basin and the Gongola Basin and the Upper Benue Trough. Exploration in the Lake Chad Basin was suspended in 2017 following the abduction of a team of NNPC Frontier Exploration Services and their consultants from the University of Maiduguri. The former GMD of the corporation in 2019 restated commitments to resume exploration activities once security clearance was received. Given the dire security conditions in that region, it is difficult to predict when or if that will ever happen.

Exploration activities are, however, ongoing in the Gongola Basin with the spudding of the Kolmani River-2 well. According to the Africa Oil and Gas report, NNPC awarded contracts to Halliburton to run drill stem tests and tubing conveyed perforation on Kolmani River-2, signalling the possible presence of commercial deposits of hydrocarbon resources. Twenty years earlier, in 1999, Shell had made discoveries of non-commercial gas deposits in Kolmani River-1. Exploration activities were subsequently suspended and abandoned due to the lack of commercial finds. For similar reasons, the Federal Government had previously suspended exploration in the Lake Chad Basin in 2000. Considering the security challenges and the cost implications, as well as the poor track record of discoveries, NNPC's return to the north for exploration appeared irrational. Discovery of hydrocarbon resources in commercial quantities in northern Nigeria, however, would change the dynamics of the country's politics. This is an indication that prevailing oil sector decisions are more politically motivated than economically practical.

Guidelines for awarding licensing are made available to the public through dedicated channels by DPR; however, there is no known policy determining the pace and areas of licence awards.

Information sources

www.nnpcgroup.com/upstream/pages/IDSL.aspx

www.nnpcgroup.com/News-and-Media/News/Lists/Posts/Post.aspx?ID=121

<https://africaoilgasreport.com/2019/08/oil-patch-sub-sahara/nnpc-moves-to-test-kolmani-river-2/>

www.oilreviewafrica.com/downstream/nigeria-to-attract-us-48bn-oil-and-gas-capex-in-upcoming-projects

www.vanguardngr.com/2019/02/buhari-directs-nnpc-to-extend-exploration-to-six-basins-in-the-country/

www.dpr.gov.ng/upstream

www.thisdaylive.com/index.php/2019/10/05/sylva-fg-to-conduct-fresh-oil-blocks-bid-rounds-in-2020/

www.energyglobalnews.com/nnpc-returns-to-gongola-basin-in-northeastern-nigeria/

3.1.2 Does the government conduct and publish a Strategic Impact Assessment (SIA) before allocating licences?

Old response: No

New response: No

UPDATE STATUS: Additional information included

A SIA is the assessment of the wider environmental, social, and economic impacts of alternative proposals at the beginning of a project, usually carried out at the decision stage (the policy or planning level). SIAs evolved from EIAs, which consider specific environmental impacts and are applied at project level. A SIA adopts a more proactive approach and includes the participation of all stakeholders.

Presently in Nigeria's oil and gas sector, EIA remain the required practice and are conducted after a licence has been awarded but before operations commence. However, CSOs under the coordination of the Catholic Organization for Relief and Development Aid (CordAid),⁷ advocate for the expansion of EIA requirements, because of its limited scope, to include other important areas such as social and human rights and health issues. This is embodied in a larger framework known as ESHRIA.

In April 2019, CSOs engaged with state actors to promote and support a participatory framework for environmental, social, and human rights assessment in Nigeria, as well as to take advantage of the opportunity presented by ongoing attempts to amend the current EIA Act. In attendance were representatives from the Ministry of the Environment, the Ministry of Petroleum Resources,

⁷ CordAid is an organisation that works to promote equality and social inclusion in fragile and conflict affected communities. It is supported by nearly 300,000 private donors in the Netherlands, its home country, and by a worldwide partner network. CordAid is a member of Caritas Internationalis, a global confederation of over 160 catholic organisations working at the grassroots in almost every country in the world.

DPR, NOSDRA, the National Human Rights Commission, and NNPC. Additionally, CSOs funded by CordAid in 2019 conducted sensitisation campaigns in oil-producing communities in the Niger Delta to increase awareness and mainstreaming of ESHRIA.

A new bill (HB 85: EIA Bill, 2019) to repeal the existing EIA Act and replace it with a new law that integrates human and social rights as well as to enable prior consideration of EIAs on certain projects is being considered by the House of Representatives. The bill has sailed through the second reading and has been referred to the Committee of the Whole for deliberation.

With an extensive EIA law that includes the social rights, human rights, and health issues of affected communities, stakeholders agree that oil and gas firms could be held responsible and accountable for their activities in oil-producing regions. Negative consequences of poor regulation, as is the case with Ogoni Land in Rivers State, can be better managed, while reparations and remediation can be adequately enforced.

Information sources

www.nnpcgroup.com/news-and-media/news/lists/posts/post.aspx?ID=121

www.nationalnetworkonline.com/en/metro/966-eshria-coalition-of-csos-move-to-intensify-advocacy-on-passage-of-bill

<https://pwyprnigeria.org/2019/05/20/multi-stakeholders-meeting-on-environmental-social-and-human-rights-impact-assessment-of-nigeria/>

House of Representatives, Federal Republic of Nigeria (2019) Order Paper, 30 April: available at <https://placng.org/wp/wp-content/uploads/2019/05/House-of-Reps-order-paper-Tuesday-30-April-2019.pdf>

<http://placbillstrack.org/view.php?getid=6273>

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

Old response: Yes

New response: Yes

UPDATE STATUS: No observable changes

Mechanisms have been established to identify property rights owners at federal, state, and local government levels. The Land Use Act 1978 clearly vests the ownership of land and the resources beneath the surface with the government.

Mineral resources such as petroleum and other subsoil resources rest within the authority of the Federal Government and are administered for the benefit of all citizens; however, states maintain a mandatory land registry in accordance with the Land Use Act. Local government councils also

maintain land registries designated as either family or community lands with traditional property titles held under customary practices, with the traditional rulers as custodians. Statutory and customary rights of occupancy are granted by the state and local government respectively to persons who fulfil necessary criteria or inheritance by family and communities. These mechanisms and instruments allow the government establish the owners of property rights and are useful when there is a need for compensation to property right owners in accordance with provisions of the land laws. They also help prevent or manage disputes related to the acquisition of property by the Federal Government. The laws are applicable to land possessed by the government for public use, as well as land allocated for oil exploration and licensing. Compensation is usually made before oil production commences to avoid disruption of operations by aggrieved property right owners.

Information sources

Federal Republic of Nigeria (1999) Federal Constitution: available at https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf

Land Use Act (1978) available at www.nigeria-law.org/Land%20Use%20Act.htm

Oil Pipeline Act (2004) www.nigeria-law.org/Oil%20Pipelines%20Act.htm

Petroleum Act (1969) <https://resourcegovernance.org/analysis-tools/publications/nigeria-1969-petroleum-act>

3.1.4 Does the government organise licences to ensure that licence areas do not overlap or conflict with existing rights to explore and extract resources?

Old response: Yes

New response: Yes

UPDATE STATUS: No observable changes

DPR maintains and updates a record of licences, which are published in NOGIAR and uploaded on the regulator's website. These include geographical coordinates, type, holder/operator, area of land, equity distribution, basin/terrain, date of grant, and duration of lease.

Oil Exploration Licences (OELs) and OMLs also include details such as survey data which are made available to the interested parties' from the start of the licensing process to the final award. While OELs and OMLs are exclusive to the licensee, OPLs are not. This allows the licensing of part or all of the same OPL to another party. In addition, licences or interests in oil and gas ventures cannot be transferred from one party to another without the consent of the regulatory body. All this information is made available upfront to beneficiaries, diminishing the possibility of overlaps and conflicts over acreages by licences.

Information sourceswww.dpr.gov.ng/

NNRC (2017) NNRC BER

3. 1. 5 Does the government have an effective policy on the pace of licensing and size of licence areas?

Old response: No**New response: No****UPDATE STATUS: No observable changes**

There is no publicly known policy driving the pace and size of oil licensing in Nigeria. Licensing appears to be motivated by the need to raise revenue and encourage private investments in the petroleum and mining sector.

DPR oversees the licence allocation process in the oil and gas sector and recently implemented reforms, including the use of ICT to facilitate the application process of licences and permits. This is expected to improve efficiency and speed of processing applications; however, licences that can be processed through DPR's electronic licensing portal do not include OPLs, OMLs, or OELs. Electronic processing of licences covers the construction and operation of oil and gas facilities such as oil refineries and depots. They also include licences/permits to provide technical and engineering services in the oil and gas sector. No major licensing rounds have been conducted since 2007, making it challenging to ascertain if and to what degree the same method would be used to facilitate the next bidding rounds.

Information sourceswww.dpr.gov.ng/

NNRC (2017) NNRC BER

<https://africaoilgasreport.com/2018/04/farm-in-farm-out/Nigerian-bid-round-may-not-happen-until-after-2019-elections>www.thisdaylive.com/index.php/2019/10/05/sylva-fg-to-conduct-fresh-oil-blocks-bid-rounds-in-2020/

3.2 Awarding resource licences

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

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

The criteria for entering licensing rounds still comprise of the requirements outlined in the 2017 BER. They include a memorandum and articles of association and a certificate of incorporation with CAC; evidence of financial capability to engage in exploration and production activities in Nigeria; a current tax clearance certificate; evidence of technical capability and a track record of experience and expertise in petroleum exploration, development, and production; the company's environmental policies, with an emphasis on EIA; the company's local content commitments; and payment of all applicable fees. Oil firms that do not meet the requirements for obtaining an oil licence are not invited to join the oil licensing bidding process. In addition to these requirements, bidders for marginal fields are also required to meet certain criteria including a competent person's report providing details of their shareholding structure and partnerships and/or collaboration with indigenous firms.

Of concern, however, is that the country's legal framework still gives excessive discretionary powers to the Minister of Petroleum Resources which could threaten the transparency of the process. PIGB contains provisions designed to address the potential abuse of powers by public officials and also promote transparency and accountability in the sector. The current President, who also doubles as the Petroleum Minister, withheld assent after the bill sailed through the National Assembly.

Information sources

www.dpr.gov.ng/

www.premiumtimesng.com/news/headlines/325846-senate-reconsiders-pigb-six-others-rejected-by-buhari.html

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

As reported in the 2017 BER, current bid round guidelines highlight the prevailing NPP, which encourages the involvement of private and public interest with emphasis on promoting indigenous participation and increasing the petroleum reserve base.

Previous bidding rounds were carried out under the discretionary powers of the Petroleum Minister. While policy documents such as the Seven Big Wins portray intentions of the government to adopt competitive bidding in subsequent award of licences, the legal provisions that would enshrine this principle under PIGB are not yet in force. Existing legislation still provides the Minister of Petroleum Resources with unlimited powers to influence the licensing process. Without the necessary legislation to support a transparent licensing process, bidding rounds would still be subject to influence by the sentiments of the prevailing administration. The next major oil bid rounds may be held in 2020, according to the Minister of State for Petroleum Resources.

Information sources

NNRC (2017) NNRC BER

www.dpr.gov.ng/

www.thisdaylive.com/index.php/2019/07/30/fg-plans-hitch-free-allocation-of-gas-flare-sites-to-bidders/

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

As reported in the 2017 BER, with a competitive process that is transparent and all information disclosed, there is little provision for post bidding negotiations. The terms are negotiable to the point of bidding and the award of licences. Afterwards, the conditions for completion of the process through the payment of signature bonus are set and, in the case where the preferred winner defaults, the licence is offered to the bidder in second without further negotiations.

The discretionary powers of the Minister of Petroleum Resources and structural challenges within the NNPC preclude decision making from transparent scrutiny by oversight institutions and sector stakeholders. Previous bidding rounds, the last of which was conducted in 2007, were characterised by opaque processes which resulted in badly negotiated contracts and the loss of revenue to the nation. This is yet to change as required legislation designed to correct the malady is yet to be signed into law.

The current administration, which is yet to award any crude oil licence, came into office in 2015 and was re-elected in 2019. Policy documents published in 2017 by the government express the intention to adopt transparent practices in the oil and gas sector, including the awarding of licences. This fact notwithstanding, until new oil bid rounds are opened, industry watchers can only speculate on whether the government will follow through with promises to ensure transparency and accountability in the licensing process—especially when such promises are juxtaposed with the government’s refusal to enact legislation that would limit its interference.

Information sources

NNRC (2017) NNRC BER

Federal Ministry of Petroleum Resources (2017) NPP: available at www.petroleumindustrybill.com/wp-content/uploads/2017/07/National-Petroleum-Policy-Approved-by-FEC-in-July-2017.pdf

www.thisdaylive.com/index.php/2019/07/30/fg-plans-hitch-free-allocation-of-gas-flare-sites-to-bidders/

3.2.4 Does the government subject licence transfers to the same checks as an initial licence award?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

In theory, licence transfers are expected to be subjected to the same checks as initial licence awards. Existing regulation recognises the use of open bidding, selective tendering, or negotiated transfer for the assignment of interest, with the assignor obtaining the minister’s consent to divest interest. The assignor is responsible for ensuring that the assignee meets required criteria for operating the asset, while the Ministry of Petroleum Resources conducts due diligence investigations on the transfer to ensure technical and financial capacity and also ensure that there is no revenue loss to the nation. In practice, however, events suggest that ministerial discretion has undermined the process, leading to poorly coordinated transfers and multiple prosecutorial cases in domestic and foreign courts. These events were reported in the 2017 BER, with the manner in which OMLs were divested by oil operating firms given as evidence. OMLs were divested to new owners, with the NNPC/ National Petroleum Development Corporation (NPDC) share of the funding to be provided by newly established, unknown entities.

In 2018, Shell filed criminal charges against its former senior employee in charge of sub-Saharan Africa over suspected financial violations during the divestment of OML 42 in Nigeria, one of the licence transfers flagged in the 2017 report. The same employee is also a major suspect in another ongoing investigation involving one of Nigeria's largest oil fields, OML 245, which is at the centre of one of the biggest bribery scandals in recent times. Although the allegations (made public by Shell) did not comment on the technical eligibility or qualification of the assignee in that transfer, they are indicative of the weak control mechanisms to ensure compliance with guidelines and regulations in the award of licences.

In September 2019, the Rivers State government announced it had acquired a 45% stake in OML 11 that belonged to Shell Petroleum Development Company (SPDC). OML 11 is another oil licence at the centre of the biggest human rights abuse in Nigeria's history. Ejama Community in Rivers State, affected by an oil spill in the 1970s by SPDC that destroyed approximately 255 hectares of agricultural land, fishing swamps, and rivers, protested the continuous production of crude oil from OML 11 without court-mandated compensation. Members of the affected community were executed by the military administration of General Sani Abacha for their role in the protest, while others were murdered by military forces intervening on behalf of Shell. As a result, agitations by the community increased, leading to the shutdown of operations in 1993. Oil production has not resumed since then, while litigation has continued in the courts. Following a Supreme Court ruling in January 2019 and failure by Shell to comply, the Rivers State government acquired Shell's 45% stake in OML 11. Information about the transfer, other than that provided in the announcement by the Rivers State government, is not available to the public, so there is no evidence to suggest that the licence transfer was conducted in a transparent manner and according to guidelines.

Information sources

NNRC (2017) NNRC BER

Bouso, R., George, L., and Reuters (2018) Shell targets former senior executive in Nigeria graft complaint, March 28: available at www.reuters.com/article/us-nigeria-shell-court/shell-targets-former-executive-in-nigeria-graft-complaint-idUSKBN1H415K (accessed 21 August 2019)

www.dpr.gov.ng/

www.thisdaylive.com/index.php/2019/09/30/oml-11-rivers-acquires-shells-interest-in-ogoniland/

3.2.5 Does the government disclose pre- and post-licence round information?

Old response: Yes

New response: Yes

UPDATE STATUS: No observable changes

The guidelines for bidding provide all the information needed during the pre-licensing phase of licensing rounds. This information is made available to the public through the DPR website. Post-

licence round information is not made available to the public, but access is granted to participants in the bidding process who may need it for verification of the process or to seek redress in the event that a party is dissatisfied with the outcome of the bidding round. Oversight authorities, such as the legislative committees and NEITI, are also granted access to the information on demand for the purpose of reporting, audit, review, or investigation.

Advocacy by NEITI and the adoption of principles of the OGP led to pledges by the NNPC and DPR to commit to open and transparent operations, including the award of licences. The next major oil licensing rounds in the country will offer an opportunity to industry stakeholders and observers to assess the authenticity of the country's commitments to transparency and accountability in the award of licences. According to the Minister of State for Petroleum Resources, oil bidding rounds may open in 2020.

Information sources

www.dpr.gov.ng/

www.thisdaylive.com/index.php/2019/10/05/sylva-fg-to-conduct-fresh-oil-blocks-bid-rounds-in-2020/

3.2.6 Are oversight of the licensing process effective, and are conflicts of interest avoided?

Old response: No

New response: No

UPDATE STATUS: No observable changes

Previous licensing rounds clearly show that conflicts of interests are not avoided and oversight of the licensing process is weak. The case study of the award of OML 245, which resulted in a corruption scandal involving oil firms from different countries and high-ranking officials in the Nigerian government, is indicative of the weakness of oversight mechanisms in the licensing process.

The executive arm of government still exercises very strong control in the operation and management of the sector, as the President doubles as the Minister of Petroleum Resources and his chief of staff is on the board of the NNPC. The legislature has very little means of performing oversight functions on licensing process in the Nigeria oil and gas sector. They act reactively only after infractions have been committed and action is limited to making recommendations, which may not be enforced to prevent reoccurrence in the future.

The Natural Resource Governance Institute (NRGI) has stated that oil fields in the country are performing below expectation due to lack of needed technical and financial capability of the licence holders and explained that personal interests were regularly prioritised, leaving the nation's economic growth and development at risk. Nonetheless, Nigeria's commitment to the disclosure of information along the entire value chain of the extractive sector in accordance with

its OGP Action Plan is yet to be fully implemented. Control mechanisms, such as disclosure of beneficial ownership information and asset declaration (which could address conflicts of interest and reduce graft), are yet to be institutionalised, let alone properly enforced. Moreover, PIGB—aimed at strengthening the regulatory framework, eliminating discretionary powers, ensuring transparent revenue mobilisation, and promoting fair practices and operations—seems to be frozen in uncertainty.

Information sources

NRGI (2017) 2017 RGI: available at www.resourcegovernanceindex.org/country-profiles/NGA/oil-gas (accessed 21 August 2019)

OGP (2017) OGP Nigeria Action Plan (2017–2019): available at www.opengovpartnership.org/wp-content/uploads/2017/05/Nigeria_NAP_2017-2019.pdf (accessed 21 August 2019)

Harmonised PIGB (2018) available at www.petroleumindustrybill.com/wp-content/uploads/2018/04/Harmonised-Clean-Copy-of-Petroleum-Industry-and-Governance-Bill-2018.pdf

3.3 Monitoring operations

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

Field development plans (FDP) involve an evaluation of multiple development options for an oil field and selecting the best technical solution for optimising the development and production of that field. Factors considered include the net present value, oil and gas recovery, operational flexibility and scalability, capital versus operating costs, and technical, operating, and financial risks. An FDP is designed and prepared by the oil operating firm and submitted to DPR for approval.

Industry track records suggest several bottlenecks that impact on the evaluation process and timeline causing undue delays in approving FDPs. Some of the identified challenges include multiplicity of regulatory agencies resulting in interagency rivalry and inefficient bureaucracy as noted in the 2017 BER. Different government agencies evaluate different aspects of development plans. These agencies include DPR for the technical components of the plan and the Ministry of the Environment, the NCDMB, and the Nigerian Maritime Administration and Safety Agency (NIMASA), respectively responsible for EIAs, local content compliance, and marine pollution prevention and control in offshore and deep waters.

In 2018, the Minister of State for Petroleum Resources acknowledged the aforementioned interagency challenges in evaluating and approving FDPs, but also identified other challenges inherent in the plans submitted by oil operating firms. According to the minister, the factors that resulted in the delay of approvals were the 'inadequacy or incompleteness of plans that do not address all the project development issues.' This includes an end-to-end gas utilisation solution that would contribute to achieving the country's goal of eradicating gas flaring. FDPs are also required to comply with technology transfer and other environmental and health checks. While there is no publicly documented evidence to suggest that the challenges have been addressed, expert opinion suggests that, in recent years, the process has become less laborious when compared to previous experiences.

Information sources

DPR, Procedure guide for the design and construction of oil and gas surface production facilities: available at www.dpr.gov.ng/ (accessed 21 August 2019)

Halliburton, FDP Consulting: available at www.halliburton.com/en-US/ps/consulting/field-development-planning.html (accessed 21 August 2019)

www.thisdaylive.com/index.php/2018/05/18/kachikwu-seeks-speedy-approval-of-oilfield-development-plans/

Engagement with Dr Adeoye Adefulu, partner and head energy practice team at Odujinrin and Adefulu, Lagos, Nigeria

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

Capacity challenges limit the ability of regulatory agencies comprising of DPR and NOSDRA to monitor oil and gas companies. Some of the challenges identified in the 2017 BER include limited equipment and logistic support as well as requisite human capacity skill and expertise. Monitoring activities in the oil and gas sector require high technical proficiency and usually expensive logistics support which in some cases result in the dependence of regulators on the oil firms to carry out monitoring operations. Expert opinion and industry observers have expressed concern that such dependence compromises the objectivity and effectiveness of regulatory personnel when executing their duties.

Except for the fact that in the last two years some government agencies in the oil and gas sector have embarked on recruitment and training of new personnel, there is as yet no evidence to suggest that the capacity challenges have been effectively addressed.

Information sources

www.vanguardngr.com/2018/05/pti-trains-dpr-technical-staff/

<https://punchng.com/breaking-nnpc-recruitment-2019-cbt-test-fixed-for-june-1/>

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Licence holders are mandated by law to submit periodic reports detailing geological and operational data to DPR and Director of Geological Survey. These reports also include updates on oil production and reserves. Data provided is used to update DPR's NDR.

IDSL, a subsidiary of the NNPC, is also charged with the acquisition, processing, interpretation, and storage of seismic data and provides reservoir management services to indigenous and foreign oil and gas companies. All geological data is owned by the Federal Government and secured for usage in prospective bids. Requisite geological information is made available to interested parties for a price by DPR.

During the review period, improvements in the disclosure of operational data by the NNPC and other parastatals of the Ministry of Petroleum Resources were observed allowing the verification of its availability.

Information sources

Petroleum Drilling and Production (Amendment) Regulation (2006) available at <http://extwprlegs1.fao.org/docs/pdf/nig120683.pdf>

www.dpr.gov.ng/

www.nnpcgroup.com/upstream/pages/IDSL.aspx

PRECEPT 4: TAXATION AND OTHER COMPANY PAYMENTS









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



| | |
|--|--|
| Overall precept score | |
| <p>Precept 4: Taxation and other company payments</p> <p>There have been some changes since the 2017 Benchmarking Exercise. Nigeria continues to operate both a licensing and a contractual regime. The government has not totally minimised the use of costly and non-essential investment incentives although there have been recent amendments to the Deep Offshore and Inland Basins PSC Act of 2004. Reforms to the legal framework and fiscal terms to improve accountability are still required. The extractive companies still face multiple taxes and levies while access to direct information on fiscal terms in oil and gas contracts remains difficult to obtain.</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 the 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 (CIT) 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? |  |
| 4.2.2 If there are legal clauses that stabilise legal terms governing an extractive project, do these clauses limit stabilisation to key fiscal terms; and is stabilisation 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? |  |
| 4.3.2 Does the fiscal regime include a set of provisions to limit tax avoidance practices? |  |
| 4.3.3 Is the number of collecting organisations minimised and do tax administrators coordinate with other government agencies? |  |
| 4.3.4 Are tax administration procedures simple, effective, and harmonised, reflecting principles of self-assessment and with a risk-based compliance strategy? |  |
| 4.3.5 Are tax administrators competent and well-sourced? |  |

4.4 ACCOUNTABILITY AND TRANSPARENCY OF FISCAL TERMS

| | |
|---|---|
| 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

- Royalties, signature bonuses, and other payments that are equivalent to gross sales tax are payable in Nigeria. There is the need to improve tax efficiencies, which will enhance accrual of public revenue as well as strike a balance between increased government revenue and investor returns. In terms of a licensing and contractual regime, Nigeria operates both a licensing and a contractual regime. Risk Service Contract (RSC) operators are placed under performance schemes with the Federal Government and are paid as service providers; they are taxed under the Companies Income Tax Act (CITA) at 20%.
- Petroleum Profit Tax (PPT) is chargeable at the rate of 65.75% for the first five years of taxable operation and 85% thereafter for concessions. Withholding tax on rentals, hire, and lease of upstream operating equipment constitutes a rents tax applicable in Nigeria. Capital Gains Tax, handled by the Federal Inland Revenue Services (FIRS), is charged upon the disposal of assets (upstream oil and gas acreage assets) at 10%.
- The Nigerian government has not totally avoided the use of costly or non-essential investment incentives, e.g. NIPC's pioneer status, tax holidays, etc. Abuse of tax waivers and incentives is one the challenges identified in Nigeria's Open Government Partnership (OGP) commitments 2017–2019.
- The generally applicable corporate income tax (CIT) is not applicable across board in the upstream sector—it only applies to non-crude oil-related profits/income. There are proposals in policy to impose CIT on all companies in both the upstream and downstream sectors. However, with PPT at 85%, the upstream sector is adequately taxed. There are stabilisation clauses in major extractive project contracts in Nigeria.

Legal frameworks of fiscal terms

- The terms are contained in legislations like the Petroleum Profit Tax (PPT) Act and the Deep Offshore and Inland Basin Production Sharing Contract Act 2004 (as amended), but some are negotiated separately into contracts like the JV-revised Memorandum of Understanding (MOU) 2000 with incentives that are not explicit in the source legislation.
- The recent 2019 amendment to the Deep Offshore and Inland Basin Production Sharing Contract (PSC) Act imposes a new flat royalty rate of 10% starting from 200 metres and

7.5% for the inland basins. Royalty based on oil price is graduated according to different categories.

- The legal framework and fiscal terms provide limited opportunity for accountability to citizens while providing greater accountability to investors. The legal framework is in need of reforms to improve accountability to citizens and flexibility to changing circumstances.
- There are stabilisation clauses in major extractive project contracts in Nigeria. However, equilibrium clauses are preferred to ‘freezing clauses’, which hold the law constant for the benefit of the investor. The principle in equilibrium clauses holds that when one of the parties (the investor) is adversely affected by changes in law, policy, or regulations, the contract makes provisions for a negotiation process that restores the original financial position/profitability of the investor without having any effect on the laws, regulations, and policies of the country. In contrast, the stabilisation clause does not do this.

Tax administration

- Nigeria applies general tax avoidance rules, which can be subverted by specific practices and procedures. However, steps have been taken in the 2019 Finance Bill currently pending before the National Assembly to reduce tax avoidance through the introduction of thin capitalisation of 30% of earnings before interest, tax, depreciation and amortization (EBITDA) for interest deductibility. Any excess deduction can be carried forward for five years. The legal and policy provisions to limit tax avoidance should be strengthened and improved to reduce revenue leakages.
- Many agencies collect taxes and levies in the petroleum industry, including FIRS, DPR, NAPIMS, the Oil and Gas Free Zone Authority, Nigeria Content Development and Monitoring Board (NCDMB), etc. The separation of taxes based on collecting agencies’ statutes might be a good explanation.
- Capacity gaps remain in tax administration. There is therefore the need for specialist training of staff of various revenue agencies (FIRS, DPR, etc.) and improvements on policies in the oil and gas sectors for greater collaboration, returns, and efficiencies. The Oil and Gas Departments in FIRS, the Ministry of Finance, and Central Bank of Nigeria (CBN) need to be strengthened.

Accountability and transparency of fiscal regimes

- Access to direct information on fiscal terms in oil and gas contracts is difficult to obtain. Furthermore, the amendment of the Companies and Allied Matters Act passed by the 8th National Assembly, which introduced beneficial ownership in line with the OGP commitments, did not get presidential assent. Undisclosed fiscal terms restrict effective oversight and impede the ability of the legislature and other oversight agencies of government to carry out their functions.
- The government consults substantially with businesses but not so much with civil society before adopting changes to the fiscal framework.

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?

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

Royalties, signature bonuses, etc. and other payments that are equivalent to gross sales tax are payable in Nigeria. With the exception of the amendment to the Deep Offshore PSC Act, there has been no change in law and policy since 2017. The holder of an OML under the 1969 Petroleum Act is required to pay royalties to the Federal Government as soon as production starts. The details of payments include the following.

Licensing and contractual regime: Nigeria operates both a licensing and a contractual regime. The JVs between the Federal Government of Nigeria and either an IOC or an indigenous operator or a sole risk operator (SRO) constitute the licensing regime. The contractual regime arrangements are the RSCs and the PSCs. RSC operators are placed under performance schemes with the Federal Government and are paid as service providers; they are taxed under CITA at 20%.

Pre-production payments: the amounts that can be collected upfront may be dependent on the deposits that the company expects to find. These amounts consist mainly of:

- bidding fees paid for the bid documents and bidding process;
- signature bonuses paid immediately once the oil blocks are awarded, before any production but based on the perceived value of estimated oil reserves; and
- surface/concession rent, a yearly rent paid on area calculation (whether there is production or not). It is in this light that DPR, NAPIMS, and the Oil and Gas Free Zone Authority collects licensing fees, permits, and such other charges.

Post-production payments: these consist of all other payments after the commencement of production:

- production bonuses, paid as soon as production reaches a certain threshold to DPR in a PSC contract;
- some social taxes, like the NCDMB payments (which are charged against the operating costs of upstream companies): There is a 1% tax based on invoices paid against contracts by the company per year. The Niger Delta Development Commission (NDDC) also collects 3% of IOCs yearly budgets;

- royalties collectible by DPR, but their variable nature is in the volume of production based on onshore or water depth multiplied by prevailing oil price; and
- PPT, collected by FIRS (a pre-paid tax). The profits declared by the IOCs vary each year based on production and oil price. The final tax payable is determined by revenue less expenses, which vary per year.

Information sources

Petroleum Act 1969 (2004) Cap P.10, LFN

Petroleum Profits Act (2004) Cap P.13, LFN

NDDC (Establishment) Act (2004) Cap. N.86, LFN

NOGICD Act (2010)

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

Old response: No

New response: Yes/No

UPDATE STATUS: Some changes observed

The fiscal regime partly includes a variable tax rate targeted explicitly at excess profits or rents. PPT is chargeable at the rate of 65.75% for the first five years of taxable operation and 85% thereafter for concessions. The Nigerian tax rate of 50% for PSCs, however, indicates a lesser capture of Resource Rent Tax (RRT)⁸ than the 85% concession rates. The history of PPT rates in Nigeria shows that the PPT rate was as low as 18.9% in 1970, after which it rose astronomically to 80.7% between 1971 and 1974. The rate was 82.3% from 1975 to 1989, and it peaked at 85% in 1990 to date for concessions, while the rate for PSCs is 50%.⁹ Taxable profit is regulated by the PPTA.

PPT is a pre-paid tax due and payable by any company producing or exploring for petroleum in Nigeria. The Exploration and Production Company files an estimated annual return not later than February of each year. This tax is consequently paid in 12 monthly instalments throughout the year. A 13th-month payment can be paid where the accumulated actual tax exceeds the tax paid. The company will get a refund where the accumulated actual tax is below the tax paid. The

⁸ South Africa charges 30% PPT and 40% RRT, Uganda charges 30% PPT and 0-80% RRT, Malaysia 30% PPT and 70% RRT

⁹ 'Effect of PPT and Companies Income Tax on Economic Growth in Nigeria', *Journal of Public Administration, Finance, and Law*, 13(2018).

company also submits its annual tax return within five months of the end of each assessment year.

PIB sought to establish a progressive fiscal framework to encourage further investment in the petroleum industry while optimising revenue accruing to the government, but it did not receive presidential assent to become law after passage by the 8th National Assembly. There are proposals in the 2017 National Petroleum Fiscal Policy (NPFP) for an increase in royalty rates across all categories of PSCs and establishing the idea of price-based royalties to replace the current volume-based rate. There is also a proposal by the NNPC to set royalties payable for acreages located in deep offshore and inland basin PSCs through regulations based on established economic parameters. Essentially, a consensus has emerged on the need to increase government's take by increasing revenues. The consensus led to the amendment of the Deep Offshore and Inland Basins PSC Act, which now guarantees a 10% royalty and a further price-based royalty which takes cognisance of fluctuation in the price of oil.

Withholding taxes on rentals, hire, and lease of upstream operating equipment like rigs, drilling machines, etc. constitute a rents tax applicable in Nigeria. Hire of rigs and other upstream machinery and equipment are a heavy expense in the upstream petroleum industry, on which withholding taxes on such rentals are charged and deducted at source by the resource upstream companies. Dividends, interests, rents, royalties, commission, consultancy, technical service fees, etc. are subject to withholding taxes.

Capital Gains Tax is another tax that targets excess profits. Capital Gains Tax is paid on the profit received when an asset or investment is sold by the owner. The tax rate is 10%. By Section 11 of the Capital Gains Tax Act LFN (2004), Capital Gains Tax is chargeable when the sales proceeds on the disposal of the chargeable asset is more than the cost of acquisition and all other incidental expenses to the disposal. Information from FIRS and NEITI indicates that the Capital Gains Tax from the disposal of assets (in this case, upstream oil and gas acreage assets) is captured and accounted for in Nigeria. SPDC divestment from OMLs 18, 29, and 71/72 and the Nembe Creek Trunk Line and related facilities in the eastern Niger Delta were referred to by NEITI. SPDC said its interests in OML 29 and the Nembe Creek Trunk Line were sold to Aiteo Eastern Exploration and Production Company Limited, with total cash proceeds of US\$ 1.7 billion.¹⁰

- i. **S.32. Capital Gains Tax Act, 2004—Exemption of tax on gain arising from take-overs**, etc. states that ‘a person shall not be chargeable to tax under this Act, in respect of any gains arising from the acquisition of the shares of a company either taken over, or absorbed or merged by another company as a result of which the acquired company loses its identity as a limited company, provided that no cash payment is made in respect of the transaction.’

¹⁰ <http://businessnews.com.ng/2015/03/27/shell-sells-1-7bn-nigerian-assets-to-aiteo/>.

ii. **S.12 (Capital Gains Tax). Exclusion from consideration for disposals of sums chargeable to income tax**

- (1) 'There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of the person making the disposal for the purposes of the Personal Income Tax Act, the Companies Income Tax Act or the Petroleum Profits Tax Act, which Acts are hereafter jointly referred to as —the Income Tax Acts. [Cap. P8. Cap. C2I. Cap. P13.]'

If the capital gain has been taken into account as income under the PPT of the resource company, then Capital Gains Tax cannot be charged but if the excess gain is computed as a balancing charge it may be subject to Capital Gains Tax under Section 12(2) of the Capital Gains Tax Act.

Information sources

Petroleum Profits Act (2004) Cap P.13, LFN

NPFP (2017)

Capital Gains Tax (2004) Cap C.1, LFN

Deep Offshore and Inland Basins PSC (Amendment) Act (2019)

4.1.3 Does the extractive sector fiscal regime include the generally applicable corporate income tax (CIT) in the country?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The generally applicable CIT regime does not apply in the upstream sector, but it applies in the downstream sector of the industry. The income of companies engaged in upstream activities is subject to tax under the PPTA 2004, as amended. Their income is subject to tax at 85% (subject to the incentives contained in the MOU as relevant), or 65.75% within the first five years of operation during which they recover their capitalised pre-production expenditure. With PPT at 85%, the upstream companies seem to be adequately taxed. 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 pay CIT at 30% of taxable profits under CITA. Non-crude oil-related income/profits earned by upstream companies are also separately liable to CIT. Put plainly, PPT is levied on the income of

companies engaged in upstream (and CIT on downstream) petroleum operations. However, the NPFP proposes an imposition of CIT for all companies in the sector.

According to the FIRS, Nigeria operates a single-track tax system on upstream operations which seeks to capture the relevant due tax. However, some other countries operate the dual-track system involving PPT and resource rent tax. Both FIRS and NEITI affirm the suitability, in a bid to increase public revenue, of having both PPT and CIT paid by upstream companies.¹¹

Information sources:

Petroleum Profits Tax Act, Cap P.13, LFN (2004)

Companies Income Tax Act, Cap.C.21, LFN (2004)

National Petroleum Fiscal Policy (2017)

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

The Nigerian government has not totally avoided the use of costly or non-essential investment incentives. Steps have been taken in the direction of cutting down on costly incentives. Various government authorities grant incentives, such as the Nigerian Investment Promotion Council (pioneer status; tax holidays), FIRS (qualifying operating or capital costs; tax allowances; tax reliefs; tax credits; tax investment incentives), the Oil and Gas Free Zone (tax free operations), CBN (incentives on foreign exchange), and Customs (waivers on import duties). Abuse of tax waivers and incentives was one the challenges identified in Nigeria's OGP commitments 2017–2019.

Capital allowances: under PPTA, accounting depreciations are not allowable for tax calculations. Instead, PPTA gives both a Petroleum Investment Allowance (PIA) and an Annual Allowance (AA) to oil-producing companies that have incurred a Qualifying Capital Expenditure (QCE). QCE is defined as capital expenditures incurred in an accounting year in respect of plant, machinery, and fixtures; pipelines and storage tanks; construction of buildings; structures or works of a permanent nature; and acquisition of rights in or over oil deposits; searching for or discovering

¹¹ Uganda, South Africa, and Malaysia operate the dual track approach.

and testing petroleum deposits or winning access thereto; or construction of any work or buildings likely to be of little value when the petroleum operations for which they were constructed cease.

These are allowed against the assessable profit to arrive at the chargeable profits. The relevant tax rate is applied to the chargeable profits to determine the amount of PPT payable. PIA is an allowance granted to a company in the first year when it incurs QCE for the purpose of its operations. The rates depend on the fiscal regime (contract form) under which the company operates. The following rates apply to companies in JV operations: onshore operations—5%; operations in areas up to 100 metres of water depth—10%; operations in areas between 101 metres and 200 metres of water depth—15%; and operations in areas beyond 200 metres of water depth—20%.

The AA is an allowance granted annually at a flat rate of 20% on the original cost of an asset, subject to the requirement that the taxpayer retains 1% of the original cost in its books until the asset is finally disposed of. The retention of the 1% cost in the books of the company effectively means that the AA granted for the fifth (and last) year is 19%, rather than the 20% for each of the previous four years.

Table 4.1: Annual Allowance (AA) on the original cost of an asset

| | |
|-------------|-----|
| First year | 20% |
| Second year | 20% |
| Third year | 20% |
| Fourth year | 20% |
| Fifth year | 19% |

The capital allowance for which relief may be claimed in any particular tax year is the sum of any PIA and AA. Capital allowance is not granted for any expenditure that would have been a qualifying expenditure, except in respect of deductions that have been made in arriving at the adjusted profit of the company pursuant to Section 10 of the PPTA. Loss from a previous year is deductible for a maximum period of four years, after which all unrelieved losses will lapse.¹²

Under the Deep Offshore Basin and Inland Basins and Production Sharing Contract Act,¹³ PPT is assessed at the rate of 50% of chargeable profits for each contract area for the duration of the PSC. The fiscal regime applicable to any PSC may also be specific to the licensing round during which the relevant OPL or OML was awarded and the PSC signed. The other incentives applicable under the Deep Offshore Basin and Inland Basins Act include claim of investment tax credit at 50% of QCE (for PSCs signed before July 1998) or a PIA at 50% of QCE for PSCs signed after July 1998.¹⁴

¹² David West (2012) Chartered Institute of Taxation Oil and Gas Lecture.

¹³ Laws of the Federation of Nigeria (2004) Deep Offshore and Inland Basin PSC Decree No 9 of 1999, as amended by the [Deep Offshore and Inland Basin Production Sharing Contracts \(Amendment\) Decree No 26 of 1999](#).

¹⁴ KPMG Advisory Services (2014), a partnership registered in Nigeria.

NEITI states that the Federal Government lost about NGN 475.8 billion by granting tax waivers under the pioneer status scheme to oil and gas companies in the upstream sector between 2009 and 2016 for tax holidays, but this has been stopped since 2017 by the Nigerian Investment Promotion Commission, which has removed oil and gas from the Pioneer Status Incentive List.

The NLNG (Fiscal Incentive Guarantees and Assurances) Act was also designed to confer pioneer status on NLNG Limited and to exempt the company from certain taxes, custom duties, other levies, and the provision of pre-shipment inspection of imports and to provide guarantees and assurances by the Federal Government to the company and its shareholders. This was a very extensive and costly incentive and denied the Treasury hundreds of millions of dollars in revenue. The major costly tax incentives were not renewed after its expiration, but it made a good business case for investments in Nigeria's LNG, considering that it gave investors very high returns on investment.

In 2016, a bill to amend the NLNG (Fiscal Incentive Guarantees and Assurances) Act was introduced in the National Assembly. It sought to compel NLNG to pay 3% of its annual budget to NDDC like all oil and gas companies, as well as to pay 3% of its gross freight on international inbound and outbound cargo to NIMASA. However, the bill did not pass into law. It will be recalled that, in 2013, NLNG filed a suit at the Federal High Court, Lagos Division against the Attorney General of the Federation and Global West Vessel Specialists Nigeria Limited, seeking a judicial determination *inter alia* on the legality of certain levies imposed on NLNG by NIMASA and the consequent blockade of NLNG vessels by NIMASA and Global West as a result of the dispute. The Federal High Court gave its decision in October 2017 in favour of NLNG, granting all the reliefs sought by NLNG in the case, but in March 2019 the Court of Appeal remitted the case for retrial to another judge of the Federal High Court on the grounds that the judgement in the first case was tainted by the lack of a fair hearing.¹⁵

Flare gas costs incurred by oil and gas companies for gas flaring are tax deductible expenses. This is an incentive. Nigeria has lost US\$ 1.007 billion in 2017 and US\$ 987.175 million in 2018 of the commercial value of gas flared. Of the total gas produced, 11% was flared in 2017, and 9.94% in 2018. The 2018 Gas Flaring Permit Regulation makes provision for increase of the gas flare payment from NGN 10 to US\$ 2 for 1,000 mscf flared on 10,000 barrels per day or US\$ 0.50 per mscf for less than 10,000 barrels per day.¹⁶

Commercialisation of flare gas: there is also incentive to third parties to tap gas that is to be flared and directly commercialise the gas without the payment of a royalty. This means that the tax deductibility of gas flaring payment will be reduced or foreclosed, and this increases the revenue available to government.

¹⁵ The Court of Appeal judgement also gave the parties the option of pursuing their appeal in the Supreme Court.

¹⁶ Flare Gas Prevention of Waste and Pollution, July 2018.

Deductible expenses: these are expenses that are wholly exclusively and necessarily incurred as specified in Section 10 of the PPTA. Royalties and gas flaring payments are deductible expenses ‘wholly, exclusively, and necessarily’ incurred in obtaining the profits and accounted for while making PPT returns in Nigeria. This raises the question as to whether payments and social taxes to NDDC and NCMDB are also tax deductible. It would appear so, as the Supreme Court of Nigeria held that, where charges arose or were imposed by the Federal Government in the course of the company’s operation relating to petroleum operations, such charges would be allowed. In other words, charges will be allowed once they are incidental to petroleum operations. It was held by the Supreme Court in the case of *SPDC (Nig.) Ltd V. F.B.I.R.*, (1996) 8 N. W. L. R (Pt. 466) 256; NOGC 2 [1996-2000] 80 SC that Bank charges and scholarships which are not ordinarily deductible as ‘allowable expenses’ incurred by a company would qualify as allowable expenses under Section 10(1) of the Petroleum Profits Tax Act and, in that case, expenses incurred by the company was deductive as an allowable expense. Pursuant to the provisions of Section 10 of the PPTA, allowable deductions are treated as charges against income and not as tax offsets and are wholly incurred in the process of petroleum operations.

Information sources:

Petroleum Profits Tax Act, Cap P.13, LFN (2004)

NLNG (Fiscal Incentives Guarantees and Assurances) Act (1990)

NIMASA v NLNG & 2Ors, Court of Appeal Decision: available at <https://www.bloomfield-law.com/our-works/case-review-nimasa-v-nlng-2-ors-2019-court-of-appeal-decision/>

SPDC (Nig.) Ltd V. F.B.I.R., (1996) 8 N. W. L. R (Pt. 466) 256; NOGC 2 [1996-2000] 80 SC

Nigeria’s OGP commitments (2017–2019)

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

Nigeria introduced equity holding in resource companies in 1969 through NNPC and its related companies, operational from 1971. The fiscal and non-fiscal benefits of the equity is greater than the cost of acquiring it. It allows the country to earn more compared to PSCs and other arrangements for petroleum extraction. According to DPR’s 2017 NOGIAR, the distribution of concessions is as follows:

- JVs: 48.47%; PSCs: 40.72%; SROs: 6.62%; and Marginal Oil Fields: 4.2%.

JV: this is an arrangement under which the Federal Government through NNPC enters into a joint operating agreement with multinational companies as JV partners. The country holds controlling shares in all the JV arrangements through NNPC/NAPIMS. Equity holding in JV arrangements allows the country to earn a higher percentage share in oil and gas production and the proceeds from the sales of petroleum resources but with the burden of providing the upfront cash for oil and gas operations. The funding challenges led to calls for a change of the funding mechanism,¹⁷ but this did not stop the country from paying arrears of cash call; for instance, Nigeria spent NGN 1,236.98 billion for JV Cash Calls in 2017 and NGN 539 billion in 2018.¹⁸ Nigeria has therefore been paying cash call arrears; for instance, in 2018, the production volume was 1.93 mbpd, but with incremental production for repayment of cash call arrears actual oil production was 1.96 mbpd.¹⁹

Under the present alternative equity arrangement between NNPC and its JV partners, an *alternative funding arrangement* in petroleum operations has been concluded to transform NNPC from a paid equity and carrying partner to a ‘carried partner’. This is an arrangement in which the IOCs in JV arrangements agree to fund all the capital costs of a project, whereby no cash call is made upon NNPC for its own equity participation. NNPC pays back its share of the capital costs through allocation of additional crude oil produced. Under this arrangement, the NNPC is termed the ‘carried partner’, while the IOC is called the ‘carrying partner’. The Federal Government has concluded arrangements to settle the IOCs for the JV cash calls debts it owed between 2010 and 2015 with a view to settling the indebtedness over the next five years. The payments will be made in the form of barrels of new crude production in excess of a particular threshold over the next five years. This in effect means the IOCs will not receive any cash, but perhaps recover through the NNPC, effectively under-lifting its share of crude oil over the next five years.²⁰

PSC: under this arrangement, the NNPC, as the owner of the mineral right (concession), enters into a contract with a technical partner designated as contractor. The contractor bears all the risks and, when oil is discovered in commercial quantity, they recover their cost and share profit on a predetermined ratio with the NNPC. The ownership of the concession remains with the NNPC.²¹

Marginal Field Operators: under this arrangement, fields discovered by the multinational companies but left unattended for a period not less than 10 years is compulsorily acquired and reallocated to indigenous concessions holders to boost local participation in the oil and gas industry. The Federal Government of Nigeria has not been transparent in how marginal fields are awarded and many that have been awarded have not taken any action and could be removed from their owners.

¹⁷ Under the 2017 NPP (p. 63), all cash call arrangements under the NNPC JVs will be exited, with a target of exiting all of them by the end of 2017.

¹⁸ See Q4 and Consolidated BIRs for 2017 and 2018: Budget Office of the Federation, www.budgetoffice.gov.ng.

¹⁹ Highlights/Breakdown of the 2020 Executive Budget, available at the website of the Budget Office of the Federation.

²⁰ Ernst & Young (2018) Global Oil and Gas Tax Guide.

²¹ www.energymixreport.com.

Service contract: under this scheme, contractors undertake exploration development and production activities for and on behalf of NNPC, the concession owners.

Information sources

DPR (2017) NOGIAR

NPP (2017)

Fourth Quarter and Consolidated Budget Implementation Reports (BIRs) (2017; 2018) available at <http://budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

Breakdown of the 2020 Executive Budget Proposal: available at www.budgetoffice.gov.ng

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

Government officials have the expertise and information needed to evaluate and design fiscal regimes. However, the expertise and information need to be strengthened through continued capacity building. The Federal Ministries of Finance, Petroleum Resources, and Trade and Investment, in conjunction with their key MDA's, keep addressing capacity deficits through investments in capacity-building interventions. MDA's such as the NIPC (pioneer status; tax holidays), FIRS (qualifying operating or capital costs; tax allowances; tax reliefs; tax credits; tax investment incentives), the Oil and Gas Free Zone (tax free operations), DPR (royalties; rents; levies; permits; penalties), CBN (incentives on foreign exchange), and Customs (waiver of import duties) have been engaged in improving capacity for the management of the upstream extractive sector fiscal regime and reducing the gaps through budgetary provisions for training. FIRS has an Oil and Gas Department, while there is an Oil and Gas Fiscal Division in the Ministry of Finance and CBN (among others).²² Capacity-building interventions have also been facilitated by the NEITI Oil and Gas Audit Reports, which in recent years have highlighted key fiscal and policy challenges (findings, implications and recommendations, and entity response), pointing the way for remedial action.

Information source

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

²² FIRS, National Budget and Planning; <http://finance.gov.ng/index.php/the-ministry/department/technical-service>.

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information added

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 incentives be required to stimulate investment. The various bidding sessions for oil acreages were guided by fiscal terms drawn up to direct the exercises. The revised JV Model MOU, the Nigeria–Sao Tome Principe PSC Model Contract, the 1993 Model PSC, the 2000 Model PSC, and the 2005 Model PSC are model contracts setting out operating and other terms for the acreages.

However, the procedure and income rates arising from the above flexibility do not seem to be systematic. The MOU between the NNPC and some of her PSC partners for deep offshore concessions provided fiscal terms that were different from the 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 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 PSC Act (Cap. D3, Laws of the Federation of Nigeria, 2004). Significantly, Sections 16(1) and (2) of the act (before the amendment) provided as follows:

16. (1) The provisions of this Decree shall be subject to review to ensure that if the price of crude oil at any time exceeds US\$ 20 per barrel, real terms, the share of the Government of the Federation in the additional revenue shall be adjusted under the Production Sharing Contracts to such extent that the Production Sharing Contracts shall be economically beneficial to the Government of the Federation.

(2) Notwithstanding the provisions of subsection (1) of this section, the provisions of this Decree shall be liable to review after a period of 15 years from the date of commencement and every 5 years thereafter.

The recent 2019 amendment to the Deep Offshore and Inland Basin PSC Act imposes a new flat royalty rate of 10% starting from 200 metres and 7.5% for the inland basins. Royalty based on oil price is graduated: a price below US\$ 20 attracts 0%; a price between US\$ 20 and US\$ 60 attracts

2.5%; a price between US\$ 60 and US\$ 100 attracts 4%; a price between US\$ 100 and US\$ 150 attracts 8%; while prices above US\$ 150 attract 10%.

The NLNG (Fiscal Incentive Guarantees and Assurances) Act also conferred pioneer status on the NLNG Limited and exempted the company from certain taxes, custom duties, other levies, and the provision of pre-shipment inspection of imports and provided guarantees and assurances by the Federal Government to the company and its shareholders. The tax relief period is extensively defined in Section 2 of the act as follows:

Notwithstanding the provisions of Section 10 of the Industrial Development (Tax Relief) Act, the tax relief period of the Company shall commence on the production day of the company and shall continue for a period of ten years, so however that the relief period shall terminate at the first anniversary date after the first five years when the cumulative average sales price of liquefied natural gas reaches US\$ 3/mmbtu calculated in the First Schedule to this Act in accordance with which such calculation shall only be made annually at each anniversary date.

Information sources

Deep Offshore and Inland Basin PSC Act (2004) Cap. D3, LFN, as amended

PPTA

NLNG (Fiscal Incentive Guarantees and Assurances) Act (2004) Cap N.87, LFN

The Revised JV Model MOU

The Nigeria–Sao Tome Principe PSC Model Contract

The 1993 Model PSC; The 2000 Model PSC; The 2005 Model PSC

4.2.2 If there are legal clauses that stabilise legal terms governing an extractive project, do these clauses limit stabilisation to key fiscal terms, and is stabilisation limited in duration?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

There are stabilisation clauses that stabilise legal terms governing extractive projects. Stabilisation clauses guard against unilateral and drastic changes in law and policy frameworks and changes in the investment environment within which an extractive contract was negotiated. 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.²³ These changes could make an otherwise profitable investment unprofitable. The investor therefore seeks a guarantee in the investment contract through clauses that would prevent overall negative changes in the legal, financial, social, and environmental conditions prevalent at the time the contract was negotiated. Fiscal stability clauses are very often part of the legal framework governing extractive projects.²⁴

A PSC between the NNPC and Gas Transmission and Power Limited, Energy 905 Sunterra Limited, and Ideal Oil and Gas Limited, as well as the Nigeria–Sao Tome and Principe Joint Development Authority Model contract, have such stabilisation clauses. The PSCs also have stabilisation and arbitration clauses. Nigeria’s PSCs also make provisions for the termination of the contract by the IOC; the governing law of the contract in this case is Nigerian law.

General stabilisation clauses have been referred to as ‘freezing clauses’, which seeks to freeze the law and make it stand still for the benefit of the investor. However, equilibrium or middle ground clauses are preferred. The principle in equilibrium clauses is that when one of the parties (the investor) is adversely affected by changes in law, policy, or regulations, the contract makes provisions for a negotiation process that restores the original financial position/profitability of the investor without having any effect on the laws, regulations, and policies of the country. This also minimises risk and guarantees stability in investments.²⁵

Information source

Oil Contracts: How to Read and Understand Them (Open Oil), available at <https://openoil.net>

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The PPT and CIT have computations of income, expenses, and allowances based on different trajectories to arrive at adjusted profit, assessable profit, chargeable profit, and assessable tax from operations. In PPT, adjusted profits are the value of profits less outgoings and expenses;

²³ www.ey.com/gl/en/services/tax/tax_service.

²⁴ Open Oil, ‘Oil Contracts: How to Read and Understand Them’, p. 187 on Stabilisation.

²⁵ *Ibid.*

assessable profits are adjusted profits less loss incurred by a company during a previous accounting period; and chargeable profits are assessable profits less capital allowances. These lead to assessable tax. In PSCs, investment tax credit is applied. While PPT is a petroleum sector-specific tax, CIT applies to every other activity in the economy. A limited number of taxes are set for each company in the MOUs, PSCs, service contracts, and JV contracts. The tax types vary and are either based on pre-production or production. However, there may be the need to for government to consolidate the laws and regulations affecting the upstream sector into one or a very limited number of laws.

Information source

PPTA (2004) Cap P.13, LFN

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information added

Nigeria applies general tax avoidance rules that can be subverted by specific practices and procedures. An extractive company can use ‘thin capitalisation’ for tax avoidance: a company is thinly capitalised if its capital is made up of a much greater proportion of debt than of equity.²⁶ The tax authorities regard this as cause for concern, given the potential for abuse through excessive interest deductions. Some tax authorities limit the application of thin capitalisation rules to corporate groups with foreign entities to avoid ‘tax leakage’ to lower tax jurisdictions. Nigeria does not have a specific thin capitalisation rule, but it does apply general anti-tax avoidance rules. Steps have been taken in the 2019 Finance Bill currently pending before the National Assembly to reduce tax avoidance through the introduction of thin capitalisation of 30% of EBITDA for interest deductibility. Any excess deduction can be carried forward for five years.

Under Section 15 of the PPTA 2004, if the tax authorities believe that any disposition is not in fact given proper effect, or that any transaction that reduces or would reduce the amount of tax payable is artificial or fictitious, they may disregard the disposition or direct that such adjustments be made in respect of the liability to tax as the authorities consider appropriate to counteract the reduction in the liability to tax (or the reduction that would otherwise apply) resulting from the transaction. The expression ‘disposition’ includes any trust, grant, covenant, agreement, or arrangement. As an example of the foregoing, the following transactions are deemed to be artificial or fictitious: a transaction between persons if one has control over the other, or a

²⁶ Ernst & Young (2018) Global Oil and Gas Tax Guide.

transaction between persons if both are controlled by another person if, in the opinion of the tax authorities, the transaction has not been made at arm's length (i.e. on terms that might have been fairly expected to be made by independent persons engaged in the same or similar activities dealing with one another at arm's length).

Transfer pricing in Nigeria is regulated by the Income Tax (Transfer Pricing) Regulations No 1 of 2012 (the Regulations) as revised by the FIRS in the New Regulations of 2018. Prior to the introduction of these regulations, the Nigerian domestic tax laws merely provided general anti-avoidance rules whereby related-party transactions must be conducted at arm's length. No detailed guidelines on the application of the arm's-length principles were provided.²⁷ The scope of the regulations includes the Personal Income Tax Act, CITA, PPTA, the Capital Gains Tax Act, and the Value Added Tax Act. Accordingly, the regulations were introduced to provide guidance on the application of the arm's length principle.

The regulations are to be applied in a manner consistent with the arm's-length principle in Article 9 of the United Nations and Organization for Economic Cooperation and Development (OECD) Model Tax Conventions on Income and Capital and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines). With the publication of the Panama and Paradise Papers, the global weaknesses to prevent, detect, track, and sanction tax evasion and avoidance, profit-shifting, and base erosion were exposed, leading to more stringent measures, and Nigeria has now established the NFIU.

Since 2015, Nigeria has committed to addressing tax transparency through the OGP. Nigeria has signed onto the Common Reporting Standards and Addis Tax Agreement. The country has also signed on for automatic information exchange with several other countries 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. In 2019, the 8th National Assembly approved a new Companies and Allied Matters Bill with detailed provisions for a beneficial ownership disclosure and a register domiciled at CAC. However, the bill did not receive presidential assent.

Information sources

Ernst and Young (2018) Global Oil and Gas Tax Guide

OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

PPTA (2004) Cap P.13, LFN

CITA (2004) Cap.C.21, LFN

Income Tax (Transfer Pricing) Regulations No. 1 (2012) (the Regulations), as revised by FIRS in the New Regulations of 2018

²⁷ Ernst & Young (2018) Global Oil and Gas Tax Guide.

4.3.3 Are the number of collecting organisations minimised and do tax administrators coordinate with other government agencies?

Old response: Yes

New response: Yes/No

UPDATE STATUS: Some changes observed

Many agencies collect taxes and levies in the petroleum industry, including the FIRS, DPR, NAPIMS, the Oil and Gas Free Zone Authority, Nigeria Content Development Board, etc. However, the agencies have mandates derived from statutes. There is coordination with other government exemplified by regular meetings between NEITI and FIRS.

The number of agencies can be explained by the separation of taxes, which are collected administratively before and during operations through concession rents, permits, licences, and other charges from the taxes collected after the profitable proceeds of the oil and gas operations are taxed. It is in the first light that the collections by DPR, NAPIMS, and the Oil and Gas Free Zone Authority can be viewed. The FIRS is in charge of the taxation of petroleum profits after end profits have been declared. The Taxes and Levies (Approved List for Collection) CAP T2, Laws of the Federation of Nigeria 2004, clearly sets out the various taxes and levies and their approved list of collecting agencies at the three tiers of government. Pursuant to the provisions of the act, the Minister of Finance in 2015 issued the Schedule to the Taxes and Levies (Approved list for Collection) Act (Amendment) Order 2015. The amendment compounded the issues by increasing the list of taxes from 39 items to 55.

Although FIRS is the agency charged with tax administration, the PSC arrangement has given rise to a situation where 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 PSC'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 licence holder. The licence holder in turn submits the returns to the FIRS. The licence holder is also obligated to pay the appropriate taxes to the FIRS from the tax oil allocated under the PSC. This anomalous arrangement not only insulates the FIRS from dealing directly with the accruable tax; it also raises the legal question of whether the licence holder is acting as the agent of the contractor or of FIRS. This is because the FIRS Act requires the appointment of entities as the agent of FIRS to be in writing or published in the Federal Gazette. There should therefore be an administrative and legislative response to the current anomaly. 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 captured. The application of technology can simplify the process and also makes avoidance difficult.

Information sources

The Taxes and Levies (Approved List for Collection) (2004) CAP T2, LFN

Schedule to the Taxes and Levies (Approved list for Collection) Act (Amendment) Order 2015

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The tax administrative procedures are not simple. They are complex and the effectiveness needs to be improved to a great extent. The system is nevertheless harmonised. One of the key objectives of the OGP commitment on taxation in the 2017–2019 period was to generate substantially more tax/revenue, as well as more ownership and commitment for the establishment of a transparent, fair, and efficient tax system. This will help address the challenges of tax evasion, tax avoidance, transfer pricing, and other harmful tax practices, and will subsequently promote fairness and justice in tax administration.

However, FIRS has been improving in the collection of oil and gas taxes. In 2016, FIRS collected NGN 3.3 trillion; in 2017, it collected NGN 4.02 trillion; and in 2018, it collected NGN 5.320 trillion. The oil tax revenue component collected by FIRS grew from NGN 1.15 trillion in 2016 to NGN 1.52 trillion in 2017 and to NGN 2.52 trillion in 2018. In 2016, the cost of collection was 2.6%; in 2017, it was 2.49%; and in 2018, it was 2.14%. This means that the actual cost of collection is heading downwards based on the efficiency and technology that FIRS is deploying for tax collection.²⁸ Various reforms for effectiveness are ongoing in FIRS but they need to be deepened. The reforms include introduction of ICT, automation, e-registration, e-filing, e-Stamp Duty, and e-Tax Clearance Certificates.

The objectives of the National Tax Policy 2017 include *simplicity, certainty, and clarity* (tax laws and administrative processes should be simple, clear, and easy to understand); *convenience* (the time and manner of fulfilling tax obligations should take the convenience of taxpayers into account and avoid undue difficulties); *low compliance costs* (the financial and economic costs of compliance to the taxpayer should be kept to the barest minimum); and *low cost of administration* (tax administration in Nigeria should be efficient and cost-effective, in line with international best practices).

²⁸ See *Gauge*, October–December 2018 (ISSN: 2006-9677), a quarterly publication of FIRS. However, FIRS is not entitled to any commission for collecting oil revenue.

Information sources

Nigeria's OGP Commitments (2017–2019)

National Tax Policy (2017)

FIRS (2018) *Gauge*, October–December (a quarterly publication of FIRS). ISSN: 2006-9677

4.3.5 Are tax administrators competent and well-sourced?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

FIRS officials and DPR staff are well paid, competent, and well-sourced. The salary structure of FIRS is outside the normal civil service structure. They also enjoy training inside and outside Nigeria. However, state-level tax officials do not enjoy the same remuneration package as federal tax officials.

The collection ratio for gross tax arrears, being the percentage of tax arrears at the beginning of a fiscal year which was collected during that fiscal year (average of the last two fiscal years), is a normal working tool for FIRS to judge whether there has been an improvement in collection. The effectiveness of the revenue administration's transfer of tax collections to the Treasury is determined by the Remittances Schedule from the collection banks reviewed according to CBN Statement. By monthly return reconciliation exercises carried out in the various tax offices and regional offices, the FIRS Treasury conducts complete accounts reconciliation between tax assessments, collections, arrears records, and receipts.

In 2014/2015, the FIRS launched the Capacity Enhancement Programme to deliver on three key objectives: introduction of an e-filing system, an integrated tax administration system aiming at standardising and automating tax administrative processes, and increased efficiency and transparency among the personnel. This was in addition to other milestones achieved, including the development of data quality, an assurance and control policy, and a review of the National Tax Policy. This helped strengthen the capacity and competence of the tax administrators.

By the fundamentals of the National Tax Policy 2017, tax officials were clearly directed on the objective that should determine their competence. The Guiding Principles of the National Tax Policy Framework include equity and fairness; simplicity, certainty, and clarity; convenience; low compliance cost; and the low cost of administration. Others are flexibility; sustainability; taxation

as a tool for economic management and development; wealth creation and employment; convergence of tax rates; a focus on indirect tax; and taxation and diversification.

Information source

National Tax Policy (2017)

4.4 Accountability and transparency of fiscal regimes

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information added

Nigeria's OGP NAP 2017–2019 states that lack of transparency is prevalent in the sector, especially in accounting for the resources derived from natural resource extraction and production, availability of information on licensing and disclosure of contract terms in the extractive industry. It therefore made a commitment to promote/enhance citizen's engagement by increasing access to information on extractive sector revenue and production. However, the amendment of the Companies and Allied Matters Act passed by the 8th National Assembly, which introduced beneficial ownership in line with the OGP commitments, did not get presidential assent. Thus, in terms of licensing disclosures, significant improvements are still required as Nigeria rarely discloses the financial interest of government officials in the oil and gas sector transactions or the identities of beneficial owners of extractive companies.

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 chain. Other efforts include the release of the strategy to grow the oil and gas sector between 2015 and 2019 (the Seven Big Wins) by the Ministry of Petroleum with definite commitments, timelines, and key performance indicators. The monthly reports published by the NNPC, the Extractive Industry Transparency Initiative (EITI) Validation of Nigeria conducted in 2016 considered that Nigeria's

level of data disclosure had improved meaningfully, which implies that a significant aspect of the requirement had been met and the broader objective for disclosure was being fulfilled.^{29,30}

In addition, in the 2017 Revenue Governance Index (RGI), Nigeria scored 17 out of 100, placing it 77th out of the 89 countries reviewed in the assessment of licensing. The RGI pointed out that though the Nigerian government had made commitments with NEITI and the OGP to improve its disclosure processes, it had yet to disclose details of contracts in oil, gas, and mining contracts as indicated in its ‘Seven Big Wins’ strategy. NRGI experts stated that:

Making secret agreements closes the space for much-needed oversight and public scrutiny. Out of public scrutiny, Nigerian government officials have negotiated a complex web of agreements that only a handful of people understand, exposing the country to conditions under which mismanagement and corruption can lead to significant leakages from government coffers. *Ad hoc* disclosures show us that some companies have received significant fiscal incentives to invest, while other companies have negotiated a range of byzantine financing agreements, such as modified carry agreements or third-party financing agreements, which have the potential to significantly impact the quantities of revenue and oil that the government receives. In one example, the government unduly gave royalty rate incentives to Addax Petroleum for four Oil Mining Leases worth as much as US\$ 2.8 billion.

Again, it is noted that the few disclosures of fiscal regimes and company data in Nigeria derive from commitments from outside Nigeria. For example, the NRGI experts further stated:

The private sector lending arm of the World Bank, the International Finance Corporation (IFC), requires that all their oil, gas and mining financings disclose the “principal contract with government that sets out the key terms and conditions under which a resource will be exploited,” and this has resulted in the disclosure of three Nigerian petroleum contracts by Seven Energy after they received IFC financing in 2014. The World Bank’s Multilateral Investment Guarantee Agency, which guarantees foreign direct investments in developing countries, has similar requirements for projects it supports, such as Accugas Limited, a subsidiary of Seven Energy in Nigeria. ... A recent survey of 40 major petroleum and mining companies showed that 18 have made public statements supporting some form of contract transparency. This includes TOTAL, Statoil, BP and Shell who all have significant

²⁹ Government of Nigeria (2017; 2018) Federal Budget Office 4th Quarter Implementation Report (and several FIRS reports); NEITI (2016) 2014 Oil and Gas Industry Audit Report (2016), pp. 113–121: available at <https://eiti.org/sites/default/files/documents/neiti-oil-gas-report-2014-fullreport-301216.pdf>.

³⁰ <https://resourcegovernance.org/sites/default/files/documents/the-case-for-publishing-petroleum-contracts-in-nigeria.pdf>.5; Government of Nigeria (2016) ‘7 Big Wins’: available at www.7bigwins.com/wp-content/uploads/2016/10/7-Big-Wins-Short-and-Medium-Term-Priorities-to-Grow-Nigerias-Oil-and-Gas-Industry-2015-2019.pdf; Government of Nigeria (2017) OGP Nigeria NAP 2017–2019: available at www.opengovpartnership.org/sites/default/files/nigeria_nap_2017-2019.pdf.

operations in Nigeria. Several more companies have disclosed contracts in stock exchange filings in their home countries.

Information sources

Nigeria OGP NAP (2017–2019)

Companies and Allied Matters Act (Amendment) Bill (2018)

7 Big Wins

RGI (2017)

Pitman, R. and Chinweze, A., The Case for Publishing Petroleum Contracts in Nigeria: available at <https://resourcegovernance.org/sites/default/files/documents/the-case-for-publishing-petroleum-contracts-in-nigeria.pdf>

Past the Tipping Point: Contract Disclosure within EITI (2017) available at www.pwyp.org/wp-content/uploads/2019/05/past-the-tipping-point-contract-disclosure-within-eiti-web-1.pdf

Seven Energy Media Announcement of 15 November (2017) available at www.sevenenergy.com/media/news-and-announcements/2017/15-11-2017

International Monetary Fund (IMF) Guide on Resource Revenue Transparency: available at www.imf.org

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The government consults substantially with businesses but not so much with civil society before adopting changes to the fiscal framework. The Federal Government consults with oil and gas sector companies before reviewing the fiscal regime for the sector. Only government agencies, industry operators and labour unions in the petroleum sector were invited to the public hearing on the amendment of the Deep Offshore and Inland Basins PSC Act in October 2019.³¹ Oil and gas companies were consulted in the development of the NPPF by the Ministry of Petroleum Resources in 2017 and the National Tax Policy by the FIRS. Civil society was consulted in the development of the National Tax Policy, although it should be noted that CSOs are not often consulted, sometimes as a result of a perceived lack of capacity to contribute and to preserve confidentiality. However, government has committed to communications in the NPP with the general public—the Nigerian people, international investors, domestic investors, civil society, the donor community, and other stakeholders.

³¹ Attendance was strictly by invitation.

Information sources:

National Petroleum Policy (2017)

THISDAY (2019) Invitation to Public Hearing on the Deep Offshore and Inland Basin PSC Amendment Bill, 10 October, p. 48

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

Old response: No

New response: Yes/No

UPDATE STATUS: Some changes observed

The relevant committees in the National Assembly, consisting of the Senate and House of Representatives, perform oversight functions on the management of the fiscal regime. They hold public hearings and conduct site visits from time to time. The 1999 Constitution gives power to the legislature to direct investigations into any matter or thing with respect to which it has power to make laws; the conduct of affairs of any person, authority, or MDA charged or intended to be charged with responsibility for executing laws made by the National Assembly, disbursing or administering monies appropriated by the National Assembly. This is to be done in a bid to expose corruption, inefficiency, or waste and to make laws or correct any defects in existing law.

In November 2018, the Nigerian Senate probed the withdrawal of US\$ 3.2 billion dollars starting from 2015 from the NLNG Dividends Account operated by the NNPC without appropriation or authorisation of the National Assembly. The sums were supposed to be for the three tiers of government: federal, state, and local government.³²

NEITI, the Auditor General of the Federation, and the internal auditors of FIRS, DPR, and other revenue collection authorities (including the tax tribunals and judiciary) variously exercise functions that are an oversight of the fiscal regime with the ability to issue and take effective decisions on matters before them. The National Tax Policy of 2017 provides fundamental grounds to oversee revenue staff. However, the oversight exercised by these agencies is not strong enough to guarantee full transparency and accountability of the fiscal regime.

Information sources

Constitution of the Federal Republic of Nigeria (1999) S. 85, 88, 89


NEITI Act (2007)

³² <https://allafrica.com>.








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.

| | |
|--|---|
| <p>Overall precept score</p> | |
| <p>Precept 5: Local impacts</p> <p>No remarkable changes have occurred since the 2017 BER. Key legislation to ensure the participation of communities, protect the environment, mitigate costs, respect rights, and ensure that communities benefit from extractive projects suffered setbacks in the period. Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA) processes are still weak; the government agencies responsible for enforcing compliance with regulations are still performing below average; and the mechanisms to ensure community trust is gained are largely ineffective principally on account government institutional weaknesses. Nigeria’s ranking on local impacts falls far below NRC recommendations.</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 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 minimisation and avoid practices that require compensation and resettlement? |  |
| 5.3.2 Does the government set and enforce effective environmental, social, and health regulations? |  |

| | |
|---|---|
| <p>5.3.3 Does the government require companies to develop environmental mitigation management plans and does it ensure that these plans are followed?</p> |  |
| <p>5.3.4 Does the government require companies to develop effective disaster response plans?</p> |  |
| <p>5.3.5 Does the government effectively allocate responsibility for the execution and financing of project closure and land rehabilitation?</p> |  |
| <p>5.3.6 Where social and environmental costs are unavoidable, does the government ensure that there is adequate compensation?</p> |  |
| <p>5.3.7 Where resettlement is unavoidable, does the government ensure that resettlement provides adequate redress?</p> |  |
| <p>5.4 LOCAL BENEFITS</p> | |
| <p>5.4.1 Does the government ensure companies come to an agreement with affected communities as to how companies will deliver community benefits?</p> |  |
| <p>5.4.2 Does the government encourage companies to direct employment and procurement opportunities towards affected communities?</p> |  |

Summary of key findings

Trust

- There are no defined, deliberate, and enforceable frameworks created by any tier of government with the goal of ensuring that affected communities participate meaningfully in decision making on resource projects. This has meant that the free, prior, and informed consent of communities is not sought or obtained. Where efforts are made in this regard, they are discretionary and 'after the fact'. EIA requirements and the Land Use Act do not reasonably prioritise consultation with communities. The Host Communities component of PIGB which could have addressed these gaps and increased trust, did not make much progress in the period under review. Similarly, the NPP, which articulates the government's vision in the petroleum sector and promises to increase the participation of affected communities, did not take widespread effect in the period.

Impact assessment

- While the EIA regulations are fairly adequate to ensure environmental protection and mitigation of negative effects, the extent to which the government integrates this process into decision making on resource projects is limited. A major reason for this is the fact that there are several gaps in governments monitoring and control of the EIA process to the extent that it is possible for it to be circumvented by resource companies that desire to do so. Government agencies responsible for approving oil and gas sector projects lack the technical and financial capacity to monitor and enforce compliance. Closely related to this is the fact that EIA laws do not recognise communities as critical stakeholders in the conduct of assessments. As a result of this, communities are alienated from the process and their role is at best passive.
- Pre-resource project assessments are principally limited to environmental impacts. No social impact assessments are required or conducted for resource projects.

Mitigation

- While Nigeria's EIA Act requires that project proponents present plans for mitigating adverse impacts of their proposed projects, there is no strong evidence indicating that, in taking decisions over resource projects, the government prefers the option of preventing costs over compensation and minimisation of such negative costs. In at least one instance (that of routine gas flaring), the government seems more inclined to impose fines and extend flare-out targets than to enforce its own flare-out dates. The capacity of government regulatory agencies to enforce sanctions and carry out their functions appropriately is grossly limited, principally on account of capacity and funding constraints.

- In the period under review, two critical pieces of legislation that could have strengthened the ability of government agencies to enforce regulations were denied assent by the President of Nigeria—PIGB and the NOSDRA Amendment Bill. PIGB recommended the establishment of a new regulator, the NPRC, charged with regulating the entire industry, effectively replacing the current DPR; while the NOSDRA Amendment Bill emphasised increased enforcement of fines and penalties for polluters, as well as giving NOSDRA the power to enforce these penalties and fines and to inspect and monitor the decommissioning of oil facilities.

Local benefits

- Government-superintended systems of benefit transfer to communities (including the NDDC, the Ministry of Niger Delta Affairs, the 13% derivation fund, and ecological funds) have failed to ensure that communities adequately benefit from natural resource earnings. While Nigeria's local content requirements holds great promise for greater benefit transfers, its actual application is weak. In contrast, oil company global memorandum of understanding (GMOU) structures created with the participation of communities are fast becoming the most effective routes for benefit transfers and participation. Unfortunately, the fact that the agreements are non-binding in many instances, and their implementation discretionary, is a significant weakness.

5.1 Trust

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

There are no defined, deliberate, or enforceable frameworks created by the government with the goal of ensuring that affected communities participate meaningfully in decision making on resource projects. The implication of this is that, in many cases, the free, prior, and informed consent of affected communities is not sought or obtained. In the few instances where affected communities play a minimal role in decision making, it is limited to decisions on strategies for benefit transfer and is hardly ever at the initiative of the government; rather, it is that of the private resource company. Where such company initiated interactions exist, it is scarcely meaningful or in-depth and mostly reflects the predetermined frameworks of the company.

Nigeria's Environmental Impact Assessment (EIA) Act is the furthest legislation on pre-resource project engagements with a broad spectrum of stakeholders. The act makes it mandatory for proponents of projects to carry out a study and produce a report clearly showing that the project being proposed will not cause harm to the environment or, where the opposite is the case, clearly describing the measures to be undertaken to prevent, reduce, or control the adverse impact on the environment.

With the knowledge of the impact of oil activities on the environment which resource-affected communities depend on for their livelihood, Nigeria's EIA Act is gravely deficient as an instrument for ensuring the meaningful participation of communities. The act is sternly limited in providing opportunities for the consultation of affected communities as it does not require companies to consult communities on resource projects.

Section 11 of the act recognises only the state and local government area where the resource project is located. It requires that, where the environment is likely to be significantly affected by a project, the affected state or local government area should be notified. It also prescribes 'timely consultations with the affected state or local government'. This clearly alienates affected communities from any form of meaningful engagement.

Other sections of the EIA Act that permit passive participation in the form of providing comments on the outcome of the EIA process fail to specify resource-affected communities as part of the groups provided with the opportunity to make such comments by the agency. It lists 'government agencies, members of the public, experts in any relevant discipline, and interested groups' without

recognising communities as a key stake-holding group. Evidently, the provisions of Nigeria's EIA Act are inadequate in providing opportunities for meaningful participation by affected communities. It goes further to weaken the stake of communities while promoting the importance of the federal, state, and local governments. These insufficient EIA requirements have inadvertently provided a rationale for the neglect of community concerns in decisions regarding resource projects by companies, while also making affected communities feel like outsiders in matters in which they should ordinarily be full participants. It has been argued that this neglect is partly responsible for the often belligerent disposition of resource-affected communities.

It can of course be argued that affected communities can realistically participate as members of the public in the EIA process. While this is largely true, the fact is that if affected communities had been specifically mentioned, a case could then be made for the adoption of local means of communication in EIA processes, as well as for the translation of EIA reports into common languages. The current situation is that community participation is significantly hampered on account of language and capacity barriers.

A good opportunity for involving affected communities in decision making processes regarding resource projects would have been at the point of acquiring and securing lands needed for such projects. Unfortunately, that opportunity has been eroded by another piece of Nigerian legislation, the Land Use Act of 1978. The act vests the ownership of all lands in the government and gives it powers to allocate them as it deems fit. As a result, resource companies are only obligated to engage the government for the acquisition of land for their projects, not the communities where those projects will be established. Available information indicates that some companies still initiate a semblance of consultation with communities after they have secured their lands and rights to establish resource projects, but this level of consultation only happens 'after the fact', when the decision has already been taken, and mainly focuses on conflict mitigation and benefit-sharing.

A recent example is the plans by the Federal Government to reallocate oil blocs with ownership tenures that have expired. There is no requirement or plan to engage communities in the decision of how the blocs are allocated.

In the period under review, there were no changes to the above two legal frameworks, which are clearly inadequate to address the issue of community participation in decision making on resource projects.

However, there were indications that the government recognises the need for greater involvement of communities in decision making regarding resource projects. In July 2017, the Federal Executive Council (FEC) approved the National Petroleum Policy (NPP). The policy articulates the vision of the Federal Government of Nigeria for the petroleum sector, sets goals and strategies, and promotes a level playing field between state-owned enterprises and the private sector: 'The policy recognizes the negative impacts of the oil industry to the livelihood and local communities. The government seeks to address these impacts through regulatory measures such as refineries, gas flare commercialization and community engagement.'

The policy states that the government recognises that the Niger Delta region has suffered from the effects of petroleum developments and that it must share in the benefits of hydrocarbons exploitation. It states further that, in accordance with the above, the government will develop a Niger Delta-wide model with the intention of involving Niger Delta communities directly in infrastructure, social, and petroleum developments in their local community areas.

The proposals in the National Petroleum Policy (NPP) set clear commitments for community participation in the Nigerian petroleum sector. Unfortunately, in the period under review there were no substantial actions taken to realise them. However, a similar policy in the gas sector, approved by Nigeria's Federal Executive Council (FEC) on 28 June 2017, does not provide similar opportunities for affected communities. A review of the NGP shows that there are no provisions for affected communities to meaningfully participate in decision making frameworks for gas exploitation in Nigeria.

In the period under review, there have continued to be calls from different segments of the society for the Federal Government to allow communities in the 'Niger Delta participate actively in equity ownership of petroleum operations, noting that this will create jobs and robust economy in oil bearing communities.' There have also been calls for a review of the Land Use Act to give room for community participation and ownership of petroleum operations in their areas.

Concerns have also been raised about the utilisation of MOUs in several communities as a strategy for community participation and benefit-sharing. While this framework generally holds great prospects for establishing trust between companies and affected communities, affected communities in some instances have continued to complain about exclusion and demand that they be included in the decision making processes in the sector. According to HOSTCOM, the umbrella organisation of oil extraction communities, they 'should be directly involved in the management of their resources to give them sense of belonging.'

In the review period, no significant progress was made by the government to ensure that affected communities have greater participation in decision making processes.

Information sources

<https://guardian.ng/news/nigeria-to-renew-oil-blocks-licences-in-q1-says-kachikwu/>

<https://guardian.ng/business-services/host-communities-to-participate-in-oil-block-allocations-under-new-policy/>

www.petroleumindustrybill.com/wp-content/uploads/2017/07/National-Petroleum-Policy-Approved-by-FEC-in-July-2017.pdf

<http://thepetronomics.com/wp-content/uploads/2017/10/national-gas-policy-summary-FINAL.pdf>

www.vanguardngr.com/2018/06/1006354/

www.vanguardngr.com/2018/07/hostcom-demands-inclusion-in-petroleum-operations/

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

The closest semblance to a legal requirement to communicate expectations with affected communities is contained in Nigeria's EIA Act. Section 11 of the act requires notification and consultation with the affected state and local government area of the proposed activity if the EIA report indicates that the environment is likely to be significantly affected by it. However, the act does not specifically stipulate communication with the affected community, but limits it to the state and local government area.

Unfortunately, there are no frameworks that require that the government provide information and set reasonable expectations concerning the costs and benefits of extraction at all project stages (exploration, development, operation, and closure); neither are there any frameworks requiring resource companies to initiate such communication with affected communities. The consequence of government's lapses in managing the expectations of local communities is evident in the belligerent relationship between the government, resource companies, and affected communities.

In the period under review, the government did not make significant progress in ensuring that affected communities have reasonable expectations of resource projects. One example is the promise by the Federal Government on the construction of modular refineries in communities, and the processes of awarding licences to members of communities. Research interviews reveal that the expectation of communities is drastically different from the realities of the project policy. Communities expect that each cluster will have at least one such modular refinery facility to be supported by the government. In fact, the Federal Government said through the Vice-President that, through the new modular refineries' initiative, oil-producing communities will be made to acquire stakes in refineries that are set up in their localities. The federal and state governments will have some stake, as well as private investors. This promise of direct ownership and benefits has not been quite realistic and is not supported by available information and practical guidelines. Based on this erroneous expectation, former illegal artisanal refiners have banded into cooperatives, waiting to be engaged by the Federal Government.

A similar instance of the government's failure to adequately manage the expectations of resource-affected communities is the clean-up activities by HYPREP in Ogoni Land. According to a 2018 report published by the Centre for Environment Human Rights and Development, the Ogoni communities have very high (and unsubstantiated) expectations of the clean-up project that goes beyond the cleaning up of oil spills and environmental remediation. Research also reveals that most community members expect that the clean-up project will provide a large number of jobs, monetary compensation, etc. The government has not adequately engaged the communities and

kept them informed of the realities of the project and the mandate of the clean-up. This incorrect expectation is already causing conflict in Ogoni Land and popularising negative perceptions about the clean-up.

In the Aje oil field around Badagry, Lagos State, where Yinka Folawiyo Petroleum is carrying out offshore extraction activities, the expectations of the affected communities are far higher than what the company can possibly meet. To a large extent, the communities expect the company to effectively replace the government in the provision of amenities. Similar examples of unrealistic expectations stemming from inadequate communication with affected communities abound in resource areas.

It is important to note that, in many oil-producing communities in Nigeria, the government presence is at best minimal. Residents of these communities have tended to turn to the oil companies for their demands for development, pressuring business interests to provide development benefits that should ideally be provided by the government.

Information sources

www.energymixreport.com/fg-states-communities-acquire-stakes-modular-refineries-osinbajo/

<https://cehrd.org.ng/index.php/reports/human-rights-and-governance/human-rights/item/146-communities-perceptions-of-the-ogoni-clean-up-project>

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

There are no clearly defined or established government superintended structures for dispute resolution for affected communities within the context of resource project. However, the EIA Act creates a weak and passive framework for resolving disputes related strictly to EIA. It states that where (a) a project is likely to cause significant adverse environmental effects that may not be 'mitigatable'; or (b) public concerns respecting the environmental effects of the project warrant it, then '... the parties who are directly affected by or have a direct interest in the project have been identified and are willing to participate in the mediation through representatives.'

Research indicates that communities have little confidence in the ability, impartiality, or willingness of regular judicial processes in Nigeria to efficiently resolve dispute between resource-affected communities and oil companies. The perception is that, in any such case, the oil

companies will be unduly favoured no matter the circumstances, and even if they are found culpable, such judgement will not be enforced. This thinking has greatly limited the level of trust. An indication of this is the fact that increasingly, more affected communities are seeking judicial remedies abroad, especially in the home countries of resource companies where they believe the judicial processes work better.

Dispute resolution as it relates to affected communities often follow an *ad hoc* pattern, where the government only react when conflicts have escalated and threaten the extraction and transport of resources. This was the case from the 1990s to 2009, when agitation by affected communities was mismanaged until it led to outright conflict and drastic cuts in Nigeria's oil outputs. The same *ad hoc* model played out in 2016, when an amorphous armed group called the Niger Delta Avengers began attacking oil installations in the region. It was only at this stage of escalated belligerence that the Federal Government initiated consultations towards addressing the conflict. Ironically, it seems the only available and effective strategy to demand conflict resolution is to demonstrate an ability to otherwise significantly escalate the conflict.

One major strategy utilised by the government to resolve conflict is the engagement of elder statesmen from the Niger Delta region. The processes chiefly involve working closely with respectable community leaders from the region to negotiate terms for resolving conflicts. This strategy was effectively used in 2009 to check the belligerence of the Movement for the Emancipation of the Niger Delta, and again in 2016 to negotiate a ceasefire with the Niger Delta Avengers. This conflict management mechanism has proved effective in ensuring peace.

Information source

<http://extwprlegs1.fao.org/docs/pdf/nig18378.pdf>

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

There are no legal or policy frameworks that stipulate the level of force to be deployed in the context of resource projects. However, it is the standard policy of the Government of Nigeria chiefly to use the Nigerian Army or a combination of the armed forces called the Joint Task Force (JTF) in security issues regarding resource project sites. Historically, these security operatives have been involved in rights abuses and outright killings. Famous examples include Odi in Bayelsa State, where army reprisals saw the sacking of an entire community and the mass murder

of villagers. Other examples of deployment of excessive force include Umuechem Community and Ogoni in the 1990s.

Research reveals that this pattern has largely remained the same to date. There have been at least three recent incidents in 2019 when the army invaded communities in Rivers and Bayelsa States, killing civilians and burning houses and properties. In July 2019, the JTF invaded a community in the Degema local government of Rivers State, torching 15 houses and killing at least one person. Petitions to the government to address the carnage were not responded to. A similar incident occurred in Ohaji-Egbema in June 2019, when soldiers stationed at a Seplat facility in Umuokpo Community shot at community members, including elderly women, who were protesting poor benefit-sharing and environmental pollution.

The Nigerian Security and Civil Defence Corp is mandated to carry out surveillance over resource projects as well as secure petroleum pipelines from vandalism. In carrying out this responsibility, the overt emphasis is on the protection of oil installations, not on ensuring that the rights of the people on resource project sites are not abused.

The Voluntary Principles on Security and Human Rights is a set of principles designed to ensure the safety and security of an extractive company's operations within a framework that guarantees respects for human rights. In the Nigerian context, it has the potential to create multi-stakeholder platforms to ensure peace, respect for human rights, and limitations to the use of force by security operatives. In 2018, the Voluntary Principles Initiative Steering Committee visited the Nigerian government and invited it to join the 11 countries who have already signed on to the principles. The government remains undecided about signing on. It is important to note that several of the oil companies operating in Nigeria have already subscribed to the principles. Ordinarily, this should create an opportunity for close collaboration on the use of force and respect for human rights if Nigeria were to join the Voluntary Principles.

Information sources

<https://medium.com/@Saatah/the-nigerian-terror-state-and-its-armed-wing-8a721c1c4751>

<http://nigerianewsday.com/2017/07/28/3786/>

<https://guardian.ng/news/rivers-community-demands-probe-on-jtf-invasion/>

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

www.lite-africa.org/index.php/programmes/past-projects/ausaid-a-call-to-action-voluntary-principles-project

5.1.5 Does the government ensure that the rights of indigenous people are protected?

Old response: No

New response: No

UPDATE STATUS: Additional information included

Under Nigerian laws principally the Land Use Act, ownership is vested in the Federal Government, the free, prior, and informed consent of indigenous people in resource sites are not sought before the commencement or during the life of resource projects. Such negotiations are limited to the Federal Government and the oil companies.

Research in communities where new resource projects are being implemented and expanded reveals that the requirement to respect the rights of indigenous people through seeking their free, prior, and informed consent is still not complied with. In one instance, food crops planted at a farm in Delta State marked for a resource project were destroyed to make way for the project.

In several instances, indigenous communities have expressed concern over rights abuses occasioned by the activities of extractive companies. A recent report by Amnesty International reveals that Shell and Eni are violating the environmental and livelihood rights of indigenous people by taking weeks to respond to reports of spills and publishing misleading information about the cause and severity of spills, which may result in communities not receiving compensation. Another community in the Niger Delta is suing Eni in Italy over environmental pollution.

Respect for the rights of indigenous people is seriously limited by the continued failure of the Nigerian government to approve the United Nations Declaration on the Rights of Indigenous Peoples. The declaration affirms the rights of indigenous people to the enjoyment of rights and freedoms. It establishes a universal framework of minimum standards for the survival, dignity, and wellbeing of indigenous peoples. While 144 countries voted in support of the declaration, Nigeria was among the 11 countries that abstained from voting. If adopted, the declaration will require that Nigeria enacts domestic laws that ensures respect of the rights of indigenous people. Nigeria has made no progress in this regard.

Information sources

www.amnesty.org/en/latest/news/2018/03/nigeria-amnesty-activists-uncover-serious-negligence-by-oil-giants-shell-and-eni/

www.foeeurope.org/nigerian-community-oil-pollution-eni-lawsuit-090118

www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

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?

Old response: No

New response: No

UPDATE STATUS: No additional information included

A Strategic Impact Assessment (SIA) examines the broader benefits and costs of licensing new resource projects. It assesses the overall readiness of the government to oversee those projects to generate maximum benefits, as well as the extent to which it aligns with the development policy of the government. Ideally, an SIA is carried out prior to the inception of the project.

Unfortunately, there are currently no laws or regulations in Nigeria that require the conduct of an SIA, with all its implications, before the implementation of a resource project. The government's failure in this regard has resulted in the inability of state agencies (including regulators) to adequately manage resource projects for the benefit of the people.

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Nigerian laws provide for the conduct of an EIA prior to the commencement of resource projects. This requirement is documented principally in Nigeria's EIA Act 1992. Unfortunately, there are no requirements for the conduct of socioeconomic impact assessments prior to resource projects.

Provisions requiring EIAs are also documented in the Land Use Act, the Federal Environmental Protection Agency (FEPA) Act, and EGASPIN 2002. The 2017 BER Report details the relevant contents of the acts. In EGASPIN, for instance, a requirement of DPR is that proponents of resource projects submit a report setting 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 commence those projects. Similarly, Section 21 of the EIA Act requires that the outcome of the EIA process should be integrated into planning the resource project through providing alternatives or for mitigating negative impacts.

The prevailing EIA 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 the Environmental Assessment Department of the Federal Ministry of the Environment, there is a routine Environmental Compliance Monitoring Exercise conducted annually on facilities that have attained the EIA closed-out status as well as on facilities with valid Environmental Audit (EAU) approval. According to it, ‘the objectives of this exercise include but not limited to ensuring that the conditions of the EIA close-outs as well as the EAU are carried out including the implementation of the Environmental Management Plan to sustain the continuous improvement of environmental performance of the facility.’

This process essentially provides the Federal Ministry of the Environment with up-to-date information with the compliance status of each resource project even after EIA have been approved. This provision indicates that there is a framework which ensures compliance with EIA from the point of exploration to closure.

Unfortunately, communities and indigenous landowners are not recognised as a distinct group required to be engaged in the EIA processes. Nigeria’s EIA Act clause permitting the participation of the public is the only opening for communities to participate. However, even this limited opening is challenging, given the educational level and interest of community people. EIAs are not produced in local languages to enhance accessibility to affected communities. Similarly, Section 11(1a) of the EIA Act (which specifies the manner of response to an EIA revealing the environment is likely to be significantly affected by a proposed project) only requires that the affected local and state government be notified. It makes no mention of informing the affected communities.

Nigerian environmental regulatory frameworks require that resource proponents secure consultants to conduct their own EIA. While it is not mandatory for EIAs to be conducted by an independent third party, the EIA Act provides for an elaborate process of verification and review. Upon the submission of the EIA report, the responsible agency examines and makes same available to government agencies, members of the public, experts in any relevant discipline, and interested groups. It also provides for the establishment of a review panel which holds public meetings open to the participation of all stakeholders.

There is a regulatory provision requiring 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. A provision to make EIAs publicly available is also contained in the FEPA Act Section 6(b). This also applies to 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.

Despite the available stipulations, actual compliance is at best lethargic. Research reveals that there are cases where resource projects are started before the conclusion of an EIA process. In another community, an EIA report was plagiarised from another country and presented as reflecting assessment of an environment in a Nigerian community. Evidence from visits to communities also indicates that, where existing resource projects are being expanded in size, EIAs are often not conducted even when the extensions have significant environmental, social, and economic impacts.

While the EIA regulations are fairly adequate to ensure environmental protection and mitigation of negative effects, the extent to which the government integrates this process into decision making on resource projects is limited. A major reason for this is the fact that there are several gaps in governments monitoring and control of the EIA process to the extent that it is possible for it to be circumvented by resource companies that desire to do so.

Information sources

<https://ead.gov.ng/environmental-compliance-monitoring-exercise/>

www.nigeria-law.org/Land%20Use%20Act.htm

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

Interviews and Focus Group Discussions with community members

5.3 Cost mitigation

5.3.1 Does the government favour prevention over minimisation and avoid practices that require compensation and resettlement?

Old response: No

New response: No

UPDATE STATUS: Additional information included

In cost mitigation, best practices require that, when the government is made aware of the overall potential impacts of resource projects, it must mitigate the potential environmental, social, and health costs of exploration and extraction, either by intervening directly or by influencing the activities of the companies involved. Such mitigation efforts should ideally follow a mitigation hierarchy which emphasises prevention, minimisation, and compensation in order of preference. Faced with the potential of negative effects of a project, the actions of the government should be principally focused on preventing that effect. Where this is not immediately possible, it should

seek means to minimise the negative effect. Compensation to the affected communities should be considered the last and least option.

Nigeria's EIA Act requires that project proponents present plans for mitigating adverse impacts. However, it does not expressly recommend that the mitigation hierarchy be followed. There is no evidence indicating that, in taking decisions over resource projects, the government prefers the option of preventing costs over compensation and minimisation of such costs. In fact, there is significant evidence that the primary strategy utilised by the government in handling costs has been through compensation as a first option, rather than prevention. For instance, in dealing with the persistent and regular problem of oil spills occasioned by the failure of equipment, the government has not been able to strongly insist on proactive measures that ensure such spills are mitigated. Companies are allowed to opt for the payment of compensation to the victims rather than taking actions aimed at preventing such failure from happening in the first place. Faced with oil spills, the routine practice is the payment of compensation. In many cases, this compensation is inadequate and irregular. In other instances, companies shirk even this responsibility.

Another example of the approach of the government to managing costs is with the situation of gas flaring at oil extraction sites in Nigeria. While the health, environmental, and livelihood costs of this practice on communities has been well-documented, the government continues to prefer fines over strong sanctions aimed at ending the practice. Over the last three decades at least, the government has continued to adjust its flare-out date while flaring continues with all the negative costs. Due to the way the fines are structured, the fact that they are paltry, and the inability of the government to accurately calculate them, oil companies continue to prefer them to accentuating action to end the flaring of AG. It is interesting to note that, while oil extraction communities bear all the negative impacts of gas flaring, the fines oil companies pay for flaring are not channelled to them.

Information source

<https://punchng.com/gas-flaring-persists-as-2020-deadline-nears/>

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

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

The following agencies of the Federal Government have varying degrees of responsibility in the enforcement of regulations in the oil and gas sector.

The Federal Ministry of the Environment is statutorily mandated to enforce environmental standards. The ministry has the mandate to 'ensure environmental protection, natural resources conservation and sustainable development.' The ministry is also responsible for overseeing EIA.

The National Environmental Standards and Regulations Enforcement Agency Act empowers the agency to be responsible for enforcing all environmental laws, guidelines, policies, standards, and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions, and treaties on the environment to which Nigeria is a signatory.

DPR has the statutory responsibility of ensuring compliance with petroleum laws, regulations, and guidelines in the oil and gas industry. The functions of the agency include 'ensuring that Health Safety & Environment regulations conform with national and international best oil field practice.'

NOSDRA is responsible for the preparedness, detection, and response to oil spillages in Nigeria. The agency also has the task of ensuring compliance with environment legislation in the Nigerian petroleum sector.

While there are fairly adequate environmental regulations in the oil and gas sector in Nigeria, as well as mentions of health and safety parameters, the major challenge has been the extent of their enforcement. It has been argued that government agencies responsible for enforcing regulations do not have the capacity, resources, or will to do so.

For instance, it has been observed that DPR lacks the incentive to carry out its function of enforcing standards effectively. This is because DPR is faced with a conflict of interest in ensuring that health, environmental, and safety standards are followed in the sector, while doubling as the agency with the responsibility to oversee the economic regulation of the industry. One of the functions of DPR is to 'ensure timely and accurate payments of Rents, Royalties, and other revenues due to the government.' In this regard, strictly enforcing regulations could lead DPR taking decisions that could reduce revenues.

One of the major weaknesses in the enforcement of health and safety standards in the sector is the lax and outdated laws meant to deter violations. According to experts, a 'licensee or lessee who fails to comply with the health and safety law is liable on conviction to a fine not exceeding NGN 100 or to imprisonment not exceeding 6 months or to both.' Clearly, this level of punishment for violation is not in tandem with best practices, and certainly not enough to ensure compliance with available regulations.

A recent report by the Institute for Oil, Gas, Energy, Environment, and Sustainable Development of Afe Babalola University, Ado Ekiti, states that 'the implementation of laws governing environmental issues in the Nigerian petroleum industry remained weak, while the agency in charge of regulating the industry appears distracted'. The report further states that the 'implementation of the regulatory framework for environmental protection in the Nigerian oil and gas sector was still very weak.'

The effect of weak regulation of standards on environmental protection is captured in a recent report by the International Centre for Investigative Reporting. It reveals cases of large-scale pollution in Bayelsa state by Eni. The report reveals the weakness of NOSDRA to enforce clean-up and remediation in line with the law.

Unfortunately, in the period under review, two critical pieces of legislation that could have strengthened the ability of agencies to enforce regulations were denied assent by the President of Nigeria: the NOSDRA Amendment Bill and PIGB. The NOSDRA Amendment Draft Bill emphasised increased enforcement of fines and penalties for polluters, as well as giving NOSDRA powers to enforce penalties and fines and to inspect and monitor the decommissioning of oil facilities. Similarly, PIGB was denied assent by the President. The bill recommended establishment of a new regulator, the NPRC, charged with regulating the entire industry, effectively replacing the current DPR.

Information sources

www.dpr.gov.ng/functions-of-dpr/

www.nosdra.gov.ng/index48a648a6.html?page_id=5www.alliedacademies.org/articles/environmental-crime-liability-of-the-nigerian-government-in-its-oil-pollution-menace-9631.html

www.energymixreport.com/health-safety-issues-in-nigerias-oil-gas-sector/

www.vanguardngr.com/2018/12/environmental-standards-regulation-in-nigerias-oil-industry-still-weak-report/

www.icirigeria.org/inside-nigerias-oil-rich-community-where-agip-breaks-the-law-endangering-lives-and-livelihood-of-residents/?fbclid=IwAR0W7iJLW4tyksrf21n4A9vfp4odhQ1_5hWss_L7Qf78lkj2NsczlrKfSCI

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?

Old response: No

New response: Yes/No

UPDATE STATUS: No additional information included

As captured in the 2017 BER, the EIA Act 1992 contains imprecise provisions for mitigating negative environmental impacts of resource projects without expressly demanding that they develop mitigation plans.

According to the act, 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.

Other policies and regulations also provide for mitigating environmental impacts in the sector.

Under EGASPIN, operators must obtain permits for all aspects of oil-related effluent discharges from all point sources (i.e. gaseous, liquid, and solid) and oil-related project development.

The Oil and Gas Pipelines Regulations require a pipeline licence to implement emergency plans to ensure prompt and remedial action for protecting the environment.

The Petroleum (Drilling and Production) Regulations require licensees and lessees to adopt precautions to prevent pollution and dispose of waste from petroleum operations in accordance with applicable regulations, as may be approved by DPR.

Despite the available policies and law, actual enforcement of these regulations are weak. The agencies tasked with the responsibility of ensuring that they are enforced are structurally weak, technically incapable, and financially unable to carry out their task. This deficiency is evident in the inability of many of the regulatory agencies to establish reasonable presence in many of the locations where they should be monitoring impacts and enforcing standards. This includes in the communities.

Information source

www.lexology.com/library/detail.aspx?g=12565d6d-b473-4335-be0d-1bd34aa0e4de

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

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

NOSDRA is the Federal Government agency responsible for the detection, and response to oil spillages in Nigeria. According to the NOSDRA Establishment Act, the objective of the agency includes to coordinate and implement the National Oil Spill Contingency Plan for Nigeria. While a National Oil Spill Contingency Plan has been developed, approved, and placed within the agency

framework of NOSDRA, there is no corresponding requirement in Nigerian regulations for companies to develop their own disaster management plans.

Despite this gap in extant Nigerian laws and policies, notable multinational oil companies have proactively designed their own disaster management plans. For instance, SPDC, in describing its spill response plan, says that when a leak is identified, production is suspended and efforts are made to contain any spilled oil. According to the company, they regularly test their oil spill emergency response procedures and capability to ensure staff and contractors can respond rapidly to an incident.

Similarly, Nigeria AGIP Oil says its emergency response measure includes mobilising its in-house response team for confirmation and verification of spill sites, containment of the spill, isolation or shutdown of the leak point, repairs, clean-up, etc.

Despite the plans oil companies have put in place for quick response to disaster, the reality gathered from interviews and community interactions indicates that these efforts are insufficient to address the number of disasters that occur, including oil spills and blow-outs. It is sometimes days or weeks before the oil company’s emergency team arrives at oil spill locations, by which time irreversible damage has already been done. A major weakness in this regard is the fact that there are no enforceable standards for disaster response established and monitored by the government.

Information sources

www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/security-theft-and-sabotage.html

www.eni.com/en_NG/sustainability/environment/response-to-oil-spills/response-to-oil-spills.shtml

Stakeholder Engagement with community members and industry experts

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

Old response: Yes

New response: Yes

UPDATE STATUS: No additional information included

The Petroleum Act and the Oil Pipeline Act contain provisions for the abandonment and decommissioning of existing wells. Specifically, these regulations are contained in:

- the Petroleum (Drilling and Production) Regulations;
- the Oil and Gas Pipeline Regulations; and

- individual PSCs.

Abandonment is regulated by the Petroleum (Drilling and Production) Regulations. The plugging or abandonment of a well may only be done with the written permission of the Director of DPR. The Director of DPR may direct that no bore hole or well may be plugged or no work may be executed except in the presence of an officer of the Ministry of Mines, Power, and Steel.

The holder of the OPL or OML is primarily responsible for all decommissioning costs. Under the PSCs, the PSC contractor is required to provide a letter of credit or bank guarantee as security for pre-estimated decommissioning costs. Alternatively, the PSC contractors may be required to set aside a decommissioning fund in an interest-bearing account.

Nigeria's EIA Act also contains provisions for clean-up activity after the completion of a project. 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 contain detailed plans of how the project proponent intends to close the project at the end of its lifecycle. The responsibility for project closure lies with the project proponent who is required by law to provide an elaborate plan for closing a project. However, the process of project closure does not include the participation of affected communities; neither are CSOs or the media engaged in close-out processes. Such participation is in line with global best practices and standards.

Information source

<https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/nigeria>

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Compensation considerations from the government follows two major streams. The first is through (a) the creation of development agencies, and the second is through (b) the transfer of additional funds to affected areas and other benefits in consideration of the costs borne by resource-affected communities. In Nigeria, the following agencies and payments are available:

- the Ecological Fund;
- the 13% derivation fund to Niger Delta states;
- the Ministry of Niger Delta Affairs; and

- the NDDC.

The second format of compensation is characterised by direct payments to affected communities and individuals. This mostly happens when there has been a disaster (often associated with pollution) that has negatively impacted the community or individuals.

It is important to note that, in Nigeria, the principal legislation on compensation to which other legislations make reference to or depend on is the 1978 Land Use Act, now Cap L5 LFN 2004. However, the Land Use Act focuses primarily on compulsory acquisition of land and provides for compensation in that regard. In its context and content, the Land Use Act does not capture the challenges of environmental pollution neither does it provide for scientific and robust methods of assessment where pollution and damage are involved. Clearly, there is a lot of confusion in the assessment of compensation in instances of compulsory acquisition/compulsory purchase and in instances of compensation assessment for damage caused by oil spills.

Research in communities reveals that compensation is irregular and inadequate. In most instances where direct compensation is provided, it comes from the multinational oil companies. The payments are hardly commensurate with what was lost on account of the pollution. Where the NNPC is culpable in pollution, the corporation never takes responsibility or pays compensation.

Other government established and supervised compensation schemes meant to ensure the transfer of benefits to communities are ineffective. The NDDC, the Ministry of Niger Delta Affairs, and the 13% derivation scheme have failed to have any real impact on affected communities. Historically, these schemes have become highly prone to corruption and have only benefited a select group of elite.

Information source

www.stakeholderdemocracy.org/wp-content/uploads/2016/06/New-Compensation-Systems-.pdf

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

There is currently no legal framework that covers resettlement on account of displacement associated with resource projects.

Nigeria's Land Use Act vests 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.

The government began a process of developing a national policy for the protection of internally displaced persons in 2006. The policy, which has twice been revised in 2009 and 2012, has remained a 'draft' policy and has not been adopted. The draft National Policy on Internally Displaced Persons in Nigeria defines displacement that could arise as a result of resource projects as 'Development-Induced Displacement'. It says this type 'refers to a situation where people are compelled to move as a result of policies and projects implemented to supposedly enhance 'development''. Examples of this include large-scale infrastructure projects such as dams, roads, ports, airports, refineries, and oil and gas installations. If it had gone forward, this policy could have created a framework for ensuring effective and adequate resettlement.

In January 2019, the Federal Government announced its intention to adopt the national policy on internal displacement. President Muhammadu Buhari announced this at the 2018 National Migration Dialogue on 'Realizing the Sustainable Development Goals for all including migrants, refugees and internally-displaced persons.' It is not immediately clear how far these plans have gone and if the policy will take into consideration the displacement occasioned by extractive activities.

On 23 October 2009, African States adopted the African Union Convention for the Protection and Assistance of internally displaced persons in Africa (the Kampala Convention). The Kampala Convention takes an innovative approach by formulating responses tailored to the specifics of displacement in Africa. Since ratification, the Kampala Convention has not been domesticated in Nigeria, making the legal application of its provisions within the national legal system subject to the constitutional firewall and unusable by communities facing displacement.

Information sources

BER (2017)

www.nigeria-law.org/Land%20Use%20Act.htm

www.dailytrust.com.ng/new-national-policy-on-idps.html

www.globalprotectioncluster.org/assets/files/tools_and_guidance/Internal%20Displacement/unhcr-gpc_reg_framework_idp.pdf

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

The NCDMB was established by the NOGICD Act, which came into effect on 22 April 2010. The key thrust of NOGICD is to integrate oil-producing communities into the oil and gas value chain. One of the functions of NCDMB is 'to engage in targeted capacity-building interventions that would deepen indigenous capabilities - Human Capital Development, Infrastructure and Facilities, Manufactured Materials, and Local Supplier Development.' Through local content law, a framework is created to ensure benefit transfer by companies. More recently, the NCDMB has set up the Nigeria Content Intervention Fund aimed at providing a pool of resources dedicated to meeting the financing needs of indigenous players in the oil and gas sector.

However, oil-producing communities regularly complain and question the effectiveness and extent of application of the local content requirement.

In recent times, sub-national governments have become more involved in the development and signing of MOUs between companies and oil-producing communities. In Delta State for instance, the governor supported a negotiation process in 2018 that resulted in the signing of an agreement between the OML 30 communities and Heritage Oil. In several cases, the MOUs contain plans for infrastructural development, educational scholarships, and employment. However, in the case of Delta State, when it became apparent that the company had reneged on the MOU, the state government did not in turn take action to ensure that the company would abide by the agreements they had signed. Unfortunately, these MOUs are not legally binding: compliance is discretionary and there are no channels for affected communities to enforce compliance if the agreements are violated.

There are other frameworks to ensure that companies transfer benefits to communities. Section 14(2)(b) of the NDDC Establishment Act specifically stipulates that 3% of the total yearly budget of any oil-producing company operating onshore and offshore in the Niger Delta area will be paid into the funds of the NDDC. Other frameworks include the Ministry of Niger Delta Affairs. However, government enforcement of rules to ensure the transfer of benefits to communities has been rather lax. What eventually gets to the affected communities is hardly proportionate to the losses and deprivations they endure.

Information sources

<https://ncdmb.gov.ng/about/ncdmb-overview/>

www.vanguardngr.com/2019/02/local-content-nigeria-spends-10bn-annually-on-foreign-welders/

<https://thenationonlineng.net/why-local-content-act-is-partially-implemented/>

<https://guardian.ng/news/host-communities-of-oml-30-sign-mou-with-jv-partners-in-delta/>

<https://businessday.ng/news/article/oml-30-host-communities-threaten-to-disrupt-90000-bpd-crude-production/>

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

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No additional information included

The major government-backed strategy for ensuring that companies direct employment and procurement contract opportunities to locals is through the provisions of the NOGICD Act. Companies are expected to extend training, procurement preferences, and employment to locals. However, there are weaknesses in the implementation of the provisions of the act. Some communities complain they are unable to determine what they are entitled to in the form of employment from the companies and say they are not aware of procurement opportunities.

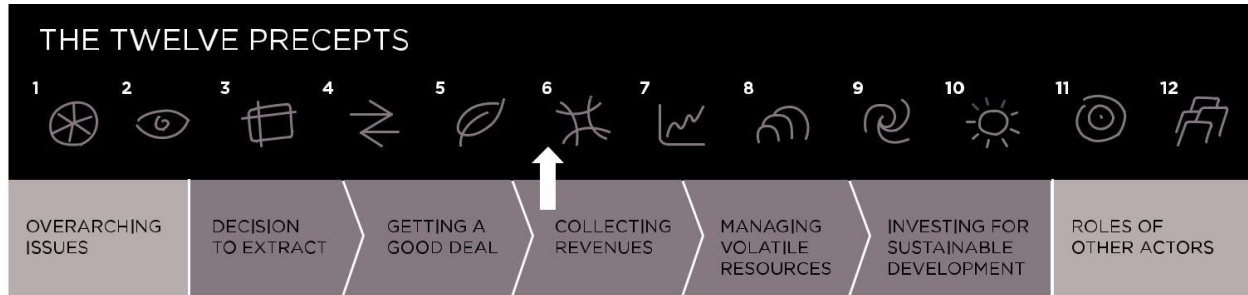
In some instances, oil companies have established frameworks for ensuring that procurement contracts and employment opportunities are directed to affected communities.

Information sources

www.ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf







www.energymixreport.com/an-overview-of-the-nigerian-oil-and-gas-industry-local-content-initiative/

PRECEPT 6: STATE-OWNED ENTERPRISES: NNPC



Nationally owned companies should be accountable, with well-defined mandates and an objective of commercial efficiency.

| | |
|--|--|
| Overall precept score | |
| <p>Precept 6: SOEs</p> <p>Change in the Nigerian National Petroleum Corporation (NNPC)'s leadership in the review period has not altered the corporation's recent practice of disclosing selective unaudited operational and financial information. However, the lack of legal provisions mandating such practices raises sustainability concerns. Furthermore, stalled petroleum industry reform in the 8th National Assembly leaves firmly left in place several factors limiting NNPC's ability to operate transparently with the objective of being commercially viable in a competitive environment. However, changes to NNPC's funding arrangement has improved its ability to meet its joint venture capital obligations.</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**

- An appraisal of the commercial performance of NNPC subsidiaries reveals that the discretion the corporation enjoys in pursuing commercial interests under current laws limits its performance and affects its ability to generate returns for the country.
- NNPC dabbles into all spheres of the petroleum industry, specifically in operation, regulation, and policy, by virtue of its position. This is likely to lead to conflict of interest, lack of focus, inefficiencies, and underperformance.

SOE corporate governance

- While the current corporate governance structure of NNPC, with strong presidential influence, can allow for coherent strategic decision making, it remains susceptible to excessive political interference and limits its accountability through checks and balances.

SOE transparency and accountability

- NNPC continues the practice of disclosing selective unaudited operational and financial information in the review period. Yet a lack of underlying legal instruments to ensure sustainability of this practice and failure to enact necessary legislation to kick-start petroleum industry reform constrains transparency and accountability in Nigeria's national oil company.

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?

Old response: No

New response: No

UPDATE STATUS: Additional information included

The NNPC Act (1977) empowers the corporation to ‘engage in all commercial activities relating to the petroleum industry.’ In exercise of this provision, the NNPC has established several subsidiaries with interests along the entire value chain of the petroleum industry. However, the level of discretion the NNPC has under the act allows it to pursue interests in the petroleum industry that may not reflect the technical and financial capacity of the corporation. For instance, consider the difference in commercial performance of NNPC subsidiaries (Figure 6.1). While the observed differences are partly due to operational challenges, perpetually poor performance in many subsidiaries reflect the deficiency in the definition of a clear commercial strategy. Such a strategy ought to be based on a well-considered outcome of a risk–reward calculus and an honest appraisal of the corporation’s current financial and technical capacity.

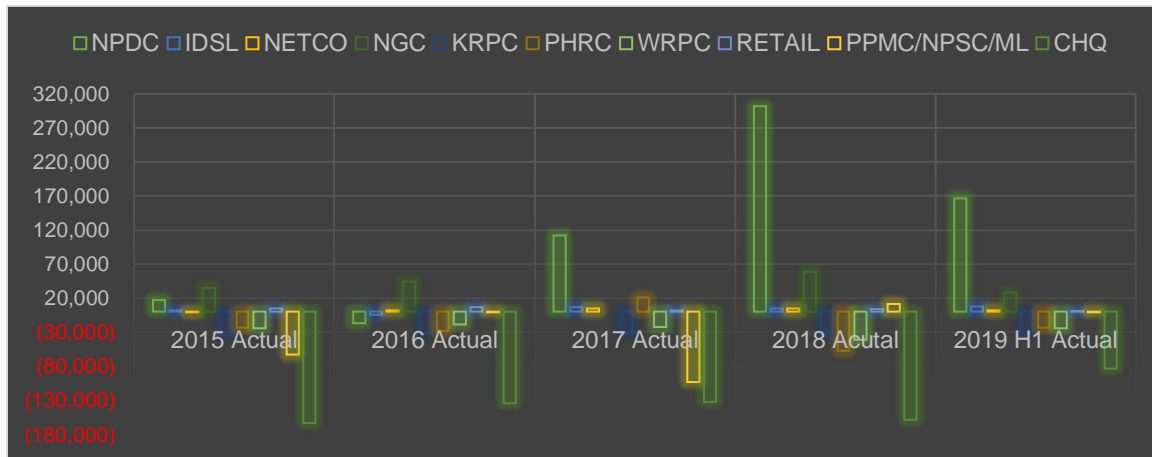
The NNPC’s financial performance data reveals strong commercial performance for some subsidiaries, such as NPDC, since 2017, whereas others (such as refineries and ventures) repeatedly return operational deficits (Figure 6.1). Moreover, the positive performance of the NPDC could have been better if well-governed and if unintended cross-subsidisation with non-performing subsidiaries had been checked and stopped.

A review of the subsidiaries grouped under ‘NNPC Ventures’ such as NNPC Medical Services, which aims ‘to be the best healthcare provider in the country’, also reveals that the corporation is pursuing commercial roles/interests outside the petroleum industry. Although there is no provision delineating activities that NNPC cannot carry out in the act, its engagement in areas outside its core competencies may be a driver for the poor performance observed in these areas. Moreover, branching outside of the petroleum industry may lead to waste in human and financial resources on a wide range of ill-suited activities that fail to generate returns for the country.

Furthermore, PIGB—passed by the 8th National Assembly—did not get presidential assent, rolling back progress on reform efforts aimed at restructuring public entities and refining the definition of their roles in the petroleum industry. The bill had proposed to establish two incorporated companies from NNPC, the Nigeria Petroleum Assets Management Company and the NPC. Both entities were to be governed and managed based on the provisions of CAMA and the Nigerian Securities and Exchange Commission (SEC)’s Code of Corporate Governance as opposed to the Public Procurement Act and other MDA regulations. Industry experts suggest that

uncertainty for investors due to the lingering industry reform costs the industry about US\$ 15–US\$ 20 billion in direct investments annually.

Figure 6.1: Selected NNPC group financial performance by entity (surplus/deficit)



Source: NNPC Monthly Financial and Operations Report

Information sources

KPMG (2017) *The Petroleum Industry Governance Bill*: available at www.kpmg.com/ng

NNPC Act (1990)

NNPC Monthly Financial and Operational Reports: available at www.nnpcgroup.com/

Olorunsola, O. (2018) *Without PIGB, FG Should Say Goodbye to ERGP*: available at www.nigerianrc.org/olorunsola-without-pigb-fg-should-say-goodbye-to-ergp/

Olayinka, C. and Daka, T. (2018) *Nigeria: Experts Insist Buhari Should Sign PIGB Into Law*: available at <https://allafrica.com/stories/201804220055.html>

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

The NNPC’s unique positioning in the Nigerian petroleum industry allows it to play roles in all spheres of the industry, specifically in operations (as noted above), regulation, and policy.

The NNPC Act (1977) empowers the corporation to ‘enforce all regulatory measures relating to the general control of the Petroleum sector through its Petroleum Inspectorate department.’ However, the Petroleum Inspectorate was moved to the Ministry of Petroleum Resources in 1988, eventually morphing into the entity now referred to as DPR. Irrespective of the current arrangement, regulatory provisions remain in the act and the NNPC continues to have a significant influence on regulation in the industry. Specifically, we see the NNPC making regulatory and policy pronouncements, and this creates significant institutional recklessness, perennial conflict, and/or an undue advantage for the corporation as an operator. In fact, the NNPC operates as though it is above being regulated, thus, creating no clear delineation between its commercial and non-commercial roles in the industry.

Although the NNPC Act does not explicitly provide for policy functions for the corporation, the NNPC’s superior technical capacity (human resource) relative to the Ministry of Petroleum Resources allows it to influence policy. In particular, the Minister for Petroleum Resources always sees the NNPC as ready backroom policy support at the risk of disrespect to the core staff of the ministry. Successive ministers have tended to rely on the NNPC’s human resources due to the deficiencies in the Ministry of Petroleum Resources given the civil service structure, with features such as transfers that limit sector-specific expertise relevant for policymaking. Moreover, the NNPC Towers houses the Ministry of Petroleum Resources and current legal provisions make the Minister of Petroleum Resources NNPC’s board chair.

The NNPC also takes up sociopolitical and quasi-fiscal activities such as ensuring regular supply of Premium Motor Spirit (PMS) nationwide, irrespective of the market forces. The corporation maintains a monopoly over supply and regulates the price by absorbing the difference between that price and the cost of importing the product. Being the sole importer of PMS, NNPC takes on the financial responsibility of any differences between the supply costs and retail prices in form of price recovery. This has significant implications for NNPC’s books and its remittances to the Federation Account. In addition, the good principle of checks and balance is completely non-existent, making them seem suspicious to the citizenry at all times.

PIGB, as passed by the 8th National Assembly, sought to delineate roles for specific new public entities to improve the governance in the petroleum industry. In particular, it provided for the creation of the NPRC as the sole regulator for the petroleum industry. Until the government implements such reforms, the current influence of NNPC across the different spheres of industry practice will persist.

Information sources

NNPC Act (1990)

Stakeholder engagements

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

Old response: No

New response: Yes/No

UPDATE STATUS: Some changes observed

Previously, the NNPC relied on allocations from the Federal Government budget to fund its cash call obligations. The NNPC Act mandates the corporation's expenditure to follow the appropriation process. Under this arrangement, the NNPC struggled to meet its funding obligations in quantum and in a timely manner. More recently, the NNPC has taken steps to adopt a more workable funding arrangement, especially regarding equity contributions on JVs.

In the period under review, the cash call budget previously approved (as well as the federal annual budget) is no longer directly funded by the Federal Government. Instead, the NNPC relies on aggregate revenues from its subsidiaries and business units, deductions from oil revenue due to the Federation, and third-party financing for approved projects to finance its operations.

The immediate past NNPC GMD, Maikanti Baru, had expressed a renewed desire to introduce incorporated JVs (IJVs) to help finance investment needs through debt. Such an arrangement could have significant implications for government revenues, transparency, and partnership arrangements with operators. For instance, the NNPC will receive a share of IJV revenues after expenses and taxes as dividends instead of direct proceeds of sales. While the idea of IJVs has been floated since 2008, there have been concerns that have constrained its adoption. In particular, in previous iterations of PIB, there were concerns regarding the proposed shareholding structure by which the government was to maintain controlling shares amid fears of the likelihood of undue political interference.

Information sources

NEITI (2019) Funding NNPC and its subsidiaries

NNPC Monthly Financial and Operational Reports

NNPC (2019) 'Eyes Incorporated Joint Venture Model to Improve Industry Fortune'

Okon, T. (2009) From Joint Ventures to Incorporated Joint Ventures

Onuegbu, H.C. (2017) The Funding Regimes in the Nigerian Oil and Gas Industry: Challenges, Failures and Panacea

PIB (2015) Two Options for Converting NPDC's Unincorporated Joint Ventures to Incorporated Joint Ventures

6.2 SOE corporate governance

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

Old response: Yes

New response: Yes/No

UPDATE STATUS: Additional information included

The Nigerian government fully owns the NNPC, a statutory corporation charged with the responsibility of representing the Federation’s interest in the petroleum industry. The Federal Government is responsible for strategic decision making regarding NNPC, for example management and board appointments. In practice, the President makes the key decisions, often influenced by the Minister of State for Petroleum Resources (when there is one). During the review period, a Federal High Court delivered judgement on a suit that challenged the President’s ability to hold the position of Minister of Petroleum Resources. The court held that such practice was not in violation of the law given that someone else oversees the day-to-day running of the ministry, which at the time was Ibe Kachikwu.

Under the current arrangement, decision making is vested in a strong single-state actor (the President), which allows for coherent strategic choices but encourages undue political interference and limits checks and balances. Enhanced but clearly defined roles for other state shareholders beyond the President may improve accountability through useful checks and balances.

Following from the legislative process that led to the passage of PIGB, the current consensus position on reform regarding ownership of NNPC is to restructure the corporation to create the NPC in addition to the Nigerian Petroleum Liability Management Company and the Nigerian Petroleum Assets Management Company Limited. While the government will maintain majority shareholding in the NPC, there is allowance for public ownership of a limited shareholding in the company.

Information sources

Olisa Agbakoba Legal (2018) available at www.mondaq.com/Nigeria/x/757892/Constitutional+Administrative+Law/Federal+High+Court+Holds+that+Buhari+Cannot+be+President+and+Minister+of+Petroleum

PIGB (2018) available at www.petroleumindustrybill.com/wp-content/uploads/2018/04/Harmonised-Clean-Copy-of-Petroleum-Industry-and-Governance-Bill-2018.pdf

Stakeholder engagements

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

Old response: No

New response: No

UPDATE STATUS: Additional information included

Provisions for constituting the NNPC Board are stipulated in the NNPC Act, which provides for the Minister of Petroleum Resources to act as Chairman of the board. It also provides for a representative of the Ministry of Finance but leaves little room for executive directors, with only the GMD of the NNPC represented on the board. While the act allows for private sector participation, there is no representation of private actors on the current NNPC Board. Consequently, the set-up by design and practice make for a heavily government-oriented board, also reflecting the ownership structure.

Little wonder the set-up described above freely allows for political interference. The minister, who is responsible for policy in the industry, being Chairperson of the board, may be driven by policy considerations at best and political considerations at worse. While the current Constitution does not violate the act, NNPC corporate governance might improve if board members are largely independent and selected based on technical capacity and competence. This can be done by recruiting board members from outside the government to bring the right skills needed for effective decision making.

Information sources

NNPC Act (1990)

Stakeholder engagements

6.2.3 Does the NNPC invest in staff integrity and capacity?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

Improving the competence of staff through training and providing incentives can safeguard against narrow rent seeking and promote overall organisational effectiveness. The NNPC has one of the more robust remunerations and professional development structures among Nigerian public service organisations. The NNPC's Leadership Academy was established to provide technical, managerial and executive training within and outside the corporation. In the past, the corporation has publicised its staff anti-fraud training activities. However, it is not clear that the

corporations’ investment in staff capacity translates into staff integrity. This is even as recruitment into the corporation as well as appointments to key positions still appears to be subjected to political patronage, socio-ethnic, and religious considerations. In addition, some laws and regulations require equal staffing considerations from all 36 States of the Federation, which can impede the selection of the best and the brightest for advancement.

| Information source | | | | | |
|--|------------|---------|--------|-----------|----|
| NNPC | Leadership | Academy | (n.d.) | Available | at |
| www.nnpcgroup.com/Ventures/Pages/NNPCLeadershipAcademy.aspx | | | | | |

6.3 SOE transparency and accountability

6.3.1 Does the NNPC disclose key operational and payment data?

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

The NNPC has maintained the practice of disclosing selective and unaudited monthly operational and financial performance data since 2016. Despite the disclosure of information by NNPC in recent times, it is important to examine the implications and unintended consequences of increased information disclosure. Specifically, shining light on some information may leave other issues in darkness.

Furthermore, transparency or information disclosure is not an end in itself. It is instrumental for seeking accountability. Too much emphasis on information disclosure is misplaced, especially when the assumption that the availability of information incentivises good behaviour among decision makers fails. The information disclosed has to be useful and civil society and the public have to be able to understand and use it. In this regard, the timeliness, understanding, and faithful representation of data are important. While transparency can point to wrongdoing and identify who should be held accountable, it is redundant in many cases where other accountability infrastructure subverts its impact.

The disclosure of operational and financial information by the NNPC since 2016 has also banked on the preferences of the leadership at the corporation. The fact that this transparency measure remains under the purview of personal initiative and not governed by legal requirements raises institutional and sustainability concerns.

Information sources

Abdul-Baki, Z. (2019) 'The role of accounting in conflicts resolution', *Managerial Auditing Journal* (forthcoming). <https://doi.org/10.1108/MAJ-03-2018-1835>

Ejiogu, A., Ejiogu, C., and Ambituuni, A. (2018) 'The dark side of transparency: Does the Nigeria extractive industries transparency initiative help or hinder accountability and corruption control?', *British Accounting Review*. doi:10.1016/j.bar.2018.10.004

NRGI (2019) RGI: From Legal Reform to Implementation in Sub-Saharan Africa: available at <https://resourcegovernance.org/sites/default/files/documents/rgi-from-legal-reform-to-implementation-sub-saharan-africa.pdf>

NNPC (n.d.) 'NNPC Monthly Performance Data (several months)': available at www.nnpcgroup.com/NNPC-Business/Business-Information/Pages/Monthly-Performance-Data.aspx

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

Old response: Yes/No

New response: No

UPDATE STATUS: Additional information included

The law (Section 7, Subsections 2–3 of the NNPC Act, 1997) mandates that the NNPC must conduct regular audits of its operations using independent auditors. Available evidence suggests that, in the past, the corporation has only subjected itself to these audits at the behest of the Federal Government, including its only publicly available 2015 audit to investigate allegations of unremitted funds into the Federation Accounts by the corporation. As part of its drive towards more transparency, the corporation announced the completion of its group financial audit for five years between 2011 and 2016 in 2018. Although the NNPC has made a concerted effort to make public monthly financial and operation reports, its Audit Report(s) are not publicly available.

The lack of a culture of openness and disclosure within the system is partly responsible for the poor record-keeping, the lack of checks and balances, ineffective performance reviews and audits, and the absence of transparency and accountability in the NNPC. Historically, the government does not seem to value transparency and has not meaningfully sought it from the NNPC or investigated wrongdoing in a way leading to consequences or penalties, . This extremely weak transparency and accountability culture means neither staff nor decision makers are incentivised to be transparent.

Anecdotal evidence from a 2016 audit of the Federal Government's books (published in 2018) also suggests that huge amounts of generated revenues were unremitted by NNPC to the Federation Account, and that its crude oil exploration and operations records were opaque.

Information sources

Daily Trust Newspaper (2018) KPMG Audit Shows NNPC, Others Failed To Remit NGN 8 trillion Between 2010 And 2015, 18 May: available at <http://saharareporters.com/2018/05/18/kpmg-audit-shows-nnpc-others-failed-remit-n8trn-between-2010-and-2015>

NRGI (2019) RGI: From Legal Reform to Implementation in Sub-Saharan Africa: available at <https://resourcegovernance.org/sites/default/files/documents/rgi-from-legal-reform-to-implementation-sub-saharan-africa.pdf>

Office of the Auditor General for the Federation (2018) Annual Report of the Auditor General for the Federation the Accounts of the Federation of Nigeria for the Year Ended 31 December 2016: available at https://oaugf.ng/images/downloads/2016_Annual_Report.pdf

Nnodim, O. (2018) NNPC completes group financial audit for five years, *Punch Newspapers*, 9 April: available at <https://punchng.com/nnpc-completes-group-financial-audit-for-five-years/>

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

Old response: No

New response: No

UPDATE STATUS: Additional information added

Primarily, Nigeria's legislature maintains oversight over the NNPC through its constitutional powers to enact laws and approve the budgets of government agencies. In the past, NNPC's cash call funding followed the legislative appropriation process, which is susceptible to delay and politicking. More recently, NNPC funding has not appeared in the budget of the Federal Government, given the different funding arrangement i that NNPC now employs for JVs.

The legislature also often plays a reactive role to oversight by mainly constituting inquiries into alleged wrongdoing by the NNPC. During the review period, legislative efforts have not led to NNPC leaders facing punitive consequences for wrongdoing or poor performance. For instance, probes initiated by the National Assembly, for example investigating alleged diversion of funds for subsidy payment and non-remittance of funds to the Federation Account, have not led to legal consequences for the NNPC. However, the National Assembly's probe of NNPC's under-remittance of funds to the Federation Account stirred conversation and may have partly influenced more disclosure by the corporation.

To avoid unduly constraining NNPC decision making, legislative oversight can be limited to fixing problems with the legal or legislative framework governing the petroleum industry in general and the NNPC in particular. Issues of corporate governance are often under the purview of corporate boards; therefore, legislative overreach in such areas may constrain the corporation's decision making and efficiency.

A more proactive approach to legislation will be enacting laws to address loopholes and to improve institutional governance in the petroleum industry and the NNPC's corporate governance structure. Unfortunately, such efforts (through PIGB, for instance) have been a subject of politics and controversy and have still not led to substantive legislation.

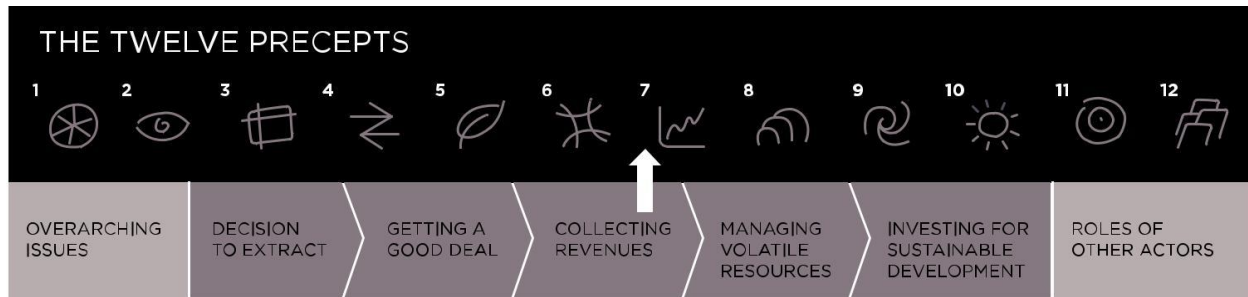
Information sources

Benson, E.A. (2018) NNPC under fire as Senate inaugurates fresh oil subsidy investigation, 17 October: available at <https://nairametrics.com/2018/10/17/national-assembly-opens-fresh-subsidy-investigation/>


Baiyewu, L. (2018) 'Reps summon ministers, NNPC boss over illegal subsidy payments', *Punch Newspapers*, 14 October: available at <https://punchng.com/reps-summon-ministers-nnpc-boss-over-illegal-subsidy-payments/>

Stakeholder engagements

PRECEPT 7: INVESTING FOR GROWTH








The government should invest revenues to achieve optimal and equitable outcomes for current and future generations.





| | |
|---|---|
| Overall precept score | |
| <p>Precept 7: Investing for growth</p> <p>A key essence of petroleum resource management is to satisfy today’s needs while ensuring sufficient savings for future generations and a rainy day. Unfortunately, the resource revenue distribution remains skewed in favour of the current generation. The share of capital expenditure is low and the debt–revenue ratio has increased to 293%, exceeding the 250% level recommended for optimal fiscal sustainability. This development implies a high financial burden for future generations. The existing fiscal frameworks are comprehensive and emphasise long-term fiscal sustainability. However, selective compliance at the federal level and the outright absence of fiscal rules at the sub-national level has affected the effectiveness of the fiscal framework. However, a key area of improvement is observed regarding the monetary policy. Monetary authority interventions have stemmed the negative impact of revenue dependence by moderating inflation and exchange rates. This has stabilized the economy and enhanced the economic recovery process, but weakness at the fiscal end has generated a sub-optimal economic growth.</p> |  |

Overview of the questions and ratings

7.1 LONG-TERM FISCAL SUSTAINABILITY

| | |
|--|---|
| 7.1.1: Do sustainability indicators suggest that the government’s use of resources and its spending policy is sustainable over the long term? |  |
| 7.1.2 Does the government have a fiscal framework that promotes long-term fiscal sustainability and includes numerical targets? |  |
| 7.1.3 Has the government adhered to its fiscal framework including any fiscal rules set? Are there verification and enforcement measures to promote compliance with any fiscal rules and has the government complied with these targets? |  |
| 7.1.4 Does the government have a well-defined debt management policy, including provisions on the collateralisation of government assets, borrowing terms, and transparency requirements? |  |
| 7.1.5 Is the government helping to expand the non-resource tax base? |  |

7.2 ABSORPTIVE CAPACITY

| | |
|--|---|
| 7.2.1 How effective is the government at transforming money into productive assets or social services? |  |
| 7.2.2 Does the government have adequate information to assess whether the growth of total spending (including government spending) exceeds the limits of absorptive capacity? |  |
| 7.2.3 Does the government use surplus revenues to repay foreign denominated debt or save in foreign assets to avoid breaching absorptive capacity constraints? |  |
| 7.2.4 Does the central bank help mitigate the potential negative impacts associated with resource dependence, including real exchange rate appreciation or exchange rate and revenue volatility? |  |

Summary of key findings

Long-term fiscal sustainability

- The Federal Government has several fiscal frameworks in place guiding medium-term spending, deficit, and debt. The analysis of fiscal performance indicates debt gross domestic product (GDP) is within the set threshold, but the debt–revenue ratio threshold has been breached.
- The government has made significant steps towards diversification of the economy from oil and expanding the tax base with policies such as Voluntary Asset and Income Declaration Scheme and the Voluntary Offshore Assets Regularisation Scheme. However, given Nigeria’s enormous potential, there is opportunity for improvement. The tax–GDP ratio and the proportion of the labour force that is tax compliant is low.

Absorptive capacity

- Nigeria has an absorptive capacity problem because of the level of revenue inflows relative to the huge development needs. The government does not have a surplus from resource revenue and the saving frameworks for economic stabilisation has been inefficiently managed.

7.1 Current and future needs

7.1.1 Do sustainability indicators suggest that the government's use of resources and its spending policy is sustainable over the long term?

Old response: No

New response: No

UPDATE STATUS: Additional information included

Fiscal sustainability refers to government's ability to continue its current spending and deficit financing without a risk of major fiscal adjustment in the long term. Resource-based countries are more susceptible to revenue shocks due to volatility in oil prices and this could put them on unsustainable fiscal paths. Sustainability metrics are economic indicators that reveal the current fiscal stance of the government and provide future trajectory along sustainable fiscal path. The key sustainability metrics include a debt sustainability analysis (DSA), net adjusted savings, and the debt and deficit profiles of the government.

The most recent DSA carried out by the Debt Management Office (DMO) indicates that Nigeria faces an increasing risk of debt distress. In 2017, the total public debt (federal, state, and local government) to GDP amount to 19.8%, which is below the 56% threshold recommended for low-middle-income countries like Nigeria. Nigeria's estimated debt-GDP ratio for 2018 is 20.9%, which is still significantly below the sustainable threshold. Projections from 2017 to 2037 indicate that the country's fiscal profile will not exceed the threshold.

However, the analysis for total public debt stock and debt service to revenue shows that the recommended thresholds have been breached. Given that the Nigerian economy is highly informal, the debt-revenue ratio will provide a better position regarding fiscal sustainability. Government revenue, especially the oil revenue, dropped markedly in the aftermath of international oil price shocks in 2014. This plunged the economy into recession in 2016 and the government resorted to deficit financing in the period to avert expenditure volatility. Between 2014 and 2018, the government borrowed more than NGN 10 trillion for budget support. However, there has been no commensurate rise in revenue. In fact, the federally collected revenue (federal, state, and local governments) dropped from NGN 10 trillion in 2014 to about NGN 7.5 trillion in 2017. The general government primary balance was also 4.7% in 2017 and 3.6% in 2018, which violates the Fiscal Responsibility Acts (FRA) (2007).

The fiscal sustainability at the sub-national level is also weak. The Nigerian Governors Forum in its 2017 DSA assessment noted that three states are already in distress (Cross River, Plateau, and Osun), one is at high risk of debt crisis (Ekiti), and 23 other face a medium risk level. In the past three years, most states have relied on Federal Government bail-outs and other grants to meet their recurrent expenditure. According to BudGIT (2019), 33 states will be unable to meet

their recurrent spending without federal transfers. The recently introduced NFIU guidelines on local government could also have a mixed effect on state financial sustainability. The guideline ensures local governments receive their allocation directly from the Federation Account. This will improve financial autonomy of the local government, although state governments might witness revenue decline.

Another worrisome trend in the Nigerian fiscal profile is the high debt service costs. In 2019, debt services account for 24.2% of the budget. The low external debt service to revenue, as shown in Table 1, is simply an indication that government is borrowing more from domestic debt market (68.5% of total debt). While this a positive indicator for the Nigerian financial market, high domestic debts also suggest crowding out of private investment, who are made to compete with more secure government bonds. This elevates the interest rate, constrains investment and growth, and makes it difficult for government to generate revenue to repay debts. Similarly, oil revenue still accounts for 76% of the Nigerian external reserves. This means debt portfolio is exposed to shocks from oil price decline, production drop and weak global demand.

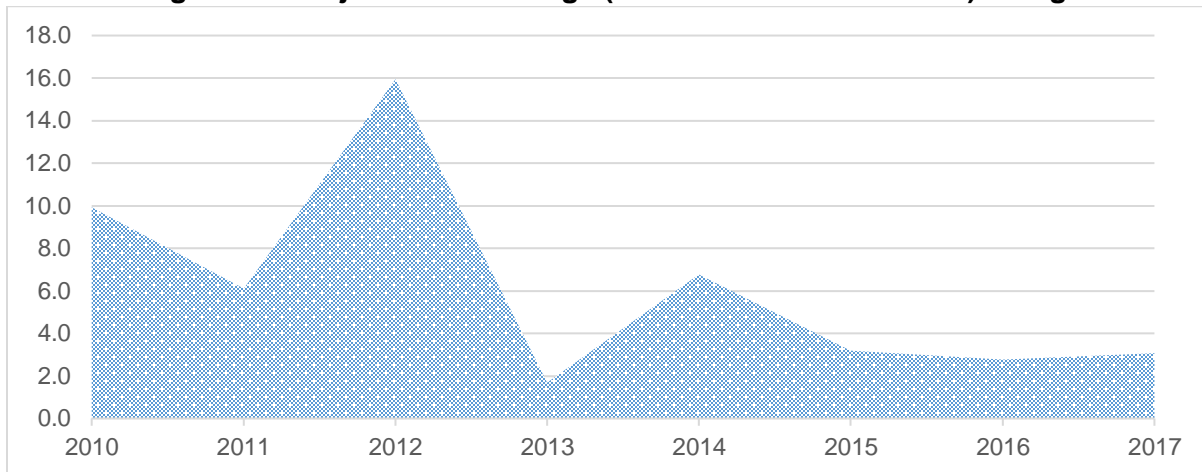
Table 7.1: DSA for Nigeria, 2017–2037

| | Threshold | '17 | '18 | '19 | '20 | '21 | '22 | '27 | '37 |
|---|-----------|-------|-------|-------|-------|-------|------|-------|-------|
| Total public debt stock (% GDP) | 56 | 19.8 | 20.9 | 21.2 | 21.9 | 22.5 | 22.9 | 22.8 | 15 |
| Total public debt stock (% revenue) | 250 | 290.4 | 293.2 | 309.9 | 320.2 | 333.6 | 345 | 349.9 | 280.9 |
| Total public debt service (% revenue) | 20 | 44.9 | 46.2 | 47 | 48.9 | 53.9 | 55 | 62.8 | 55 |
| External debt stock (% GDP) | 40 | 4.9 | 5.2 | 5.5 | 5.8 | 5.9 | 6.1 | 6.1 | 3.7 |
| External debt service to revenue | 20 | 3.4 | 5 | 3.8 | 5.3 | 8.2 | 7.7 | 10.6 | 10.5 |
| General government primary balance (% GDP) * | -3 | -4.7 | -3.6 | -3.1 | -1.3 | -1.4 | -0.7 | – | – |

Sources: DMO Nigeria (2018) * IMF (2018)

Another useful sustainability metric is the net adjusted savings. It measures the actual savings within an economy by accounting for investment in human capital (education and health), depletion rate of natural resources and environmental damages. A positive adjusted net savings indicates that national wealth is growing and also points to a more equitable intergenerational distribution of resources. For Nigeria, the adjusted net savings was positive between 2004 and 2018. This positive result can be largely attributed to private savings, as government has consistently incurred deficit over past two decades. This suggests that private sector (households and firms) has played a crucial role in putting Nigeria on a sustainable fiscal path. However, lack of robust support from government is telling, especially since 2015 when the adjusted savings rate flattened.

Figure 7.1: Adjusted net savings (% Gross National Income) in Nigeria



Source: World Development Indicators (2018)

Overall, the sustainability metrics suggest that government’s use of resource revenue and borrowing is not within a sustainable pathway. There are other emerging threats to the long-term sustainability due to high debt service, weak revenue, lack of diversification in external reserve, and low savings from the government.

Information sources

- <https://datacatalog.worldbank.org/dataset/adjusted-net-savings>
- www.dmo.gov.ng/publications/reports/debt-sustainability-analysis
- <https://yourbudget.com/wp-content/uploads/2019/10/2019-State-of-States.pdf>
- www.lawyard.ng/wp-content/uploads/2016/01/FISCAL-RESPONSIBILITY-ACT-2007.pdf

7.1.2 Does the government have a fiscal framework that promotes long-term fiscal sustainability and includes numerical targets?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Nigeria has implemented a number of fiscal frameworks to ensure fiscal sustainability. In 2004, the government adopted oil price-based fiscal rule (OPFR), which benchmarks the oil price for a fiscal year below the projected international oil price. This rule is to ensure that there is a fiscal buffer to prepare for economic uncertainty and external shocks. The revenue surplus from the price differential is to be saved in the Excess Crude Account (ECA). However, savings made into the ECA have been routinely abused by the government, mainly because of the absence of

governing laws as well as due to gross recklessness. According to CBN, the amount in the ECA fell from US\$ 2.45 billion at the end of December 2017 to US\$ 0.48 billion at the end of December 2018. In a comparison of resource countries with OPRF, NRG (2018) ranked Nigerian ECA as the most poorly managed globally.

Another important fiscal framework in Nigeria is the FRA of 2007. The act provides for expenditure, revenue, and deficit rules for responsible fiscal policy management. The act makes it mandatory for government to derive its annual budget from medium-term expenditure framework (MTEF), which is revised annually and approved by the legislature. Aggregate expenditure ceiling established in the MTEF cannot be exceeded by the government, except through revision by the legislature. The act also requires the executive to prepare a disaggregated revenue projection for the coming year. Regarding the deficit rule, the maximum budget deficit for a fiscal year is set at 3% of the estimated GDP, but the legislature can revise the benchmark. The DMO also set the annual debt ceiling available for financing the federal budget. In addition, the government has intensified efforts at improving MDA compliance with the Treasury Single Account (TSA) and Integrated Payroll and Personnel Information to reduce revenue leakages.

In practice, these set of fiscal frameworks should ensure long-term fiscal sustainability. However, abuse and breaches of these frameworks are prevalent. The government can always side-step the 3% deficit benchmark by proposing a strong economic outlook. In the 2017 and 2018 budgets, the growth and revenue projections were set high enough in way that allows government to meet the deficit rule. The actual budget deficit for those years exceeded 3%.

The operationalisation of the fiscal rule has been limited to the Federal Government. The World Bank (2018) noted that only 22 out of 36 states have passed a state-level fiscal responsibility law and only nine have a commission overseeing its implementation. In 2017, the Federal Government provided a Budget Support Facility (BSF) to the tune of NGN 614 billion to 35 states. Overall, debt stock of states has reached NGN 3.9 trillion in March 2019, and repayment is contingent on buoyant oil prices in the coming years.

The Federal Government and donors have leveraged on the BSF to enhance the fiscal framework of the states. Access to BSF was conditional on signing the 22-point Fiscal Sustainability Plan (FSP) developed by the Federal Ministry of Finance. The FSP prioritised improving budget transparency and accountability, development of state internal revenue capacity, and sustainable debt management. Already, 35 of the 36 states (except Lagos) have signed on to the plan. This is the most significant reform that has taken place in revenue management since the 2017 BER, but the effect of the reform is yet to manifest. The reform is also not set in legislation, raising concerns regarding policy reversal in future.

Information sources

<https://resourcegovernance.org/sites/default/files/documents/rgi-from-legal-reform-to-implementation-sub-saharan-africa.pdf>

<http://documents.worldbank.org/curated/en/234101523974949498/P162009-Nigeria-SFTAS-PforR-Appraisal-Stage-PID.docx>

www.cbn.gov.ng/Out/2019/RSD/2018%20AR%20KAMA1.pdf

www.lawyard.ng/wp-content/uploads/2016/01/FISCAL-RESPONSIBILITY-ACT-2007.pdf

7.1.3 Has the government adhered to its fiscal framework, including any fiscal rules set? Are there verification and enforcement measures to promote compliance with any fiscal rules and has the government complied with these targets?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The level of compliance with the fiscal rules has been mixed. On the positive side, the Federal Government presents the MTEF annually in compliance with the FRA. This ensures the annual budget is derived from the MTEF and this facilitates the medium- to long-term planning of government activities. The revenue projection is also carried out in line with OPFR, with oil benchmark set by the executive and approved by the parliament. Importantly, the Federal Government has positively exploited the recent financial issues at the sub-national levels to push some fiscal reforms.

However, there has been strategic circumvention of the fiscal rules in many instances. In 2017 and 2018, the government complied with the deficit rule of 3% *ex ante* but not *ex post*. This means the proposed budget is always in line with the deficit rule but actual budget appropriation could fall short. The government has not met its revenue target in recent times and this in part elevates the budget deficit. Also, the fiscal rule on the debt-to-revenue ratio and debt-service-to-revenue ratio has been breached. The ECA has not served as the fiscal buffer as intended. The government relied on it wherever there is shortfall in revenue. Similarly, other saving accounts like Natural Resources Development Fund and Ecological Fund have been depleted. NEITI audit of fiscal allocation between 2012 and 2016 found that NGN 563.4 billion was diverted to activities not related to development of alternative minerals which was the intended purpose of the fund. The SWF, which is codified and less prone to abuses, is grossly underfunded. All this weakens the effectiveness of the fiscal framework.

There is also weak verification and enforcement mechanism to ensure compliance. The FRA places the oversight role on the Federal Responsibility Commission, but the effectiveness of the commission is hampered by capacity challenges and poor funding. Its board was last constituted

in 2013, thereby limiting the efficacy of the commission. Overall, the compliance with the extant fiscal framework is inadequate.

Information sources

www.neiti.gov.ng/index.php/neiti-audits/fiscal-allocation-and-statutory-disbursement/category/188-fasd-2012-2016-report

<https://punchng.com/senate-to-probe-frc-board-crisis/>

7.1.4 Does the government have a well-defined debt management policy, including provisions on the collateralisation of government assets, borrowing terms, and transparency requirements?

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

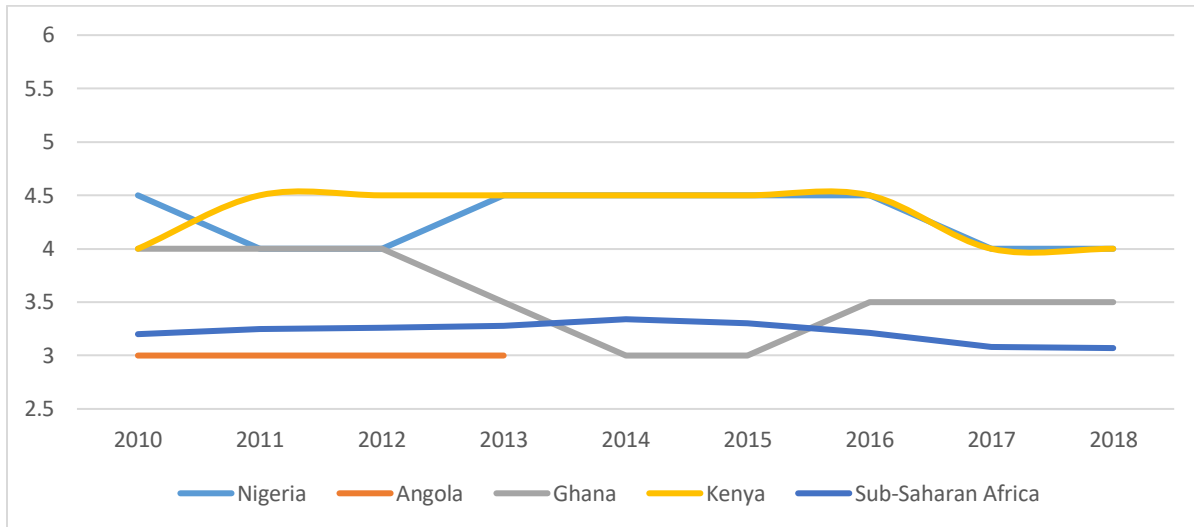
Nigeria has a well-defined debt management policy that is designed and implemented by the DMO. Currently, the DMO operation is anchored in the 2018–2020 Strategic Plan. The key components of the plan include:

- to attain a debt composition of a 60:40 ratio for domestic and external debt by 2020;
- to attain a 75:25 ratio for long- and short-term debt instruments in the domestic debt portfolio to bring down the cost of debt service and rollover risk by 2020; and
- to pursue the Average Time-To-Maturity (ATM) for the Total Debt Portfolio at a minimum of 10 years.

The ATM has improved from 7.15 years in 2015 to 9.54 years in December 2016. The recent expansion in long-term borrowing suggests Nigeria will meet its target ATM by 2020. The domestic-to-external debt composition as at March 2019 has reached a ratio of 68:32, from a 79:21 ratio at the end of 2016. The long-term debt instrument reached 69% in 2017 (Adeniran *et al.*, 2018). The transparency and quality of debt data has also improved. The information on the Nigerian debt profile is published quarterly by DMO and the DSA is conducted annually to guide the borrowing for each fiscal year. DMO has started reporting some contingency liabilities of government, such as pension arrears of MDA and contractors' debts. The government also monitored private sector debts through the Asset Management Company of Nigeria and the banking supervision role of CBN.

Furthermore, a comparison debt policy of selected African countries based on World Bank Country Policy Institution Assessment rating shows that Nigeria is among the top performers in the region (Figure 2). Although there was a slight decline in 2016 due to the elevated debt level, Nigeria scored significantly above the average performance for sub-Saharan Africa.

Figure 7.2: Country Policy Institution Assessment debt policy rating (1=low, 6=high)



Source: World Bank (2019)

The 2019 BER therefore gives the Nigeria debt policy a green rating. However, there are still areas for improvement in the country’s debt policy. First, debt management policies and institutions are absent at the sub-national level. This creates a lacuna in policy coordination across the tiers of government. Second, while DMO is empowered to raise debt for budget support, it does not monitor the use of debt. This allows debt in some instances to be used for other purposes beyond their intended objectives. Third, shrinking fiscal space in Nigeria has put pressure on government to increase borrowing. This affected fiscal sustainability to which present debt policy has effectively and speedily responded to. Fourth, the DMO can do more in reporting overall government contingency debt, such as electricity bills and judgement debts.

Information sources

www.dmo.gov.ng/publications/reports/debt-sustainability-analysis

Adeniran, A., Ekeruche, M. A., Ali, A. A., Ghazi, T., & Bodunrin, O. S. (2018). Managing Africa's Rising Debt: Time for a Multi-Pronged Approach. Global Economic Governance Policy Briefing. file:///C:/Users/CSEA%20Note1/Downloads/GA_PB_Adeniran_et_al_20181126.pdf

<https://data.worldbank.org/indicator/IQ.CPA.DEBT.XQ?view=chart>

www.dmo.gov.ng/publications/other-publications/dmo-strategic-plan

7.1.5 Is the government helping to expand the non-resource tax base?

Old response: Yes/No

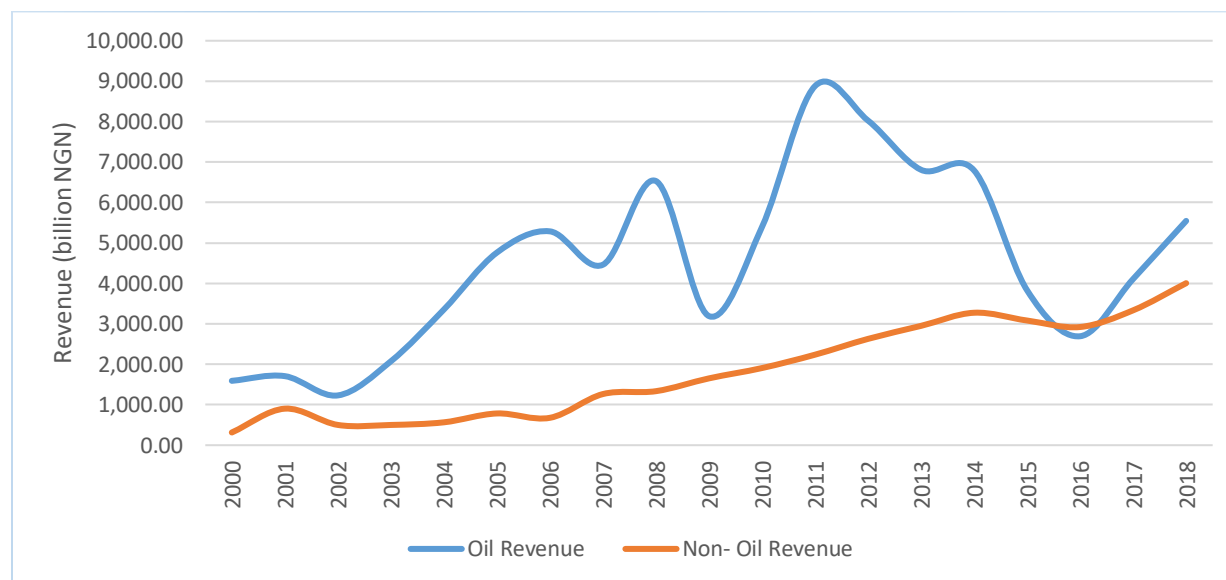
New response: Yes/No

UPDATE STATUS: Additional information included

The government has made significant steps towards diversification of the economy from oil. Between 2016 and 2018, total federally collected non-oil revenue increased by 37% and

represents 46% of the total revenue over the period. In fact, non-oil revenue temporarily exceeded oil revenue in 2016 (Figure 3). The improvement in non-oil revenue reflects government strategic efforts at expanding the non-resource base. For example, the government introduced the Voluntary Asset and Income Declaration Scheme and Voluntary Offshore Assets Regularisation Scheme to enable high net worth individuals to disclose previously undeclared assets and income and pay a less punitive tax liability as a result. According to FIRS, the interventions have already increased non-oil revenue and expanded the tax base.

Figure 7.3: Federally collected revenue (oil and gas and non-oil)



Source: CBN Statistical Bulletin (2019)

The Federal Government has actively worked on improving the ease of doing business, as this will galvanise growth and increase revenue. The Presidential Enabling Business Environment Council (PEBEC), started in 2016, has had positive effect, with Nigeria ranked among the top 20 improvers in the World Bank Ease of Doing Business Index for 2019/2020. One notable area of improvement is the digitalisation of business registration and the integration of the operation of the tax authority with CAC for ease of tax collection. FEC has also approved a plan to raise value added tax (VAT) from 5% to 7.5%. The VAT review was part of a larger fiscal reform as contained in the 2020 Finance Bill. The objective of the reform is to raise more non-resource base revenue for government and restructure the domestic tax law to align with the global best practice.

However, the progress made in non-oil revenue is modest given Nigeria’s enormous potential. Table 4 compares tax data for Nigeria and South Africa. Even with a higher GDP, Nigeria has a tax-to-GDP ratio of 6%, compared to 26.2% for South Africa. This is significantly lower than the IMF recommended 15% tax-to-GDP ratio for developing countries. Only 14 million of the 79.9 million people in the labour force are registered as taxpayers, while 19 million out of 21.8 million in the South African labour force are registered as taxpayers. One of the factors responsible for the poor tax revenue is complexity in the tax system. In 2019, Nigeria ranked 142 out of 190 countries in terms of the ease of paying taxes, while South Africa ranked 82. In essence, simplifying the Nigerian tax system is a priority area for mobilising more tax revenue.

Table 7.2: Comparison of tax data between Nigeria and South Africa

| | Nigeria | South Africa |
|---|--------------------|--------------------|
| Population | 201 million | 56 million |
| Labour force | 79.9 million | 21.8 million |
| GDP | US\$ 397.3 million | US\$ 366.3 million |
| Registered individual taxpayers | 14 million | 19 million |
| Top taxpayers paying NGN 10 million or more | 943 | 95,000 |
| Total tax revenue | NGN 6 trillion | NGN 27 trillion |
| Personal income tax revenue | NGN 802 billion | NGN 9.7 trillion |
| Tax-to-GDP ratio (all taxes) | 6% | 26.2% |
| Personal income tax-to-GDP ratio | 0.8% | 9.5% |
| Ease of paying taxes ranking | 149/190 | 82/190 |

Source: PwC Limited (2017), with an update from the authors

Another issue with the Nigerian tax system is the high prevalence of corruption and loopholes. The government is responding to these challenges with policies aimed at increasing tax audits by using e-filing and self-assessments. However, some of the challenges still persist, as the extant laws (e.g. PPTA) for revenue management have not been repealed. In general, despite government efforts, there are still considerable gaps in expanding the tax base and non-oil revenue.

Information sources

www.sunnewsonline.com/vaids-boost-revenue-performance/

www.pwc.com/ng/en/assets/pdf/voluntary-assets-income-declaration-scheme.pdf

www.cbn.gov.ng/documents/Statbulletin.asp

www.dmo.gov.ng/publications/other-publications/dmo-strategic-plan

https://sustainabledevelopment.un.org/content/documents/19409Poland_VNR_20180615.pdf

7.2 Absorptive capacity

7.2.1 How effective is the government at transforming money into productive assets or social services?

Old response: Yes/No

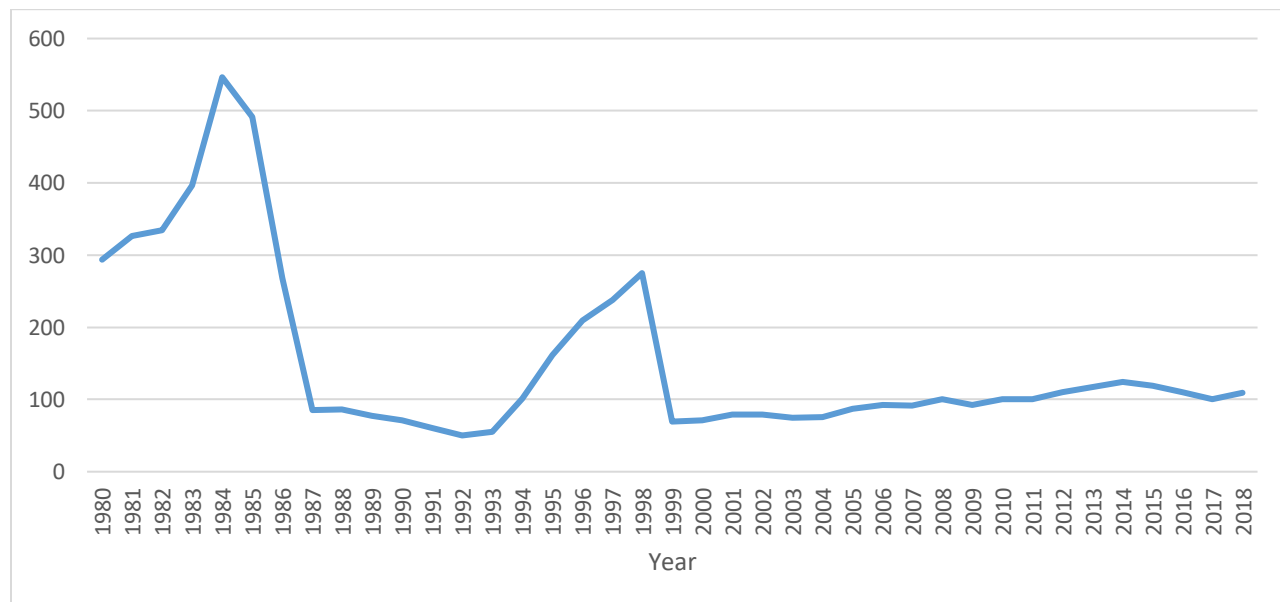
New response: Yes/No

UPDATE STATUS: Additional information included

Resource-based economies are mostly susceptible to the problem of low absorptive capacity because their domestic economy might be unable to adequately supply goods and services that government demands with its resource revenue. If not managed effectively, the supply constraints might lead to high inflation rate and exchange rate appreciation. Tracking absorptive capacity metrics such as real effective exchange rate (a composite of inflation and nominal exchange rate) for the economy could therefore enable government to efficiently manage resource revenues.

The real effective exchange rate for Nigeria has not appreciated or depreciated significantly in recent years. Between 2006 to 2015, the real effective exchange rate hovers around US\$ 90 to US\$ 120. This is a major departure from the period between 1980 and 2005 when the real effective exchange rate experienced high volatility. This suggests the economy absorptive capacity has improved over time. However, the high absorptive capacity for Nigeria might be due to factors other than effective management of oil resources. Nigeria’s huge population size, the enormous development challenges in education and health, and its high infrastructural deficit mean resource revenues are not enough to meet the domestic economy needs.

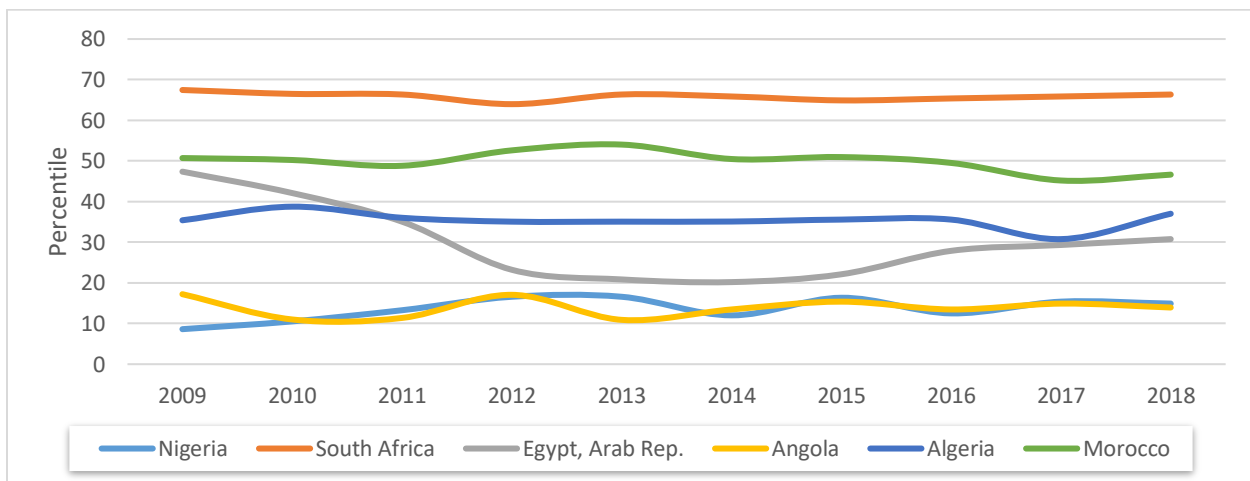
Figure 7.4: Real effective exchange rate (2010 = 100)



Source: World Development Indicator (2019)

Another pointer to inadequate government efforts at transforming resources revenue to productive assets and social services is Nigeria’s poor performance on various governance indicators. Figure 5 shows Nigeria’s ranking in the World Bank Governance Indicator of government effectiveness, defined as quality of public services, civil service, and policy formulation and implementation, along with five other top economies in Africa. Nigeria is ranked in the bottom 20th percentile between 2010 and 2018. Interestingly, Angola, the country closest to Nigeria, is also a major oil-producing country. This indicates that the governance problem is more prominent among resource-rich countries in Africa. Poor governance is also an indication that resources are inefficiently used and managed.

Figure 5: World Governance Indicator for selected African countries



Source: World Governance Indicator (2019)

Information sources

- <https://databank.worldbank.org/reports.aspx?source=worldwide-governance-indicators>
- <http://databank.worldbank.org/data/views/variableSelection/selectvariables.aspx?source=world-development-indicators>

7.2.2 Does the government have adequate information to assess whether the growth of total spending (including government spending) exceeds the limits of absorptive capacity?

Old response: No

New response: Yes/No

UPDATE STATUS: Significant changes observed

The government tracks all the key indicators relating to the absorptive capacity of the economy. NBS publishes monthly estimates for inflation rate and quarterly data on GDP. The Budget Office

also releases the quarterly BIR that tracks government spending, while CBN provides daily exchange rate from both official and market rates. The period over which the information is released is in line with global best practices. This allows government to track its absorptive capacity *vis-à-vis* resource revenue inflows.

However, there are concerns regarding the absorptive capacity monitoring at the sub-national levels. The output level and inflation rate are not available at these levels. The government spending and BIR are not released to the general public for scrutiny. Low absorptive capacity at state level will in part constrain effectiveness at the central level.

Information source

Stakeholder engagement

7.2.3 Does the government use surplus revenues to repay foreign denominated debt or save in foreign assets to avoid breaching absorptive capacity constraints?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

Over the past four decades, the Federal Government has recorded a budget surplus only twice—in 1995 and in 1996. Nigeria therefore does not have surplus revenue. Nevertheless, the government has introduced several saving frameworks to ensure part of oil and gas revenue is saved for future generations and for the stabilisation of the economy against external shocks. However, most of the saving frameworks are not effective due to lack of sound legal and institutional frameworks and pressure on government to meet the national developmental needs. The sovereign wealth fund, which is denominated in dollars and has been effectively managed, is grossly underfunded and cannot fund Nigeria’s budget for a year. Nigeria’s external debt is also low (about 28% of the total debt) and has longer maturity, which puts less pressure on government to repay its foreign denominated debt. The only positive development in this respect is the building up of the external reserve, which ensures the economy will be more resilient to external shocks. In essence, there are limited savings by the government in terms of foreign assets to avoid breaching the absorptive capacity constraints.

Information sources

www.cbn.gov.ng/documents/Statbulletin.asp

www.dmo.gov.ng/publications/reports/debt-sustainability-analysis

Stakeholder engagement

7.2.4 Does the central bank help mitigate the potential negative impacts associated with resource dependence, including real exchange rate appreciation or exchange rate and revenue volatility?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

CBN has played a significant role in economic management and stabilisation of the inflation and exchange rate. The Bank operates a managed float exchange, which allows exchange rates to fluctuate according to market forces, but the Bank regularly intervenes to ensure they do not exceed a specified range. This policy has ensured the exchange rate is maintained at around NGN 305/US\$ 1 for the official rate and NGN 360/US\$ 1 for market rates. As a result, CBN has injected over US\$ 42.3 billion between April 2018 and March 2019 to ensure liquidity in the forex market. Despite this, the foreign reserve still stood at around US\$ 40 billion in 2019, which is enough to meet 12 months of imports.

Major progress is also being made in controlling the inflation rate. Since the fourth quarter of 2017, the inflation rate has dropped below 12% and has stabilised around this bound. This is an improvement over accelerating inflation rate recorded at the peak of the economic recession in 2016. The CBN interventions through import contraction and stabilisation of exchange rate have been crucial to this progress. In 2015, the bank restricted access to foreign exchange market for 41 goods. In 2016, the bank introduced the Anchor Borrowers' Programme to improve agricultural productivity and reduce pressure on foreign exchange rate. There have also been efforts to inject capital into real sectors. In June 2019, the CBN introduced a loan-to-deposit ratio of 60% to galvanise investment in real sector. The overarching objective of these intervention is to ensure fiscal sustainability and insulate the economy from revenue or exchange rate volatility.

The monetary policy has mitigated the negative effects of Nigeria's resource dependence. However, there are areas for improvement. The present multiple exchange rate window could distort economic incentive especially in the event of another exchange rate shock. The sustainability of CBN's intervention in the forex market is also doubtful as it is premised on high oil prices. In addition, CBN's development finance interventions could affect its core mandate of price stabilisation. These interventions represent an expansionary fiscal policy, while at the same time the monetary policy (interest rate setting) has been contractionary.

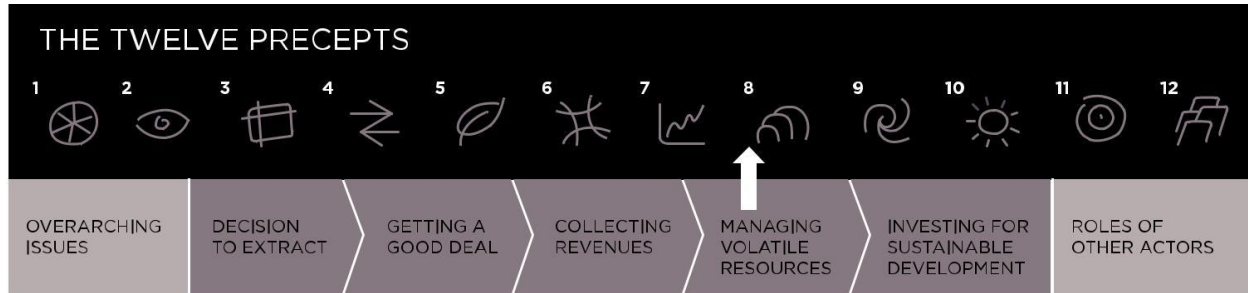
Information sources

www.cbn.gov.ng/documents/Statbulletin.asp

www.cbn.gov.ng/out/2017/dfd/anchor%20borrowers%20programme%20guidelines%20dec%20%202016.pdf

www.cbn.gov.ng/Out/2019/CCD/Lending%20to%20Real%20Sector.pdf

PRECEPT 8: EXPENDITURE VOLATILITY






The government should smooth domestic spending of revenues to account for revenue volatility.

| | |
|---|--|
| Overall precept score | |
| <p>Precept 8: Stabilising expenditure</p> <p>Government expenditure has been on an upward trajectory, with the recurrent component dominating the expenditure profile. The increase in capital expenditure was mainly from debts for infrastructure financing. The debt has also been used in smoothing the domestic spending due to revenue volatility. However, there are substantial gaps in compliance with fiscal measures to improve savings from resource revenue. The Sovereign Wealth Fund (SWF), despite its transparent and effective management as well as the increase in the total seed capital, it is still grossly underfunded as compared with Norway with around \$1 trillion. By implication, the SWF’s primary objectives and functions of economic stabilization through diversification and wealth generation for future generations may be underachieved.</p> | |

Overview of the questions and ratings

8 EXPENDITURE VOLATILITY

| | |
|--|---|
| 8.1 Has government spending been stable relative to government revenues during the past ten (10) years? |  |
| 8.2 Does the government have a fiscal framework to govern short-term expenditure smoothing, with appropriate numerical targets, and does the government comply with the framework? |  |
| 8.3 If the government has an , is it managed in a transparent, accountable, and efficient manner, and does the investment strategy help achieve the fund's objectives? |  |

Summary of key findings

Expenditure volatility

- Total government expenditure has been on an upward trajectory in the last two years. Although the recurrent expenditure component continued to dominate the expenditure profile, the increase witnessed in capital expenditure in the last two years was mainly as a result of government tying debts to infrastructure.
- The Federal Government has also sustained the measures in place to improve savings accrued from resource revenue. Resource saving policies include the OPFR, the Fiscal Responsibility Act(FRA), and the Sovereign Wealth Fund (SWF. However, there are substantial gaps in full implementation and compliance with these policies.
- The SWF, which comprises of the trio of fiscal stabilisation, future generations, and Nigeria infrastructure funds with a total seed capital endowment of US\$ 1.5 billion, is still grossly inadequate when compared to funds set aside and maintained by other resource-rich countries. However, reports on the operations and management of the fund reveal that activities are carried out transparently with timely publication of financial accounts and statements.

8 Expenditure volatility

8.1 Has government spending been stable relative to government revenues during the past 10 years?

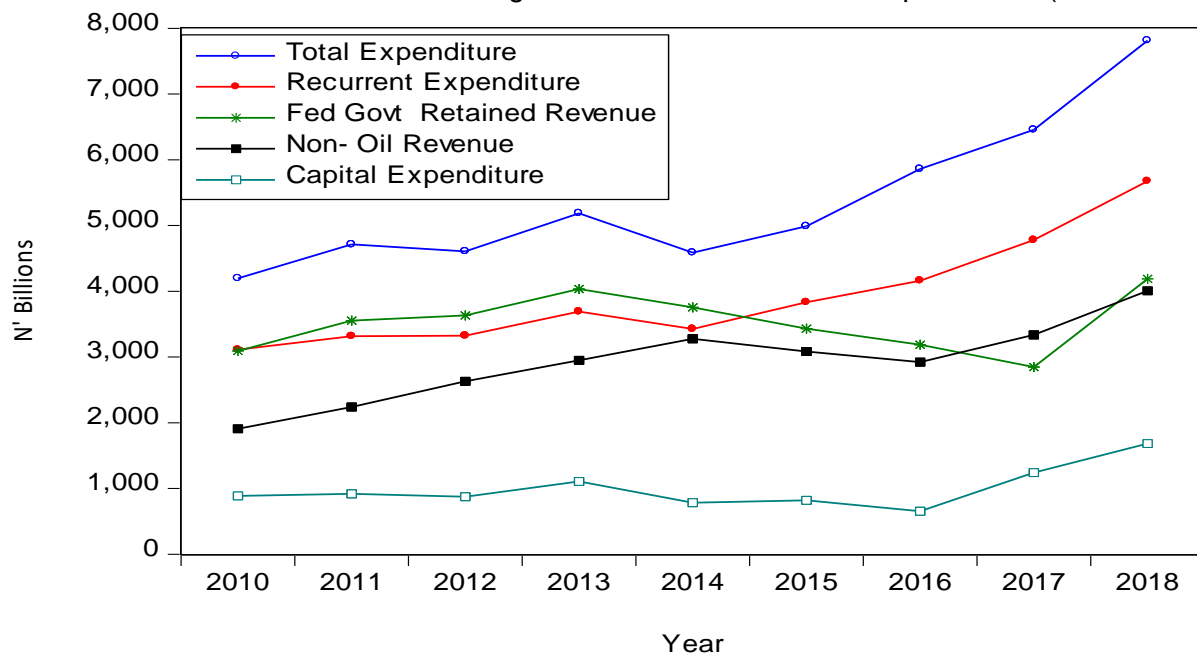
Old response: No

New response: No

UPDATE STATUS: Additional information included

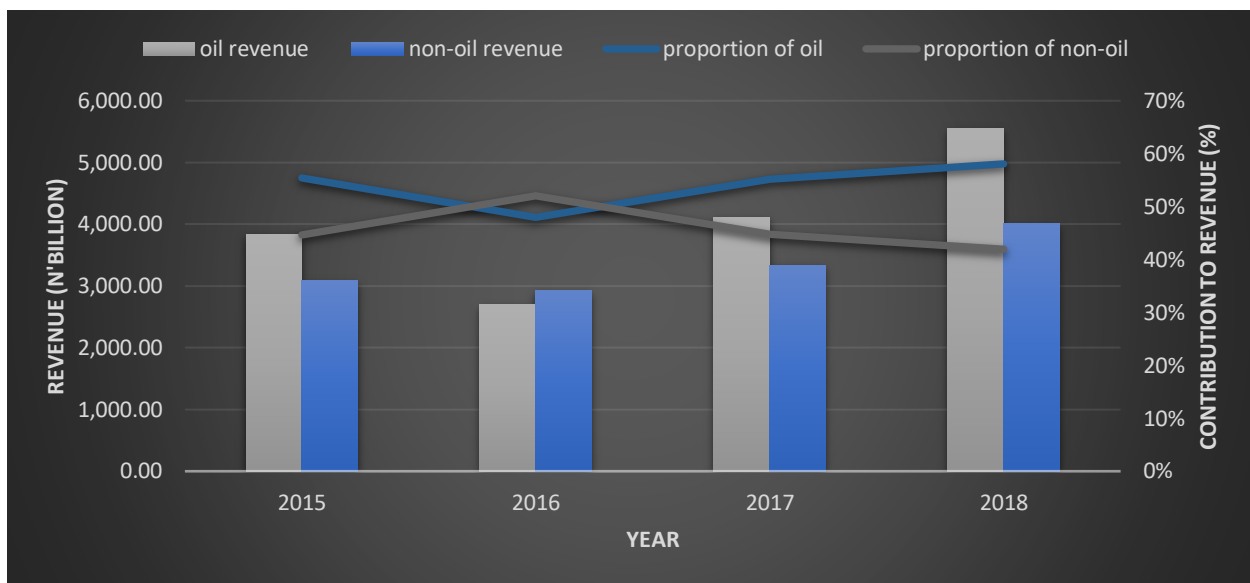
The composition of Nigerian government spending over the years has been predominantly recurrent, with a meagre proportion on capital spending. Although government expenditure in the last three years has followed an upward trajectory, there have been no significant changes in trajectory of the recurrent component of expenditure since the 2017 BER (Figure 8.1). The total expenditure still exceeds total revenue over the period and a key challenge remains the lacklustre revenue. For example, the total revenue receipts for 2018 were about 48.6% of the amount projected, while total debt servicing remained unchanged, indicating deficit and instability in the financing of expenditure. There are also observable changes in capital expenditure, which increased between 2017 and 2018, reversing the decline observed between 2014 and 2016.

Figure 8.1: Revenue and expenditure (2010 - 2018)



Source: Author's computation from CBN statistical bulletin

Figure 8.2: Oil and non-oil revenue, 2015–2018

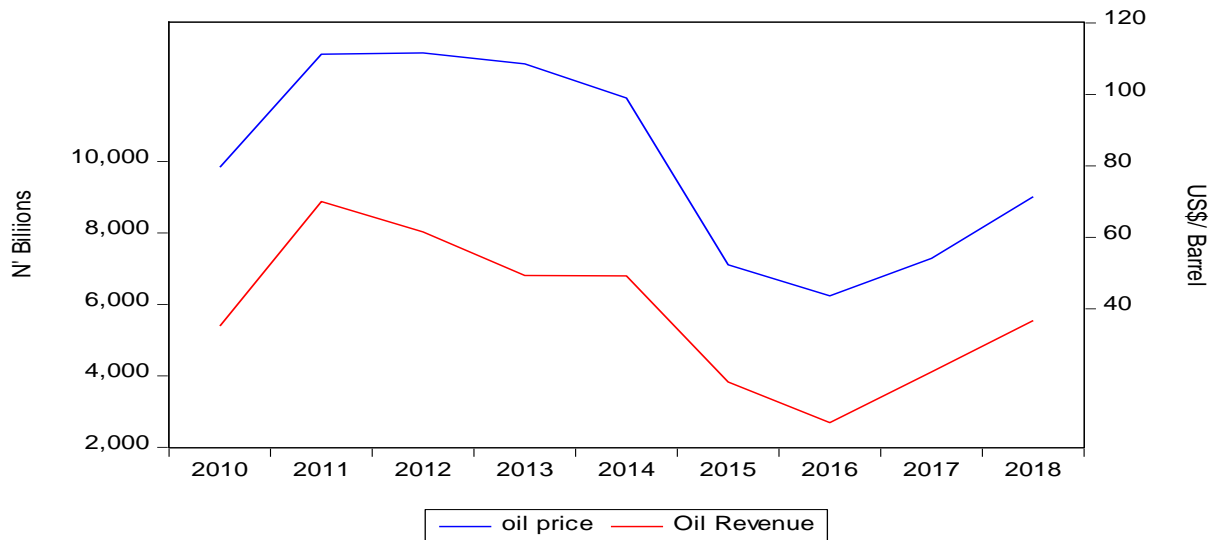


Source: Author's computation from CBN statistical bulletin

A number of factors have contributed to the increase in capital spending. Apart from the contribution from oil revenue, the increase in capital expenditure could have been caused by increased non-oil revenue and the government tying recent external debt to infrastructural financing. There has been an increase in both oil and non-oil revenue in the last three years, but the contributions of non-oil sector's revenue in the total revenue profile is less that of the oil sector revenue (Figure 8.2). As further depicted in Figure 8.3, the total revenue accruing from oil sales has been unstable in the last 10 years and its behaviour has followed a similar volatile pattern as crude oil prices. This further depicts that continuous reliance on oil proceeds to finance expenditure is unsustainable, as oil prices are highly volatile. To sustain the recent increase in the capital spending, therefore, there is a need for increased non-oil revenue to finance expenditure.

The foregoing reveals that, over the past years, the government has mainly cushioned expenditure volatility through internal and external borrowing. In addition, the under-collection of revenue, mainly from non-oil sources, and the inability to meet expenditure targets is an indicator that the country remains susceptible to shocks from oil prices. The Fitch Rating in 2018 ranked the nation's long-term foreign currency issuer default at B+, mainly as a result of its net external creditor position and its well-developed domestic debt markets. However, this is balanced against a high level of oil-revenue dependence and low levels of domestic revenue mobilisation. Besides, the expenditure volatility condition at the sub-national level is extremely poor, as most states have little leverage to borrow and rely heavily on statutory allocations to meet expenditure targets.

Figure 8.3: Crude oil prices and oil revenue



Source: Author's computation from CBN statistical bulletin

Information sources

www.premiumtimesng.com/news/top-news/356383-nes25-nigeria-needs-collective-efforts-to-hasten-national-growth-minister.html

www.cbn.gov.ng/Out/2019/STD/2018%20Statistical%20Bulletin_Real%20Sector.xlsx

<https://punchng.com/fitch-affirms-nigeria-at-b-outlook-negative/>

8.2 Does the government have a fiscal framework to govern short-term expenditure smoothing, with appropriate numerical targets, and does the government comply with the framework?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

There are a number of legislative and fiscal frameworks that provide procedures and guidelines on short-term and medium-term expenditure of the government with numerical targets. The FRA (2007) is an example of such legislation. The FRA stipulates that the government prepare an MTEF that sets out the macroeconomic projections and financial objectives relating to expenditure, revenue, taxation, and debt commitments for three financial years. In addition to the MTEF, the FRA further requires that an annual budget be prepared and derived from the MTEF. The Oil Price-Based Fiscal Rule (OPFR,) which has been in operation since 2004, is another framework in place to curtail the volatilities in international crude oil price by setting an oil price

benchmark that is below the projected international rate. Beside the FRA and OPFR, the Debt Management Office (DMO) also prepares the National Debt Management Frameworks (NDMF) as a guideline to ensure that the borrowing activities of government are conducted in accordance with statutory provisions and regulations.

However, there have been some inadequacies in the preparation, compliance, and effective implementation of some of these frameworks and legislation. First, the timing of the preparation and implementation of the annual budgets in recent years do not fully conform with the legislated provisions. For example, the 1999 Constitution (as amended) clearly states in Section 318(1) the period that constitutes a financial year as '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.' However, the budget period cycle has been fluctuating, with different commencement and end periods. These inconsistencies have negatively impacted budget implementation with implications on the country's economic performance over the years (Adeniran and Bodunrin, 2018).

Moreover, the current MTEF (2017–2019), which has formed the basis for the preparation of annual budgets in the last three years, has its limitations. While the MTEF make projections about anticipated macroeconomic indices, there is no performance analysis for the previous and current periods or regular monitoring and evaluation of government compliance with the set benchmarks.

Information sources

www.dmo.gov.ng/publications/other-publications/national-debt-management-framework/2706-national-debt-management-framework-2018-2022/file

Adeniran, A. and Bodunrin, S. (2018) The Economic Effect of Budget Delay in Nigeria: available at <http://cseaafrica.org/the-economic-effect-of-budget-delay-in-nigeria/>

8.3 If the government has a sovereign wealth fund (SWF), is it managed in a transparent, accountable and efficient manner, and does the investment strategy help achieve the fund's objectives?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

The government currently has an SWF, which commenced operations in 2012 following the enactment of the NSIA Act in 2011. The SWF is composed of three distinct funds: fiscal stabilisation, future generations, and the Nigeria infrastructure funds. The NSIA Act makes the three federating units of government joint owners of the fund. The NSIA core capital was increased from the US\$ 1 billion start-up fund by US\$ 500 million making the total seed capital endowment of US\$ 1.5 billion. Although the report on financial activities and performance of the NSIA shows a growth in total assets by about 27% in 2017 and 23.33% at the end of 2018, the

amount is still considered as small when compared to funds set aside and maintained by other resource-rich countries. The analysis in Table 8.1 summarises the size of Nigeria's SWF compared to other resource-rich countries at the end of 2017 and reveals that the seed capital represents about 6.2% of Nigeria's budget in 2017 and an investment of about US\$ 8 *per capita*.

Table 8.1: Comparison of the Nigerian SWF with other resource-rich countries

| Country | Year established | Seed capital (US\$ billion) | Current size (US\$ billion) | % of budget |
|----------|------------------|-----------------------------|-----------------------------|-------------|
| Norway | 1990 | 0.31 | 1,108.17 | 3,720 |
| Chile | 2007 | 2.38 | 24.1 | 39.8 |
| Angola | 2012 | 5 | 4.6 | 10.4 |
| Botswana | 1994 | – | 5.7 | 101.8 |
| Russia | 2008 | 66.89 | 89.9 | 32.1 |
| Kuwait | 1953 | 0.7 | 632 | 910.8 |
| Nigeria | 2012 | 1 | 1.85 | 6.2 |

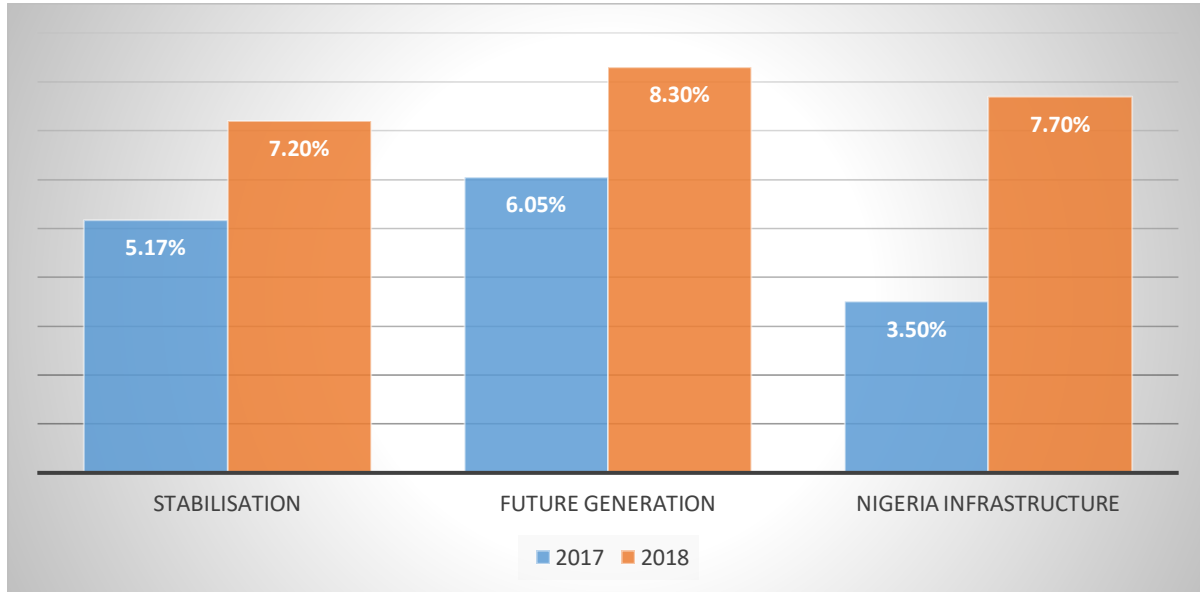
Source: NEITI (2017) and author's update

Contrary to expectations that the SWF would absorb the ECA, this is yet to happen. Details of the financial transactions in the ECA reveal that cash outflows from the account are more than inflows. Statistics from the National Budget Office reveal that, between 2012 and 2018, the account was depleted by about NGN 6.48 trillion against the inflow of about NGN 4.73 trillion.

The declining inflow is a reflection of the dynamics in the global crude oil price, as the difference between the prevailing oil price and the fiscal benchmark that forms the basis for inflow into the ECA has been declining. However, the high rate of depletion of funds in the account calls for urgent action in merging the ECA into the SWF. On the positive note, at the end of its 99th meeting in November 2019, the National Economic Council approved the additional sum of US\$ 250 billion to be transferred into the SWF from the ECA.

An evaluation of the activities and performance of the NSIA, the custodian of the SWF, over the period under review also reveals a positive improvement in its performance. Figure 8.4 shows a positive increase in the return on capital employed of the three core funds of the authority between 2017 and 2018.

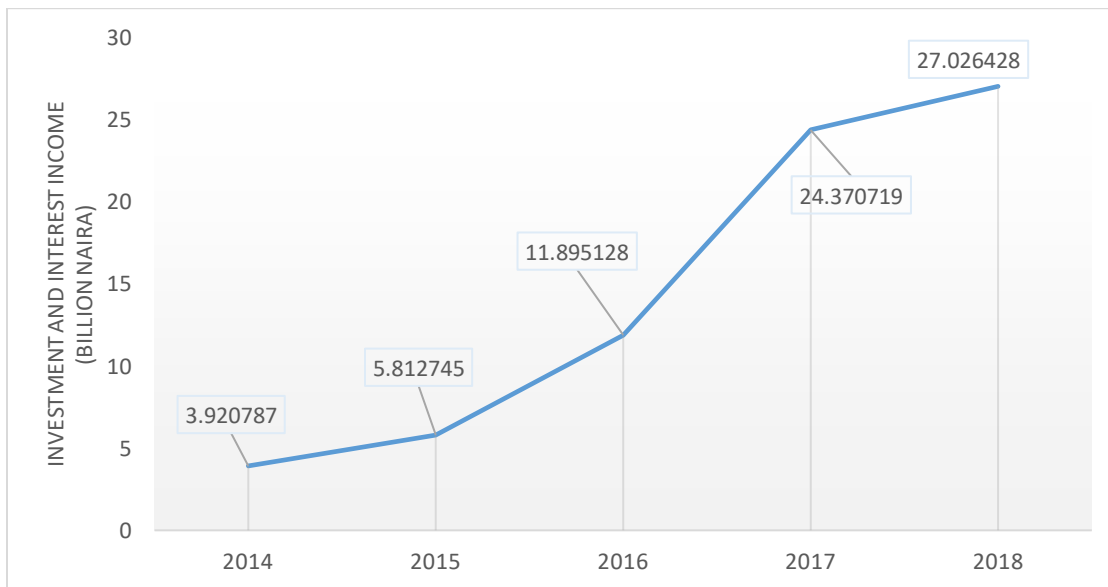
Figure 8.4: Return on capital employed (core funds)



Source: Author’s computation from Nigeria Sovereign Investment Authority (NSIA) accounts

Reports on the operations and management of the fund and other related activities further reveal that activities are carried out in a transparent manner, with timely publication of financial accounts and statements. The statement of investment and income shown in Figure 8.5 reveals consistently increasing profitability performance.

Figure 8.5: NSIA investment and interest income, 2014–2018



Source: Author’s computation from NSIA accounts

The investment strategies deployed by the fund have reflected consistencies with its objectives, as there has been no withdrawal from the fund since its inception. In addition, it has engaged in some economic stability interventions, especially in addressing the infrastructure financing gaps in the country by investment in crucial areas of the economy (such as the agriculture and health sectors, as well as investment in the provision of critical transportation infrastructures). Overall, activity reports of the Nigerian SWF reveal that the fund is well-managed, but its size is tiny when compared to funds set aside and managed by other resource-rich countries in the world.

Information sources

<https://punchng.com/excess-crude-account-depleted-by-n6-48tn-in-seven-years/>

<https://punchng.com/weve-grown-sovereign-wealth-fund-by-350m-orji/>


<https://neiti.gov.ng/index.php/media-center/news/370-nigeria-s-oil-revenue-savings-among-the-lowest-in-the-world-neiti>













NSIA (2017; 2018) Consolidated and Separate Financial Account Statements: available at www.nsia.com.ng/investor-relations/financials-statement/annual-reports

PRECEPT 9: PUBLIC SPENDING



The 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.

| | |
|--|---|
| <p>Overall precept score</p> | |
| <p>Precept 9: Public spending</p> <p>There has been no significant improvement in performance against the NRC benchmark since 2017. Capital expenditure allocation has been on the increase in nominal terms since 2016, reflecting the reflationary policy of the federal government. However, without full implementation as has perennially been the case, the objectives of the Economic Recovery and Growth Plan (ERGP) on increasing capital projects' allocations and also to improving the quality of capital spending, with a view to attaining a ratio of capital expenditure to total budget of 30% to 35% cannot said to have been met. Revenue generation shortfall has been identified as one of the key causes of the budget realism challenge. The enacted Audit Service Commission Reform Bill (2018) by the 8th National Assembly was neither assented to nor declined assent by the President.</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 sub-national 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 key findings

Public spending planning

- There is a stipulated budget calendar, but the definition of the fiscal year is typically not being followed. The 1999 Constitution (Section 318(1)) defines the budget calendar, which is elaborated by the Financial Year Act (Section 1). In practice, adherence has not been as stipulated. Annual budget approval by the legislature (2017–2019) and presidential assent to the budget have been beyond the timelines conceived by the act; a knock-on effect of late submission of the budget estimates to the National Assembly.
- Currently, Nigeria has no long-term development plan. The ERGP is a medium-term plan launched in 2017 to drive economic resurgence following the recession that was then ongoing. The most recent discontinuation of a near-development plan was Vision 2020: its second National Implementation Plan (NIP) was not brought into effect after the expiration of the first NIP in 2013.
- Some costed sector strategies of primary expenditure are consistent with fiscal forecasts, but this is not carried out by all MDA; those who do not prepare one perform rapid appraisal. The cost estimates are in the MTSS reports of key ministries and the 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). Integration can be improved if states' Planning Commissions are strengthened and in turn develop synergy with the National Planning Commission, where capital projects on a national scale are coordinated and harmonised.
- Public investment plans are usually silent on the issue of debt sustainability and the indebtedness of many states is on the increase. The 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 DMO has guidelines for sub-national borrowing.
- Capital expenditure allocation and utilisation have been on the increase in nominal terms for fiscal years 2016–2019, reflecting the reflationary policy of the government. However, the proportion of utilisation to capital expenditure for the years in focus was on the decrease, highlighting the need to improve revenue generation and early releases of funds for capital expenditure.
- Donor-funded projects were captured in the revenue framework of the 2018–2020 MTEF; the same is the case for the 2019–2021 MTEF. It is, however, unclear why no

values were reported to have been received for the whole of the 2018 fiscal year and as at the second quarter of 2019.

Revenue distribution

- Best practices in public finance management requires that all government expenditure be done through the budget process. Not all expenditure is done in this way: the TSA, the NNPC, and CBN are examples of government MDA that generate revenues spent through off-budget processes.
- Off-budget expenditures are financial transactions that are not accounted for in the budget. Examples are the various CBN intervention projects, such as the 2016 NGN 614 billion bail-out to the states for payment of staff salaries. Ideally, all barrels of oil produced ought to be calculated as revenues before any provisions for repayment of JV cash call arrears. However, the update on the 2018 fiscal outcomes by the Federal Government reveals that not all barrels of oil produced per day are calculated as outright revenue earned as there are provisions from daily productions for 'incremental production' for the repayment of JV cash call arrears.
- The current revenue-sharing formula has raised concerns regarding whether it has been 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; 26.72% 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. An attempt by the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) to review the formula in 2014 was unsuccessful. It is also unclear whether the revenue-sharing formula is embedded in the law.
- Verification mechanisms of fiscal entitlements exist at both the federal and state tiers of government. The state Commissioners of Finance and their Accountant Generals can verify the federal allocations they get by recalculating them with the template provided by the Federation Account Allocation Committee (FAAC). If any inconsistency emanates from their recalculation, it can be raised at their *post mortem* meeting. NBS releases a monthly update on FAAC disbursements from the Federation Account to the federal, state, and local governments. RMAFC protects the interest of all tiers of government by discharging duties such as monitoring of accruals into and disbursement of revenues from the Federation Account. At the sub-national level, however, there is no mechanism to ensure that local governments get their fiscal dues from the State Joint Local Government Account.
- Quarterly BIRs are produced by the Budget Office of the Federation as stipulated by the FRA 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 24% in recent years, especially regarding capital expenditure. On average, the variance between budgeted capital expenditure and actual capital expenditure for 2016–2018 was 33.73%.
- Public projects are mostly not completed on time in line with the budget. Revenue generation shortfall and the consequent rolling over of capital projects are the reasons for this.
- Public investment projects are seldom adjusted to reflect the changes in government policy. Under the Transformation Agenda, which sought to among other things to ensure that the budgeting process ‘focuses on setting allocation priorities rather than micro-budgeting’, projects that should have been executed by the local governments were still being budgeted to be executed by federal ministries. The ERGP’s policy objective stated its intention to attain a ratio of capital allocation to overall budget of 30% to 35%, but, without full implementation of capital expenditure, this objective cannot be said to have been met.
- Zero Based Budgeting (ZBB) was reported to be the guiding principle in budget preparation from 2016 to date. There is not much evidence to support this, as some of the line item sums were unusually high, as was the case under the previous envelope system of budgeting. In addition, the presence of frivolous, inappropriate, unclear, or wasteful line items in the budget has raised questions regarding the principle.
- 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 BPP publishes all procurements that pass through it that are worth up to US\$ 100,000 equivalent and above in its biannual Public Procurement Journal.

Accounting, reporting, and oversight of public spending

- The Federal Government of Nigeria employs the International Public Sector Accounting Standards and the Integrated Personnel and Payroll Management System for capturing workers on the payroll, which process is yet to be completed. The government also uses GIFMIS, but not all MDA are connected to the platform; Government-Owned Enterprises (GOEs) are a good example of this. The number of MDA connected to GIFMIS is understood to have arisen significantly with the most recent phase of connections.
- Although the BIRs are produced by the minister as directed by the FRA, they have mostly failed to meet the prescribed 30-day threshold 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 Federal Government's budget implementation to the computer literate.

- The audit process is yet to meet global best practice 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 (2018), enacted and sent to the President for assent by the 8th National Assembly, got neither a presidential assent nor a response in the negative. Looking at the 2016 Audit Report, the number of MDA yet to submit their audited accounts to the Auditor General for the Federation at the time of preparing the 2016 Audit Report went up from 215 in 2015 to 323 in 2016. This number stood at 265 in the 2017 Audit Report.
- The Auditor General publishes a report on the consolidated operations of the Federal Government. This has not been done on time in recent years as it takes up to 10 to 12 months after the end of the financial year to do so. Findings/recommendations from the Consolidated Audit of the Federal Government of Nigeria financial statements are transmitted to the National Assembly for oversight, but these have not been used to improve the design of projects, programmes and policies, or resource allocations.
- Public investment projects are not fully accounted. The 2016 Audit Report stated that 65 MDA have never submitted their audited accounts since inception; the 2017 Audit Report puts this number at 11. Many other MDA were also reported to neglect audit queries.
- International best practices stipulate that audited accounts should be published within 18 months of the end of a fiscal year. Section 85(5) of the 1999 Constitution mandates that the Auditor General must audit within three months of receiving the financial accounts of the Federation from the Accountant General and submit his report to the Public Accounts Committee of the National Assembly. Section 49(2) of the FRA stipulates that audited accounts are to be published within seven months of the end of the financial year. By either international or Nigerian standards, the publication of the 2017 Audit Report has not been timely.

9.1 Public spending planning

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

Old response: Yes/No

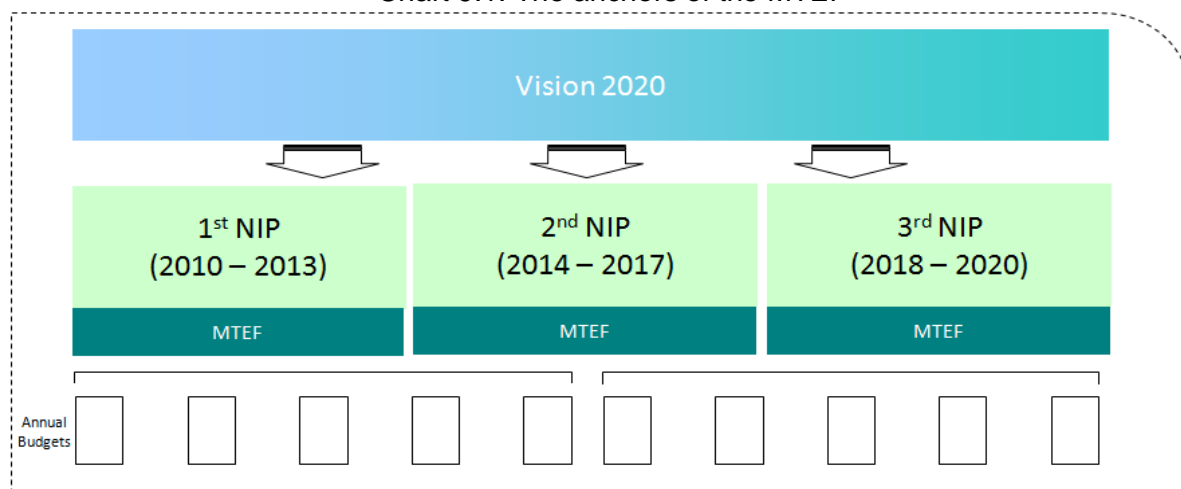
New response: Yes/No

UPDATE STATUS: No observable changes.

There has been no significant change since the 2017 benchmarking exercise. Currently, Nigeria does not have a development plan; the closest there is to a national plan is the ERGP, a medium-term plan launched by the Federal Government in 2017 to guide economic resurgence from the then economic recession. The ERGP also contains sectoral targets and the various sectors of the economy have policies that guide development.

The most recent discontinuation of a near-development plan was Vision 2020. With the expiration of its first NIP in 2013, there was a failure on the part of government to bring into effect the follow-up second NIP, which was to be in effect from 2014 to 2017; as a result, there was no third NIP, which should have lasted until 2020. Incidentally, the ERGP also terminates in 2020 but cannot be said to align with the Vision 2020.³³ Chart 1, elaborating on the MTEF, paints a clearer picture of this situation.

Chart 9.1: The anchors of the MTEF



U. Amakom (2013) Review of the macroeconomic framework of the 2014–2016 MTEF

³³ More significant is that there is no known ongoing engagement at the time of writing this report for a successor plan to either Vision 2020 or the ERGP, although the Federal Government did say during the public presentation of the 2020 Federal Budget Proposals in October 2019 that engagements for a successor plan would commence in earnest.

Although fiscal forecasts, as contained in the MTEFs, are prepared on a consistent rolling basis of up to three years, some of the forecasts within the period in focus were unrealistic. For example, a review of the 2017–2019 and 2018–2020 MTEFs revealed that projections on some macroeconomic variables for the years in focus were either overly optimistic or it was unclear how they had been formulated. The table below looks at some of these projections in more detail.

Table 9.1: MTEF projections vs actuals

| Year | Macroeconomic variables | Projections (MTEFs; budgets) | Actuals (BIRs; NBS) | Variance (difference) |
|-------|-------------------------|------------------------------|---------------------|-----------------------|
| 2017 | GDP growth (%) | 2.50% | 0.77% | 69.20% |
| | Oil production (mbpd) | 2.2 mbpd | 1.89 mbpd | 14% |
| | Retained revenue | 5.08 trillion | 2.37 trillion | 53.35% |
| 2018 | GDP growth (%) | 3.50% | 1.91% | 45.43% |
| | Oil production (mbpd) | 2.3 mbpd | 1.95 mbpd | 15.22% |
| | Retained revenue | 7.165 trillion | 3.48 trillion | 51.43% |
| 2019* | GDP growth (%) | 3.01% | 1.97% | 34.55% |
| | Oil production (mbpd) | 2.3 mbpd | 1.96 trillion | 14.78% |
| | Retained revenue | 6.99 trillion | – | – |

Source: NBS (2017–2019; 2018–2020; 2019–2021) MTEF

Q4 BIRs

* Implies prorated for Jan–June 2019

As can be seen above, the 2018–2020 MTEF, for instance, projected a 3.5% GDP growth rate for 2018, less than a year after exiting the recession,³⁴ and also projected a retained revenue of NGN 7.166 trillion for 2018, when the actualised value for 2017 was less than 50% of the projected sum at the end of the financial year.³⁵

On information regarding variables, unlike the 2014–2016 MTEF, the 2018–2020 MTEF contained information on projected inflation rates, interest rates, and accretions to external reserves; it also contained little or no information on access to credits, broad money (M2), etc. It further stated that

³⁴ The actual average growth rate from NBS 2018 GDP Growth Reports was 1.91%.

³⁵ See the BIR for Q4 2017. The actualised total retained revenue out of NGN 5.084 trillion budgeted for in 2017 was NGN 2.377 trillion (i.e. a 53.35% difference). Also see the BIR for Q4 2018, as the actual total retained revenue for 2018 was NGN 3.481 trillion out of projected NGN 7.165 trillion, a 51.43% difference.

the scourge of unemployment was and is to be tackled through various Social Investment Programmes (SIP) such as N-Power and the Government Enterprise and Empowerment Programme without addressing the challenge of how to scale SIP up for maximum impact.

Ideally, investment decisions are to be based on the Medium-Term Sector Strategies (MTSS). Although not all MDA prepare MTSS,³⁶ those that do not perform 'rapid appraisal' to come up with their capital projects. The MDA that perform 'rapid appraisal' do so because of the insignificant size budget of such ministries (they are the MDA not listed in the footnote below).

Some costed sector strategies of primary expenditure are consistent with fiscal forecasts, but this is not done by all MDA. The cost estimates are in the MTSS reports of key ministries and in the ERGP implementation plans.

Regarding the budget circulars issued to MDA, the 2019 Federal Government of Nigeria Budget Call Circular had capital budget ceilings for the various sectors and those for overheads were implicitly stated. Section 4.1.1 of the document reads: 'All MDA are required to work within their 2018 expenditure ceilings for the purpose of making their 2019 overhead budget submissions. For the avoidance of doubt, BOF will advise each MDA on its overhead ceiling.'

The Nigerian DMO conducts an annual DSA with relevant stakeholders such as the Federal Ministry of Finance, the Budget Office of the Federation, CBN, etc., and publishes a yearly DSA Report. This analysis contains both external and domestic components. This is true of the fiscal years 2017–2019 and of the years preceding them.

On the existence of and adherence to a fixed budget calendar, there is a stipulated budget calendar but the definition of the fiscal year is typically not being followed. Section 318(1) of the 1999 Constitution (as amended) states that the fiscal 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.' Sections 11(1) and (2) and Section 14 of the FRA also provide the timing for the 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 happens in practice is that the stipulation of the Constitution that empowers the National Assembly to prescribe 'such other date' is being mistaken for arbitrariness—a situation whereby a fiscal year runs from January to December, for instance,

³⁶ According to the technical session on the 2019–2021 MTSS organised for federal MDA in July 2018 by the Ministry of Budget and National Planning, only the following 'major' federal MDA prepare MTSS: Education; Health; Transportation; Power; Works and Housing; Niger Delta; Communications; Science and Technology; Agriculture; Solid Minerals; Environment; Water Resources; Interior; and the Ministry of FCT.

while the following fiscal year runs from May to April. Based on the experience of the 2018 and 2019 budgets, the 2018 budget commenced in the month of June and ended in May the following year, while that of 2019 commenced in the month of May and will run till the month of April. It is imperative for the financial year to be fixed and not change every other year. A constitutional amendment to this effect would be helpful in holding officials in the budget process to do what they are meant to do within with a specific timeline.³⁷ This will facilitate execution of capital projects provided for in the budget and ensure proper monitoring and evaluation, as well as facilitate investment decision and implementation in the private sector.

Annual budget approval by the legislature in the last two years (2018–2019) has not been timely. Against the Financial Year Act stipulation that a fiscal year commences on 01 January and ends on 31 December, the 2018 federal budget was approved by the legislature on 16 May 2018, while that of 2019 was approved on 30 April 2019. As a result, presidential assent was late as well: the 2018 budget received presidential assent on 20 June 2018, while that of 2019 was signed into law by the President on 27 May 2019.

Information sources

Constitution of the Federal Republic of Nigeria (1999)

Federation of Nigeria (2004) Financial Year Act

Federation of Nigeria (2018; 2019) Federal Annual Budgets

Federation of Nigeria (2019) Federal Budget Call Circular: available at

<http://budgetoffice.gov.ng/index.php/fgn-2019-budget-call-circular/fgn-2019-budget-call-circular/download>

Amakom, U. (2013) 'Review of the Macroeconomic Framework of the 2014–2016 MTEF', paper delivered to CSJ's Pre-Budget Session, November

MTEF (2018–2020)

MTEF (2019–2021)

www.dmo.gov.ng/publications/reports/debt-sustainability-analysis

www.premiumtimesng.com/news/headlines/273082-breaking-buhari-signs-2018-budget.html

<https://punchng.com/nass-to-transmit-n8-92trn-approved-2019-budget-to-buhari-thursday/>

<https://punchng.com/breaking-buhari-signs-2019-budget/>

9.1.2 Are public investment projects designed, appraised, and implemented based on national and sector plans?

³⁷ A proposed amendment of Sections 81 and 121 of the 1999 Constitution in 2018 was unsuccessful as the President withheld assent; it is expected that the 9th National Assembly will pick up from where their colleagues in the 8th National Assembly left off.

Old response: No

New response: Yes/No

UPDATE STATUS: Some changes observed.

There have been some changes in this regard since the 2017 benchmarking exercise. Prior to 2017 (i.e. between 2015 and 2017) when the ERGP was launched, public investment projects could not be said to have been typically designed and appraised based on national and sector plans, as there was as yet no economic plan by the Federal Government at the time. With the launch of the ERGP, however, various sectoral investment projects have been developed in line with the sectoral targets as contained in the ERGP.

On the other hand, 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 the three tiers of government; in other words, federal investment plans are based on federal policies, while state investment plans are based on state policies. In the past, public investment plans have been integrated through NEEDS (2004) and state policies have been aligned with federal policies through State Economic Empowerment and Development Strategies and Local Economic Empowerment and Development Strategies. Since the expiration of NEEDS in 2008, each tier of government has operated independently. This challenge can be overcome if or when State Planning Commissions are strengthened and in turn develop synergy with the National Planning Commission, where capital projects on a national scale are coordinated and harmonised.

Public investment plans do not provide certainty about funding. The trend is that some MDA do not have MTSS where costing is presented, while the MTEF does not contain the sectoral breakdown that arises from project costing.

The FRA of 2007 provides a threshold and guidelines for national and sub-national borrowing. Sections 41(1) (a) and (b) of the FRA stipulate that borrowing shall only be for capital expenditure and human development and only on concessional terms, with low interest rates and a reasonably long amortisation 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 DMO has guidelines for sub-national borrowing, but public investment plans are usually silent on the issue of debt sustainability and many states' indebtedness has continually been on the rise. Essentially, public investment plans do not create an environment that ensures sustainable levels of sub-national borrowing.

The trend of line items found in the budget over the years raises the question of whether an appraisal method exists to ensure systematic vetting of projects and selection based on transparent criteria and in keeping with realistic priorities. For example, the 2018 budget line items were reported to have been selected using a multi-criteria analysis approach and rapid appraisal technique, but what was finally approved cannot be said to have been entirely the product of such an approach. The content of the executive budget proposals (of MDA) raised issues around this

even before the legislative approval. Furthermore, the executive, after preparing the budget, presents it to the National Assembly, which effects some changes in the process of enactment, removing some items and adding new ones. What gets to be approved is a collection of sector-specific items that emanate from the sectors and other provisions for each sector that cannot be said to emanate from an appraisal method that systematically vets projects.³⁸

There is also the issue of ‘frivolous’ expenditure line items that appear in the budget, raising questions about their appropriateness in pursuing the objectives of national and sector plans. These questionable budget line items are vague in meaning, appearing to be wasteful or inappropriate provisions for expenditure. Under the Presidential Air Fleets (State House) in the 2018 Federal Government of Nigeria budget, for instance, there was a provision for ‘subscription to Professional Bodies’ for NGN 298.6 million, raising questions about how members of staff are involved and how each subscription is worth. Similarly, NGN 1.229 billion was provided for ‘Monitoring and Evaluation’ under the Federal Ministry of Women Affairs. Moreover, the National Agency for Great Green Wall had NGN 70.837 million provided for ‘Promotion of Alternative Livelihoods’ in their 2019 budget,³⁹ while the Ministry of Power, Works, and Housing proposed a NGN 1 billion allocation for ‘Expansion and Reinforcement of Infrastructure in 11 Distribution Companies to Reduce Stranded Generation Capacity.’⁴⁰ Other examples abound, even in earlier budgets. This throws up questions around systematic vetting of line items included in the budget.

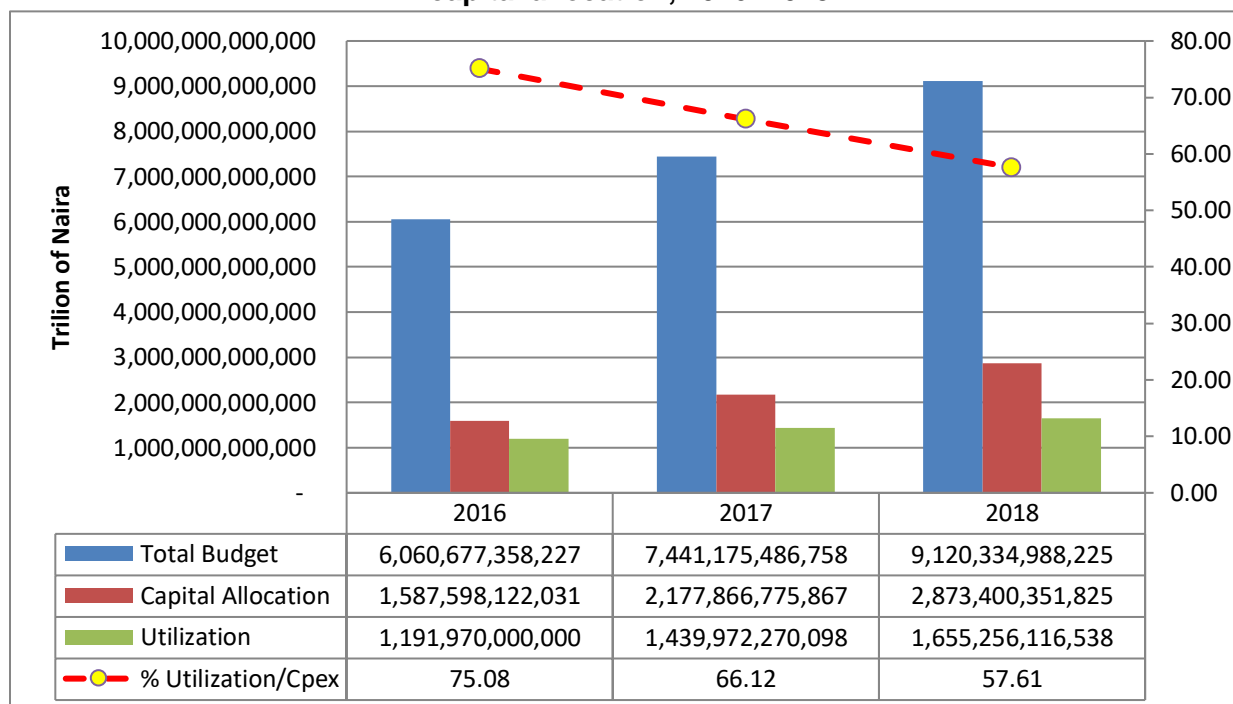
Over the medium term, it should be noted that items in the budget are fiscal expenditure plans that at best represent a statement of intent of those in authority. This has been found to vary from what finally gets executed. The NGN 6.06 trillion 2016 Federal Government of Nigeria budget had a capital component of NGN 1.587 trillion, of which NGN 1.192 trillion was utilised, representing a 75.08% investment spending for the financial year. The 2017 budget had a capital expenditure allocation of NGN 2.178 trillion out of a total budget of NGN 7.441 trillion; NGN 1.439 billion was utilised, representing an annual investment spending of 66.12%. The 2018 budget of NGN 9.12 trillion had a capital expenditure allocation of NGN 2.873 trillion, out of which NGN 1.655 trillion was utilised, representing an investment spending of 57.61%. The declining trend of Capital Expenditure Utilisation Rate for the years in focus is presented in Chart 2.

³⁸ This would be remedied by proper engagement between the executive and the legislative at the MTSS stage.

³⁹ This provision was made without a location or specific deliverables for appropriate monitoring.

⁴⁰ Proposing this expenditure head after privatisation is not ideal. If the distributing companies have no financial capacity to operationalise their areas of exclusivity, new investors should be brought on board to complement their resources instead.

Chart 9.2: Total budget, capital allocation, actual utilisation, and utilisation rate of the capital allocation, 2016–2018



Source: The authors, with data from the budget and BIRs (2016; 2017; 2018)

Chart 2 suggests that there is some level of predictability of investment spending on the part of the government, as both capital allocation and utilisation rates are those of reflationary policy currently being implemented compared to the years before them. Further analysis shows that the capital allocation and amount utilised were both on the increase in nominal terms: from NGN 1.587 trillion in 2016 to NGN 2.873 trillion in 2018 for capital allocation and from NGN 1.191 trillion in 2016 to NGN 1.819 trillion in 2018 for amount utilised. However, the proportion of utilisation to capital expenditure for the years in focus decreased. In terms of transparency, there is need for clarity as to what constitutes a fiscal year, as the 66.12% capital utilisation reported for 2017 includes capital projects executed in May 2018. In the medium term, therefore, it cannot be said that there is sufficient transparency or predictability in investment spending.

In contrast to what applied before the 2018 fiscal year, donor-funded projects were captured in the 2018–2020 and 2019–2021 MTEFs. However, no figure has been reported in the revenue profile of government as revenue from donor-funded projects so far.⁴¹ The need for reportage of all projects in the budget to promote efficiency, effectiveness, accountability, and transparency in fiscal governance cannot be overemphasised. Reporting these projects in the budget would improve transparency in the management of public resources.

⁴¹ The projected values in the 2018 and 2019 revenue profiles were NGN 199.92 billion and NGN 209.92 billion respectively. The 2018 Q4 BIR had no value as revenue from this source and the ‘Highlights/Breakdown of the 2020 Executive Budget Proposal’ reported no value as at June 2019.

Information sources

FRA (2007)

DSA (2017) available at www.dmo.gov.ng/publications/reports/debt-sustainability-analysis/2504-2017-debt-sustainability-analysis-dsa-report

DMO, Sub-National Borrowing Guidelines 2008–2012: available at <https://dmo.gov.ng/index.php/publications/other-publications/borrowing-guidelines/1054-subnational-borrowing-guidelines-2008-2012>

Federation of Nigeria (2017; 2018; 2019) Federal Budgets

CWP (2018) Recommendations on the Line Items of Frivolous, Inappropriate, Unclear and Wasteful Estimates in the 2018 Federal Appropriation Bill

CWP (2019) Recommendations on the Line Items of Frivolous, Inappropriate, Unclear and Wasteful Estimates in the 2019 Federal Appropriation Bill

Quarterly BIRs (2016; 2017; 2018) available at <http://budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

MTEF (2018–2020)

MTEF (2019–2021)

Highlights/Breakdown of the 2020 Executive Budget Proposal (2019) available at <http://budgetoffice.gov.ng>

9.2 Revenue distribution

9.2.1 Is all government spending from resources appropriated through the national budget?

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

Some government expenditure through MDA are carried out through the budget process. On the other hand, based on the principles of the Global Initiative for Fiscal Transparency (which holds that any budget outside a government's budget for legislative approval is extrabudgetary), the NNPC and other independent agencies—such as the Nigeria Ports Authority and NIMASA—are examples of government agencies with generated revenues spent through off-budget processes.

This has been the case since the last benchmarking exercise in 2017. There are other examples of expenditure without appropriation.⁴²

The TSA was introduced in Nigeria in 2012 to consolidate all inflows of MDA of the government into a single account at CBN. The TSA became fully operational in Nigeria in September 2015 following a Federal Government directive to MDA to fully implement the account. Although the CBN Banking Supervision Annual Report 2015 revealed that the implementation of the TSA had led to a 2.9% decrease in customers' deposits, it brought about a reduction in the proliferation of bank accounts operated by MDA towards promoting financial accountability among governmental organs.

It has been the practice that resource and non-resource revenues are reported separately in the federal 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 BIRs.

Regarding oil revenue, for example, the 2018–2020 MTEF made an oil production forecast of 2.3 mbpd at a benchmark price of US\$ 45 per barrel for the year 2018; a 2.4 mbpd oil projection for 2019 at a benchmark price of US\$ 50 per barrel; and a 2.5 mbpd oil projection at a benchmark price of US\$ 52 per barrel for 2020. The 2019–2021 MTEF also had projections for 2019: a 2.3 mbpd oil production at US\$ 60 per barrel. On non-oil revenues, projections on gross revenue figures for CIT and VAT were also given. The BIRs also report on the net redistributable revenue disaggregated by oil and non-oil categories.

Information sources

CBN (2015) Banking Supervision Annual Report: available at www.cbn.gov.ng/Out/2017/BS/BANKING%20SUPERVISION%20ANNUAL%20REPORT.pdf

MTEF (2018–2020)

MTEF (2019–2021)

Quarterly BIRs (2018; 2019) available at <http://budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

⁴² Other recent examples include various CBN's intervention projects such as the 2016 NGN 614 billion bail-out to the states for payment of staff salaries; the payment for US\$ 496 million Tuscano Aircrafts to the US without appropriation in 2018; and the Anchor Borrowers Programme funded from the NGN 220 billion Micro, Small, and Medium Enterprises Development Fund.

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?

Old response: No

New response: No

UPDATE STATUS: No observable changes

Transparency and accountability issues surround the management of revenue earnings by GOEs. GOEs earn revenue for government and are eligible for paying an operating surplus to the government, but not all comply. In addition, they rely on the laws establishing them to prevent their being captured by the GIFMIS platform, which would improve the efficiency and effectiveness of revenue generation. Similarly, certain government expenditures are excluded from the budget; thus, the budget is not a complete statement of public expenditure.⁴³ Global best practice standards prefer off-budget expenditure to be minimal. Although off-budget expenditure exists, its proportion to budget expenditure is low. In addition, agencies like the National Communications Commission (NCC), the SEC, NIMASA, and the NNPC prepare their budgets and defend them separately. Most accountability issues stem from the management of these off-budget revenues.

Off-budget spending does not appear to be coordinated with sector plans. State-owned enterprises intervene based on the demands of their host communities and are often not coordinated with state and national plans.

Regarding auditing, reporting, and oversight, off-budget expenditure is carried out by agencies like the NNPC, NIMASA, the SEC, NCC, and NDDC. 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 reports 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.

⁴³ The overview of the 2018 fiscal outcomes, as presented in the 'Highlights/Breakdown of the 2020 Executive Budget Proposal', shows that not all barrels produced in a day were included in the calculation of revenue from the daily oil production, as 1.84 mbpd was reported instead of 1.96 mbpd. The difference—incremental production—was used for repayment of joint venture cash call arrears. Ideally, the whole 1.96 mbpd should have been recorded as revenue and a budget line created for the repayment.

Information sources

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

Highlights/Breakdown of the 2020 Executive Budget Proposal: available at <http://budgetoffice.gov.ng/index.php/breakdown-of-the-2020-executive-budget-proposal>

9.2.3 If the government distributes revenues to sub-national governments, are the transfers based on a well-articulated set of objectives and are the transfers correct and timely?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The practice is the same since the last benchmarking exercise. The Federal Government distributes revenues by way of FAAC allocations. There is also a verification mechanism of fiscal entitlements to the sub-national governments, as the states Commissioners of Finance and their Accountant Generals have the opportunity of recalculating their monthly receipts using the templates provided to them at FAAC meetings. They also have the opportunity to raise any inconsistency in their follow-up meetings for ratifications. There is a revenue-sharing formula; the current formula allocates 52.68% to the Federal Government from the Federation Account; 26.72% to the 36 states; and 20.60% to the 776 local governments. The formula has, however, been reported to lack 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 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 Government, leaving the other tiers with too little to work with. The states have asked for their allocation to increase to about 40%–45%, which would imply reducing that of the Federal Government, citing increasing sub-national fiscal obligations such as meeting the payment of the new NGN 30,000 minimum wage (among others).

It should be noted, however, that the executive arm of government has taken steps to improve the formula. In 2014, RMAFC made an attempt to review the allocation formula and adopted a draft report on a proposed new 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 existing revenue allocation formula, based on the Executive Modification Order and last amended in January 2004, appears to be of doubtful legality considering that very clear and less

arbitrary provisions were made by the Constitution for the National Assembly to review and approve the revenue allocation formula.

There seems to be a balance between the revenue and expenditure assignments of sub-national governments, there seems to be no balance between the revenue and expenditure assignments of states and local governments. States have a lot of unfunded mandates as the Federal Government of Nigeria retains the bulk of Federation Account revenue. The monthly salaries of civil servants at the state level⁴⁴ and at the level of the infrastructural development needs of the states are good examples of this. The ideal situation would be a balance between the revenue and expenditure assignments of sub-national governments. Wastage and mismanagement of resources will be encouraged if the transfers to sub-national governments are much higher than required. On the other hand, infrastructural decay will occur if transfers to sub-national governments are much lower than required.

According to Section 162(6) of the Constitution, each state maintains a State Joint Local Government Account into which the allocations to local government councils in the state from the Federation Account and from the government of the state are paid. State governments abuse this account and usually transfer less than is required by the local governments. According to Section 4 of the Allocation of Revenue (Federation Account etc) Act, states are also required to transfer 10% of their internally generated revenue to local governments. Most states in the Federation also fail to transfer this percentage, and most local governments are thus cash-strapped and cannot perform their basic obligations.

International best practices require a ceiling above which sub-national government cannot borrow. There is a clear provision in the law for sub-national governments not to go above a given ceiling. Section 42(1) of the FRA has stipulations on overall limits to 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 have not yet been set 12 years after the FRA coming into effect (even after a Federal High Court ruled that the government should set them up).⁴⁵

According to Section 222 of the Investments and Securities Act, when a sub-national body intends to raise bonds or borrow from the capital market, the total amount of loans outstanding at any particular time for the sub-national 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 Sub-National Borrowing Guidelines of the DMO prescribes that the monthly debt service ratio of a sub-national 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

⁴⁴ Bail-out packages have been given to the states that owe salaries in the past.

⁴⁵ A suit regarding why no debt limits have been set was filed by CSJ (Suit No. FHC/ABJ/CS/302/2013) against five defendants: the President, the Senate, the House of Representatives, the Minister of Finance, and the Attorney General of the Federation/Minister of Justice. The judgment was delivered on 15 February 2018.

obligations for the next twelve months (inclusive of the new loan under consideration) to their total Federation Account allocation over the preceding 12 months will not exceed 40%. The rule takes account of other sources of revenue as appropriate. However, 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.

Section 35 of the FRA provides for savings of crude oil proceeds in excess of the reference commodity price. The savings of each government in the federation is to be deposited in a separate account, which forms part of the respective government’s Consolidated Revenue Fund to be maintained at CBN by each government. The account called the ECA is of doubtful legal validity in the light of the provisions of Section 162 of the 1999 Constitution. There is also an NSIA (Establishment, etc.) Act that saves ‘excess’ resource revenues in an SWF, but there are not many savings in the above accounts.

The existence of a verification mechanism at both national and sub-national level ensures that due fiscal entitlements are received, especially by the sub-national governments. The state Commissioners of Finance and their Accountant Generals can verify the federal allocations they get by recalculating them with the template provided by the FAAC. If any inconsistency emanates from their recalculation, it can be raised at their *post mortem* meeting. NBS releases a monthly update on FAAC disbursements from the Federation Account to the federal, state, and local governments.

The table below gives an example of such a disbursement: the FAAC disbursement of the sum of NGN 616.20 billion to the three tiers of government in May 2019 from revenue generated in April 2019.

Table 9.2: FAAC May 2019 disbursement

| Beneficiaries | Statutory (NGN) | Exchange gain difference (NGN) | VAT (NGN) | Total (NGN) |
|-------------------------------|--------------------|--------------------------------|-------------------|--------------------|
| Federal Government of Nigeria | 239,654,784,075.98 | 368,550,478.77 | 13,893,927,582.82 | 253,917,262,137.57 |
| State | 121,556,109,159.27 | 186,933,728.03 | 46,313,091,942.74 | 168,056,134,830.04 |
| Local government | 93,714,664,995.54 | 144,118,068.77 | 32,419,164,359.91 | 126,277,947,424.22 |
| 13% derivation fund | 46,255,932,635.57 | 97,503,959.62 | | 46,353,436,595.19 |
| Cost of collection (NCS) | 5,024,875,391.12 | – | 354,520,284.44 | 5,379,395,675.56 |

| | | | | |
|---------------------------|---------------------------|-----------------------|--------------------------|---------------------------|
| Transfer to excess ECA | 6,307,224,099.81 | – | | 6,307,224,099.81 |
| Cost of collection (FIRS) | 3,277,276,726.99 | – | 3,504,904,044.12 | 6,782,180,771.11 |
| Cost of collection (DPR) | 3,124,936,737.11 | – | | 3,124,936,737.11 |
| Total | 518,915,803,821.39 | 797,106,235.19 | 96,485,608,214.03 | 616,198,518,270.61 |

Source: NBS

From the total disbursement of NGN 16.20 billion for the month of May 2019, the Federal Government received a total of NGN 253.92 billion; states received a total of NGN 168.06 billion; and local governments received NGN 126.27 billion. The sum of NGN 46.35 billion was shared among the oil-producing states as part of entitlement from the 13% derivation and NGN 6.31 billion was transferred to the excess ECA. RMAFC protects the interest of all tiers of government by discharging its duties, such as monitoring of accruals into and disbursement of revenues from the Federation Account. At the sub-national 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 manage their funds and disburse them in the way they think fit. There is also no verification mechanism for the disbursement of the 10% internally generated revenues (IGR) from states to local governments, as dictated by Section 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 (such as the National Judicial Council, the Independent National Electoral Commission, the NDDC, the Public Complaints Commission, and the National Human Rights Commission) all appear as lump sums in the budget without details being provided.⁴⁶ This administrative practice is not supported by the law. However, information on the disaggregated revenue stream of the government is made available in the BIRs (Fourth Quarter Reports), disaggregated by revenue streams and also compared with the projections made for each quarter. These reports are online for anyone who cares to download and read them at the website of the Budget Office of the Federation.

⁴⁶ Pursuant to the principles of transparency, full disclosure of the details of statutory transfers is being made. A high court order was disobeyed mandating the then-Minister of Finance to provide the CSJ with details of statutory transfers to six Federal Government agencies as part of the 2013 federal budget; this disobedience was followed up by a charge of contempt of court. A similar push by CSOs to disclose details of the statutory transfers led to the disclosure of the National Assembly's budget details in the 2018 federal budget.

Information sources

Federal Republic of Nigeria (1999) Constitution of the Federal Republic
 Allocation of Revenue (Federation Account, etc.) Act
 Constitutional Amendment Bill approved by the National Assembly seeking Local Government Financial
 Autonomy
 FRA (2007)
 Investments and Securities Act (2007)
 Sub-national Borrowing Guidelines: available at <https://dmo.gov.ng/index.php/publications/other-publications/borrowing-guidelines/1054-subnational-borrowing-guidelines-2008-2012>
 External Borrowing Guidelines: available at <https://dmo.gov.ng/index.php/publications/other-publications/borrowing-guidelines/1052-external-borrowing-guidelines-2008-2012>
 NSIA (Establishment, etc.) Act
 FAAC (2019) Report, May: available at [https://nigerianstat.gov.ng/elibrary?queries\[search\]=FAAC](https://nigerianstat.gov.ng/elibrary?queries[search]=FAAC)
www.rmafc.gov.ng/revenue-allocation-formula-rmafc-adopts-draft-report-ready-for-submission/
 BIRs (2017; 2018; 2019): available at <http://budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report> and
<https://punchng.com/revenue-formula-govs-to-demand-42-of-federal-allocation/>
www.premiumtimesng.com/business/business-news/329605-states-right-to-demand-review-of-revenue-sharing-formula-rmafc.html
<http://csj-ng.org/blog/the-debt-limitation-case/>

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?

Old response: No
New response: No

UPDATE STATUS: No observable changes

Not much has changed since the last benchmarking exercise. There is not much evidence to suggest that the tools to keep in-year spending under control (for example, spending and commitment controls; cash flow planning) are typically being followed. In practice, there seem to be no spending commitments; releases to sectors on whether sectors are running projects the Federal Government to have priority; they also depend on the availability of funds.

Section 25 of the FRA states that (1) the Federal Government will cause to be drawn up an Annual Cash Plan in each financial year, to be prepared by OAGF; and (2) the Annual Cash Plan will be prepared in advance of the financial year, setting out projected monthly cash flows, and will be revised periodically to reflect actual cash flows. Furthermore, Section 26 of the FRA directs the Minister of Finance to set the timeframe 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 according to Section 28 of the same FRA, if three months after the enactment of the Appropriation Act, the Minister determines that the targeted revenues are 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 there is no evidence to suggest that a Fiscal Risk Appendix has been prepared.

These stipulations have yet to be adhered to, as there is no evidence that an Annual Cash Plan, Budget Disbursement Schedule, and Fiscal Risk Appendix have been produced by the Ministry of Finance at the time of this report. A law suit by CSJ in 2013 seeking to compel the Minister of Finance to prepare and produce the Disbursement Schedule showed that none had been prepared.

Regarding the margin between the actual and the budgeted primary expenditures, actual expenditures have always deviated from the budgeted expenditure by more than 24% in recent years, especially regarding capital expenditure. The 2016 Capital Expenditure Utilisation Rate was just 75.08%, which means that the variance between actual primary expenditure and the budgeted primary expenditure was 24.92%. The Capital Expenditure Utilisation Rate for 2017 was 66.12%, meaning there was a 33.88% variance between actual and budgeted primary expenditure. The variance between the budgeted and actual Capital Expenditure Utilisation Rate was 42.39% in 2018, as the Capital Expenditure Utilisation Rate was 57.61%. On average, the variance between budgeted capital expenditure and actual capital expenditure for 2016–2018 was 33.73%, taking the average of percentage of utilisation to the Capital Expenditure Utilisation Rate (Table 9.3 Row 3). Table 9.3 illustrates these points.

Table 9.3: Margin between actual and budget primary expenditure

| Year | 2016 | 2017 | 2018 |
|---|-------------------|-------------------|-------------------|
| Capital expenditure allocation (N) | 1,587,598,122,031 | 2,177,866,775,867 | 2,873,400,351,825 |
| Capital expenditure utilised (N) | 1,191,970,000,000 | 1,439,972,270,078 | 1,655,256,116,538 |

| | | | |
|---|-----------------|-----------------|-------------------|
| % of capital expenditure utilisation | 75.08 | 66.12 | 57.61 |
| Variance between utilisation and capital expenditure (N) | 368,128,122,031 | 737,894,505,789 | 1,218,144,235,287 |
| Variance (%) | 24.92 | 33.88 | 42.39 |

Source: BIRs (2016; 2017; 2018) and authors' calculations

The variance in expenditure composition between 2016 and 2018 and the years preceding them exceeded 24%. The gap between budgeted and actual spending is a major budget realism challenge. This is largely attributable to the revenue earnings shortfall, which could be traced to the meagre amount of revenue being remitted to the Federal Government by the GOEs, along with other causes.⁴⁷

Regarding the average amount of expenditure actually being charged to the contingency vote, the practice in Nigeria is that there are both contingency votes and Service Wide Votes (SWV). The actual expenditure charged to contingency votes for 2018–2019 was on average 0.30% of the overall budget expenditure; that for SWV was on average 22.22% for the same period (Table 9.4).

Table 9.4: Proportion of contingency and SWV to the overall budget

| Year | Overall budget | Contingency votes | Contingency % | SWV | SWV % |
|----------------|-------------------|-------------------|---------------|-------------------|-------|
| 2018 | 9,120,334,988,225 | 26,801,000,000 | 0.29 | 1,845,243,720,679 | 20.23 |
| 2019 | 8,916,964,099,373 | 25,804,000,000 | 0.29 | 2,158,455,524,280 | 24.21 |
| Average | | | 0.29 | | 22.22 |

Source: Annual Budgets (2018; 2019), Budget Office of the Federation

⁴⁷ There are over 100 of these agencies. The top 10 GOEs in Nigeria by way of revenue generation include: the Federal Airport Authority of Nigeria; the Nigerian Airspace Management Agency; the Nigerian Postal Service; the Nigerian Civil Aviation Authority; the NCC; the Nigerian Deposit Insurance Corporation; the Nigerian Export Processing Zones Authority; the National Inland Waterways Authority; NIMASA; and the Nigerian Ports Authority. Revenue remittances to the government from these enterprises are suboptimal. Bringing them onto the GIFMIS platform to improve efficiency and effectiveness in public finance management and putting in place a financial targeting structure to drive revenue generation are examples of ways to improve government revenue earnings.

To improve transparency, it would be ideal to have slush sums such as the SWV disaggregated into budget lines. There is an orderly and transparent way to amend the budget. The 2018 Appropriation Budgetary Amendment is an example of such an amendment. The power to amend the budget is constitutionally vested with the legislature under Section 4 of the 1999 Constitution, but amendment of the budget as an internal redistribution of the budget allocation (without affecting the overall budget sum) must be differentiated from a Supplementary Budget, which adds more projects and activities to be funded for the year. The FRA dictates in Section 27 that the sums appropriated for a specific purpose should be used solely for the purpose specified in the Appropriation Act. Virement 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. What comes closest to this is the second and third quarter BIR. The mid-year review of the budget would ideally help evaluate whether budget execution has been as planned and how best to ramp up capital budget implementation. The Federal Government simply implements the parts of the budget that available resources can fund because there have not been enough resources over the years to fully implement the budget.

Information sources

Quarterly BIRs (2016; 2017; 2018) available at

<http://budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

Annual Budgets (2018; 2019) available at <http://budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents>

FRA (2007)

CSJ v Ministry of Finance & Anor (Suit No. FHC/ABJ/CS/251/2013)

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

9.3.2 Are public investment projects implemented as planned?

Old response: No

New response: No

UPDATE STATUS: No observable changes

Public projects are not always completed on time nor in line with the budget. This happens for many reasons. First and foremost is the issue of revenue shortfall, which has proven to be the key reason why public projects are not completed on time. Some projects are executed halfway

and rolled over onto the following year's budget as ongoing projects; 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 the perennial late passage and assent to the budget, the execution of capital projects has been constantly rolled over. In the last three years (2017–2019), for example, capital project implementation has extended to the second quarter of the following year: the 2017 capital budget implementation extended to June 2018 as a result of late passage of the 2017 Appropriation Act and the 12 month's duration clause attached to it by the National Assembly which was assented to by the President. The same occurred in 2018 as implementation stretched to May 2019.

Some major recurrent costs not envisaged during the appraisal have arisen after the budget appraisal stage. This has happened in 2017 when the Federal Government responded to the demands of the Academic Staff Union of Universities and other professional bodies. In 2018, there was also the issue of the purchase payment made by the Federal Government for 12 super Tucano aircrafts from the US for US\$ 496 million without appropriation. Ideally, no major recurrent expenditure(s) not envisaged at the budget appraisal stage will arise afterwards.

MTEFs, which articulates government's revenue and spending plans over the period of three years as well as its fiscal policy objectives over the same period, are updated on a rolling basis. They also provide the basis for the annual budget.

Public investment projects are seldom adjusted to reflect the changes in government policy. Following the Transformation Agenda of 2011–2015, during which time public investment projects did not totally align with the plan,⁴⁸ the ERGP's policy objectives stated its intention to improve budget preparation and execution processes, with a focus on increasing allocations to capital projects and improving the quality of capital spending to attain a ratio of capital expenditure to total budget of 30% to 35%. Indeed, from 2017 to 2019, capital expenditure allocations have consisted of up to 30% of the annual budgets;⁴⁹ but, without their full implementation (for reasons discussed earlier), this objective of the plan cannot be said to have been fulfilled.

Annual budgets from 2016 to date are also said to have been prepared on the principle of ZBB, by which projects are costed anew rather than on an incremental basis. However, there has been little or no evidence to suggest that ZBB has actually been followed in developing some of the projects in the budgets over this period. Provisions for some projects were unusually high, as they were in the period when the envelope system of budgeting was followed. A good example is an NGN 1.144 billion provision in the 2018 Federal Government of Nigeria budget proposal under

⁴⁸ See the 2017 BER: 'The plan sought 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.' However, this did not happen; in the budgets for those years, projects that should have been executed by the local governments were still being budgeted for by the federal ministries and there was bickering between both arms of the government regarding budgeting roles.

⁴⁹ The proportion of capital expenditure to the annual budget for 2017 was 29.27%; for 2018, it was 31.51%; for 2019, it was 31%.

the National Security Adviser for ‘Cleaning and Fumigation Services’ (Line Item Code 22020606). This provision was drastically reduced in the approved 2018 Federal Government of Nigeria budget to just NGN 1.449 million (Line Item Code 22020606) after a series of reactions by civil society actors and other stakeholders. One would think that, following a ZBB approach, a costing such as this would not have been found in the 2018 budget proposal in the first place, and there are other examples.

Project execution depends 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 is unreliable and unpredictable. This depends primarily on the proportion of the government’s revenue projection that is realised and the proportion of the budget deficit the government is able to finance through borrowing. Moreover, the budget-making and execution process is a political exercise. Some projects are given preference over others despite there being no empirical evidence that they should be a national priority. Essentially, project funding is not reliable, as revenue forecasts are usually optimistic.

Information sources

Federal Government of Nigeria Annual Budgets (2017; 2018; 2019)

<https://punchng.com/breaking-lawmakers-fault-buharis-496m-tucano-aircraft-purchase-without-due-process/>

Federal Government of Nigeria Budget Proposal (2018) available at <http://budgetoffice.gov.ng/index.php/2018-budget>

The Transformation Agenda (2011–2015): available at www.nationalplanning.gov.ng/images/docs/Transformation.pdf

Federal Ministry of Budget and Planning (2017) ERGP

Quarterly BIRs (2017; 2018) available at <http://budgetoffice.gov.ng/index.php/resources/internal-resources/reports/quarterly-budget-implementation-report>

9.3.3 Is public procurement predictable and subject to a process of open and competitive tendering?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

The Public Procurement Act (2007) Section 24 (1–3) provides for all procurement 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 should be the one with the lowest evaluated responsive bid that has been responsive to the bid regarding work specification and standard.

By law, all procurements are to be made subject to open and competitive bidding, except in some cases such as in key defence or national security contracts, which are done with some degree of restriction. 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 BPP sets the procurement approval thresholds for MDA, stating what contract sums or goods supplies can be approved by what authority in the MDA.

There is about 50% divergence of procurement of major projects from plans. A procurement plan is an acquisition plan of what an MDA has identified to acquire in the needs assessment. MDA 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 MDA 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 NGN 30,500,000 at the official CBN exchange rate of NGN 305 to US\$ 1. Section 18 of the Public Procurement Act requires BPP to publish procurements that pass through it; these must have passed through FEC. It also mandates other levels of approving authorities in the MDA to publish approved projects on their website. The BPP publishes all awarded contracts within the sum of US\$ 100,000 equivalent and above in its biannual Public Procurement Journal. This was usually published on a quarterly basis in the past but has most recently been published biannually.

It should be noted, however, that FEC still approves contracts despite the stipulation of the Public Procurement Act (2007) that a National Council on Public Procurement should be set up to do this. This council is yet to be set up.

Information sources

Public Procurement Act (2007)

BPP, 'Approved Revised Thresholds for Service Wide Application and Special Thresholds for Procurement in Oil Sector'

BPP (2016) *Public Procurement Journal* (July–December)

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

There have been some changes since the last benchmarking exercise. The Federal Government of Nigeria employs the International Public Sector Accounting Standards and the Integrated Personnel and Payroll Management System for capturing workers on the payroll, which process is yet to be completed. It also uses GIFMIS, but not all MDA are connected to the platform; the GOEs are good example of this. GIFMIS is 'an IT based system for budget management and accounting that is being implemented by the Federal Government of Nigeria to improve Public Expenditure Management processes, enhance greater accountability and transparency across MDA. GIFMIS is designed to make use of modern ICT to help the Government of Nigeria to plan and use its financial resources more efficiently and effectively.'⁵⁰

According to the GIFMIS website, the number of MDA connected to GIFMIS rose from 93 in 2012 to 209 in 2013.⁵¹ There has been no update on this as yet, although a GIFMIS 'Frequently Asked Questions' document, published in September 2017, stated that the target number of MDA to be on full GIFMIS was 821. 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 Section 30 (1) and (2), mandates that the Minister of Finance through the Budget Office of the Federation should monitor and evaluate the implementation of the annual budget and 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 should be published in the mass and electronic media as well as on the Ministry of Finance website not later than 30 days after the end of each quarter.

Although BIRs are produced by the minister, the ministry has mostly failed to meet the prescribed 30-day threshold as stipulated by the act. For example, the 2018 BIRs had still not published more than 30 days after the end of the quarter; the fourth quarter BIR had yet to be published by the

⁵⁰ Definition according to the GIFMIS website.

⁵¹ The 2016 Annual Report and Audited Consolidated Financial Statements stated that this number has significantly increased to 766 with the last phase of connections. However, GOEs, especially the top 10, are yet to come onto the GIFMIS platform.

end of August 2019. The reports are usually written in language that is easy to understand, 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. It should be noted, however, that as of the end of 2016, 65 agencies had not submitted their audited accounts since inception;⁵² this number became 11 agencies by the end of 2017.⁵³

Information sources

<http://gifmis.gov.ng/gifmis/index.php/12-faq/23-what-is-gifmis>

<http://gifmis.gov.ng/gifmis/index.php/about-gifmis>

<http://gifmis.gov.ng/gifmis/index.php/implementation-update>

[2016](#) Annual Report and Audited Consolidated Financial Statement

FRA (2007)

BIRs (2017; 2018)

Audit Reports (2016; 2017): available at <https://oaugf.ng/download-report#sort=name&sortdir=desc>

9.4.2 Are budget and off-budget recurrent spending subject to independent audit and oversight?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No observable changes

There has been no significant change since the last benchmarking exercise. 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 most recent effort by the 8th National Assembly to enact a Federal Audit Reform Bill in 2018 was met neither with presidential assent nor presidential refusal. The Auditor General of the Federation and of 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,

⁵² Federal Government of Nigeria (2016) Audit Report.

⁵³ Federal Government of Nigeria (2017) Audit Report.

commissions, agencies, and authorities are exempt. 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, provides comments, and makes a report on their accounts.

The Auditor General works according to good and fit standards but has no powers to enforce the recommendations or to compel timely responses to audit queries.⁵⁴ Thus, there is a yearly repetition of financial and process offences recorded by Audit Reports without a proper recourse mechanism. This is the basis for the Audit Reform Bill, which is yet to become law.

The audit process addresses the reliability of financial statements, regularity of transactions, functioning of internal control, and the procurement systems. The BPP 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 statements of the executive. The Auditor General's Office, although independent, does not have financial independence as their operation is subject to budgetary releases instead of as a statutory transfer. This is one of the issues addressed in the proposed 2018 Audit Reform Bill.

Reports on the 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 Federal Government of Nigeria's 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 months to do the audit and transmit it to the National Assembly at about the ninth month after the end of the financial year. The 2017 Audit Report is an example: it was published on the Auditor General's website on 04 December 2019, 21 months after the end of the financial year.⁵⁵

Findings/recommendations from the Consolidated Audit of the Federal Government of Nigeria financial statements are contained in the Audit Report transmitted to the National Assembly for oversight; however, these findings are mostly not used to improve the designing of projects, programmes and policies, resource allocations, or operational bottlenecks. Again, there are repeated violations on the same issues by MDA 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

⁵⁴ Despite the presidential directive to public officials in 2015 requiring them to respond to audit queries within 48 hours, audit queries are still being neglected. The 2016 Audit Report revealed that the number of MDA yet to submit their audited accounts at the time of the report's preparation had actually increased from 215 in 2015 to 323 in 2016. The 2017 Audit Report puts this number at 265 agencies.

⁵⁵ It was released late by both international and Nigerian standards—18 months after the end of financial year and nine months after the financial year, respectively.

that audits are undertaken but there have been no indictments following the Auditor General's yearly report.

Many CSOs and non-governmental organisations publish analysis of the budget proposals and follow up on the execution of the approved projects through monitoring. Most non-governmental organisations working in public finance management and related thematic areas such as public procurement usually analyse the budget estimates, publish their findings, and engage the relevant stakeholders on the basis of those findings.

The government's response to the external analysis of the budget is mixed. Most of the time they are defensive; at other times, good recommendations such as sticking to the stipulations of the law on budget document timelines are acknowledged and promises are made to implement them. For example, calls have been made for vehicle procurement line items in the budget to be generic rather than branded, as stipulated in the Public Procurement Act. The budget still contains these specifics, while the BPP maintains that the branding should 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 taken into account by the government, as reflected in the 2018–2020 MTEF and the budget and in the following year.

Legislative committees obtain and review BIRs from MDA, but there is no evidence that they analyse the actual spending of the budget or make recommendations for subsequent budgets. Moreover, although legislative institutions such as NILDS and the National Assembly Budget and Research Office analyse the actual spending and give feedback to the legislature, there has been no evidence to suggest that the results of their analysis is incorporated into subsequent budgets.

CSOs do participate in the budget process by engaging with policymakers at the various stages of the budget cycle. CSOs participate in the legislative public hearing and actively monitor spending. They usually work according to their field of speciality and engage stakeholders regarding potential reforms. For example, the CSJ engages in the budget process alongside other CSOs from the formulation and MTEF stage down to the monitoring and evaluation stage.

Information sources

Federal Republic of Nigeria (1999) Constitution

CSJ (2008) Clause-by-Clause Analysis of the Audit Reform Bill: available at csj-ng.org/?ddownload=241

Federal Government of Nigeria (2015; 2016; 2017) Audit Reports

www.premiumtimesng.com/news/headlines/187670-audit-queries-must-be-answered-in-24-hours-buhari-tells-public-officials.html

CSJ (2017) Review of the 2017–2019 MTEF: available at www.csj-ng.org/?ddownload=2691

Public Procurement Act (2007) - Budget Call Circular (2019) - MTEF (2018–2020)

9.4.3 Are public investment projects fully accounted for and reported on?

Old response: No**New response: Yes/No****UPDATE STATUS: Additional information included**

Not much has changed in this regard since the last benchmarking exercise. The 2016 Audit Report stated that 65 agencies have never submitted their audited accounts since inception⁵⁶ and other MDA were also reported to neglect audit queries.⁵⁷ On contingent liabilities, the recent court judgement that awarded Petroleum and Industrial Development a US\$ 9 billion compensation for a failed gas contract with the Nigerian government raises questions regarding whether the renegotiated US\$ 600 million compensation in 2015 should have been captured in the government's financial statements.

Regarding the existence of specific reports for projects and programmes, the Project and Performance Audit Department in the Office of the Auditor General for the Federation do general project audits 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, a component of the Federal Government of Nigeria's SIP to tackle poverty and improve the education of children. SIP received a NGN 500 billion allocation in both the 2018 and 2019 approved budgets.

The funds for most externally funded projects are not domiciled in the CBN but are accounted for and reported on in the government reports. It should be noted, however, that donor funding organisations do require detailed reports and the Federal Government is yet to start including externally funded projects in the budget, although their expenditure is captured in the relevant MDA expenditure.

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. The GAVI Alliance 2018 Financial Report, for example, contains 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 not covered by the budget are termed 'Extra-Budgetary Expenditure'. An example of this is in the 2016 Auditor General's report.

⁵⁶ The 2017 Audit Report gave the number as 11.

⁵⁷ The number of defaulting agencies was reported to be 160 in 2016 and 265 in 2017.

Information sources

Federal Government of Nigeria (2016; 2017) Audit Reports: available at <https://oaugf.ng/download-report#sort=name&sortdir=desc>

GAVI (2018) Annual Financial Report: available at www.gavi.org/library/gavi-documents/finance/financial-reports/2018/gavi-alliance-annual-financial-report--2018/

9.4.4 Are there independent audits and evaluations of public investment projects?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

There has been no change since the last benchmarking exercise. Most of the domestically funded projects are monitored and audited. Every budget goes through project and performance audit. Information is scrutinised by NBS 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 for the Federation six to nine months after execution. The Auditor General produces the Federal Government of Nigeria Annual Audit Report, but this report has mostly not been timely.⁵⁸ For instance, the Audit Report of 2016 was published in June 2018, while that of 2017 was published on 04 December 2019, 21 months after the end of the fiscal year.

Information source

Auditor General's Annual Report on the Accounts of the Federation of Nigeria (2016) available at <https://oaugf.ng/download-report#sort=name&sortdir=desc>

⁵⁸ International best practice stipulates that audited accounts should be published within 18 months of the end of a fiscal year. Section 85(5) of the 1999 Constitution mandates that the Auditor General should audit within three months of receiving the financial accounts of the Federation from the Accountant General and submit his report to the Public Accounts Committee of the National Assembly. Section 49(2) of the FRA stipulates that audited accounts should be published within seven months of the end of the financial year. By either international or Nigerian standards, the publication of the 2017 Audit Report was not timely.

PRECEPT 10: PRIVATE SECTOR DEVELOPMENT



The government should facilitate private sector investments to diversify the economy and to engage in the extractive sector.

| | |
|---|--|
| Overall precept score | |
| <p>Precept 10: Investing for sustainable development.</p> <p>There have been no overall changes in the outcome of government’s efforts to improve the performance of the private sector in the country between 2017 and 2019. Nigeria recorded improvement in the Doing Business ranking, but reforms are yet to include all stakeholders in the informal sector, while infrastructural deficits remain the largest bottlenecks to doing business in the country. The government has taken notable steps to improve access to healthcare, although investment in human capital is yet to translate to tangible outcomes in human capital indices. Despite affirmative action, the share of women occupying decision making positions has reduced in the last few years. Nonetheless, steps towards ensuring that women are able to participate in the economy are being implemented. The country also recorded notable developments in Nigerian content participation in the oil and gas industry.</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 do they 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

- While government has platforms with which it engages with the private sector, industrial policies are yet to reflect participation of all stakeholders in the decision making process.
- Constraints to doing business in the country still exists. Gaps in the development of physical infrastructure remains the largest impediment to businesses in the country. Although plans are in place to address the deficit in the country's power supply, expansion of power infrastructure also threaten to further deepen the country's debt profile.
- Amid regulatory gaps, Nigeria recorded only marginal improvements in the area of construction as reported in the 2019 doing business rankings published by the World Bank. Stakeholders advocate for coordinated regulation of the sector under a single regulatory board, to synergise regulatory practices and speed up development processes especially in infrastructure across the country.
- Additional investment in human capital, education, and health was observed during the review period.
- The Federal Government, however, appears to be moving away, rather than towards, gender parity in political appointments, as there were fewer women occupying decisions making positions.

Local content

- Recently released information suggests that local content participation has increased. According to the NCDMB, the country recorded over 60% domestication and domiciliation of work and services in Egina Floating Production Storage and Offloading (FPSO) vessel, built by TOTAL and which commenced operation in 2018. Of the 20,000 marine vessels that operate in the country's waters, 36% are owned by Nigerians, up from 3% before the Nigeria Content Act (2010) and with indigenous producers currently account for 15% of crude oil production in the country.
- In the period under review, steps were taken to improve the access of indigenous oil and gas firms to credit. The collateral for accessing loans through the Nigerian Content Intervention Fund was expanded by the NCDMB and the Bank of Industry (BOI), managers of the fund. According to the NCDMB, as at July 2019, US\$ 160 million of the total US\$ 200 million fund had been disbursed to Nigerian companies and was used for modular refineries and capacity building. Of concern however is that the repayment of the loans may be a challenge as beneficiaries that have begun operation are yet to begin repayment.

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

The Nigerian government periodically engages with the private sector and other stakeholders in the process of formulating industrial policies in the country. PEDEC meets with the private sector and representatives of federal and state governments 'to remove critical bottlenecks and constraints to doing business in the country and make Nigeria a progressively easier place to do business and thrive.' The main objective of the Industrial Policy and Competitiveness Advisory Council is also 'to assist the government in formulating policies and strategies that would enhance the performance of the industrial sector'. However, there are mixed indications of the efficacy of these engagements.

For instance, a research report prepared in 2016 by the Lagos Chamber of Commerce and Industry and the Financial Derivatives Company and presented to the Federal Government recommended that, to reduce inefficiencies at Nigerian ports, a single window should be allowed for processing paper works while the number of agencies required for clearing export cargo should be reduced from 20 to six. As at April 2019, the Lagos Chamber of Commerce and Industry had not recorded success in seeking the intervention of the Federal Government due to the delays caused by overlapping duties of security agents at the Lagos ports.

In a bid to protect local industries, the Federal Government combines the restriction of importation of some items with the imposition of tariffs on others. However, benefits that may have been accrued in the select industries were also eroded by the dumping of the restricted items in the country through smuggling, according to CBN in December 2018. Despite the indication that the government lacks adequate capacity to implement the 'restriction' policies, in August 2019, the Federal Government further announced restricted access to foreign exchange to discourage food import through the special import and export window. Concerns have been expressed in the private sector that the policy lacks clarity on the range of food items covered and that it has a tendency to further increase smuggling of food products. It is also the opinion of manufacturers that the special import and export window excludes millions of actors in the small- and medium-sized enterprises sector.

Information sources

<https://easeofdoingbusinessnigeria.com/about-us/the-mandate>

<https://nipc.gov.ng/2017/03/17/nigeria-sets-industrial-policy-competitiveness-advisory-council/>

Nigeria: Reforming the Maritime Ports: available at www.cipe.org/wp-content/uploads/2018/11/ABC_LCCI-Port-Efficiency-Research-Report-2016-1.pdf

www.vanguardngr.com/2019/04/lcci-seeks-urgent-intervention-of-fg-over-customs-disruption-for-importersbusiness/

<https://guardian.ng/business-services/stakeholders-seek-clarification-of-forex-ban-for-food-import/>

www.export.gov/article?id=Nigeria-Trade-Barriers

Foreign Exchange Restriction on the Importation of 42 Items: available at www.cbn.gov.ng/out/2018/fprd/foreign%20exchange%20restrictions%20on%20the%20importation%20of%2042%20items.pdf

<https://punchng.com/make-forex-policy-production-focused-manufacturers-urge-govt/>

10.1.2 Does the government identify and address gaps between the country's existing physical infrastructure and the needs of the private sector?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

Over the years, a pattern has formed regarding the inadequate supply of infrastructure, remaining the major impediment to doing business in Nigeria. Despite the implementation of the infrastructural strategy as contained in the ERGP (2017–2020), the country has continued to suffer infrastructural deficit. The 2017–2018 Global Competitiveness Index showed that the country witnessed a 0.1 drop in score from the previous ranking. The country also dropped seven ranks regarding technological readiness. In the same vein and over the past decade, according to the 2018 Ibrahim Index of African Governance (IIAG), Nigeria has shown a positive trend in infrastructural development but warning signs remain regarding sustainable economic opportunities including public management, business environment, infrastructure, and the rural sector. Specifically, in terms of infrastructural development, the country ranks 31 of 54 countries in Africa, with a score of 39.7/100.

Table 10.1: The Global Competitiveness Reports (2015–2016; 2016–2017; 2017–2018)

| Year | 2015–2016 | | 2016–2017 | | 2017–2018 | |
|---|------------|----------|------------|----------|------------|----------|
| Global Competitiveness Index Rank | 124/140 | | 127/138 | | 125/137 | |
| Global Competitiveness Index pillars under consideration | Score(1–7) | Rank/140 | Score(1–7) | Rank/138 | Score(1–7) | Rank/137 |
| Infrastructure | 2.10 | 133 | 2.1 | 132 | 2 | 132 |
| Macroeconomic environment | 4.6 | 81 | 4.0 | 108 | 3.5 | 122 |
| Health and primary education | 2.9 | 140 | 2.8 | 138 | 3.0 | 136 |
| Higher education and training | 2.8 | 128 | 2.9 | 125 | 3.1 | 116 |
| Labour market efficiency | 4.5 | 35 | 4.5 | 37 | 4.6 | 32 |
| Financial market development | 3.8 | 79 | 3.7 | 89 | 3.7 | 91 |
| Technological readiness | 3.0 | 104 | 3.1 | 105 | 3.0 | 112 |

Source: Global Competitiveness Report (2017–2018)

In its effort to bridge the infrastructure gap, the Federal Government through the National Integrated Infrastructure Master Plan seeks to provide ‘an integrated view of infrastructure development in Nigeria, with clear linkages across the key sectors’, including transportation, ICT, energy, and the housing subsector. The delivery strategy as contained in the ERGP across sectors includes:

- increasing power generation by optimising operational capacity, encouraging small-scale projects, and pursuing long-term capacity;
- improving the commercial viability of GenCos and DisCos; and
- investing massively in transport infrastructure, leveraging private sector investments.

Implementing these strategies requires an investment of US\$ 3 trillion over three decades, with the Federal Government planning to borrow US\$ 30 billion to contribute its financial quota to build the Mambilla hydropower plant, the Lagos-Kano Railway, and the Abuja Mass Transit Rail line. Construction work on the 3,050-megawatt US\$ 5.8 billion power plant (the construction contract for which was approved by FEC in August 2017) was set to begin in early 2019 and will take six years to complete.

To enable the delivery of physical infrastructure in the country, the Federal Government in 2008 established the Infrastructure Concession Regulatory Commission to regulate public–private

partnerships. The public–private partnership projects under pre-contract regulations as at May 2019 cut across sectors and subsectors: agriculture, energy, health, industry, trade and investment, urban development, ports, aviation, roads and bridges, security, culture, sports, education, and ICT.⁵⁹

As at September 2019, the Ministry of Transport announced that the construction of the Ibadan-Kano railway project had been approved by the Federal Government with a sum of US\$ 5.3 billion, while application for funds to commence the Port Harcourt–Warri coastal rail project was underway as well. In addition, projects under construction such as the Lagos–Ibadan railway line, the Lagos–Ibadan expressway, and the Marina section of the Lagos rail mass transit system (Lagos State project) recorded progress during the review period; however, expansion works on the Lagos–Badagry expressway and the Lagos–Badagry rail infrastructure (state projects aimed at improving the country’s infrastructural network with Economic Community of West African Countries (ECOWAS) countries to promote trade and commerce) experienced remarkable setbacks due to administrative dereliction. As at June 2019, it was reported that additional costs may be incurred by the new leadership of the Lagos State government in the process of restoring and completing the projects.

Information sources

The Global Competitiveness Report (2017–2018), pp. 224–225: available at www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf

IIAG (2018), p. 109: available at http://s.mo.ibrahim.foundation/u/2018/11/27173840/2018-Index-Report.pdf?_ga=2.91277018.1989544098.1548941645-1329949972.1548941645

Federal Ministry of Budget and Planning (2017) ERGP (2017–2020)

<https://punchng.com/fg-awards-5-8bn-mambilla-power-plant-contract/>

www.bbc.com/pidgin/tori-45431363

www.vanguardngr.com/2018/09/work-on-3050-megawatts-mambilla-power-plant-starts-early-2019-presidency/

<https://businessday.ng/news/article/lagos-badagry-rail-project-revamp-to-cost-more/>

<https://constructionreviewonline.com/2019/09/nigeria-approves-construction-of-us-5-3bn-ibadan-kano-rail-project/>

⁵⁹ www.icrc.gov.ng/projects/projects-under-conceptualization-development-and-procurement/.

10.1.3 Does the government identify and address bottlenecks in the construction sector supply?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional Information included

Year on year, between the first quarter of 2018 and the first quarter of 2019, the share of the construction sector in real GDP remained steady at 4%. NBS reports that the construction sector (alongside ICT, agriculture, transportation, and storage and trade) were responsible for the marginal growth witnessed in the non-oil sector. Despite the US\$ 2.2 billion government expenditure on construction in 2018, the sector performed poorly. Industry stakeholders suggest that the poor performance was partly due to the late disbursement of funds to contractors handling projects, in addition to opaque contracting, award, and implementation procedures.

Given the array of infrastructural projects being planned and undertaken across sectors under the National Integrated Infrastructure Master Plan, international construction companies who are searching out new markets to invest in have become interested in the country. Construction products that could be supplied include concrete and plant machinery and vehicles; building materials and tools; heating, ventilation, air conditioning, and refrigeration; building services; and building interiors, many of which can only be imported. It remains to be seen how the Local Content Act, proposed to be extended to the construction sector, will be implemented. The Nigerian construction industry is deemed to be non-competitive due to the relatively high cost of construction.

There are gaps to be closed respecting the regulation of the construction industry. The 2019 Doing Business ranking of the World Bank shows a marginal improvement of 0.03 percentage point within the period of one year in ‘dealing with construction permits’. The component includes indices such as the total number of procedures and days and the cost required to build a warehouse and the building quality control index, which includes the quality of building regulations; quality control before, during, and after construction; liability and insurance regimes; and professional certifications indices. Of all the 36 states in the country, only Lagos and Kano were included in the ranking. According to the report, both states increased transparency by publishing all relevant regulations, fee schedules, and pre-application requirements online.



Figure 10.1: Doing Business 2019—dealing with construction permits score

Source: Doing Business, World Bank

Stakeholders in the industry have proposed the establishment of the Nigerian Construction Industry Development Board with the responsibility of ‘formulating, implementing, regulating policies and initiatives that will speed up development processes especially in infrastructure across the country.’ The board is expected to be made up by one representative from each of the regulatory bodies in the industry and from each of the professional bodies; from the Federal Mortgage Bank of Nigeria; from the federal ministries connected with works, lands, and housing; from each geopolitical zone of the country; from the Green Building Council of Nigeria; from the Nigerian Building and Road Research Institute; from the construction industry local content board; and from the universities offering construction-related programmes.

Information sources

World Bank, Doing Business: available at

www.doingbusiness.org/en/data/exploreeconomies/nigeria#DB_dwcp

International Construction Companies Eye The Nigerian Market As The Big 5 Launches In Lagos:

available at <https://nipc.gov.ng/2019/03/05/international-construction-companies-eye-the-nigerian-market-as-the-big-5-launches-in-lagos/>

NBS (2019) Q1 GDP ORIGINAL: available at <https://nigerianstat.gov.ng/download/937>

<https://businessday.ng/real-estate/article/how-nigerias-construction-sector-slows-despite-claims-of-increased-government-spending/>

www.vanguardngr.com/2018/01/nassembly-stakeholders-extend-local-content-construction-power-sectors/

<https://guardian.ng/property/experts-call-for-construction-industry-development-board/>

10.1.4 Does the government identify and address bottlenecks in the financial system?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Getting credit, a component of the Doing Business ranking, ranks Nigeria highly among other countries, with a score of 85 out of 100 for two consecutive years. The indices of measurement include strength of legal rights, depth of credit information, credit registry coverage, and credit bureau coverage. By design, these indices only cover data on financial transactions in the formal sector. Given the large informal sector in Nigeria, the Doing Business ranking does not provide a true picture of the Nigerian financial system and excludes a large population of Nigerians.

According to PwC’s report on financial services in Nigeria, about 70% of the country’s labour force participate in the informal sector and contributes more than half to the GDP. Workers in the informal sector include those who participate in the semi-informal sector (mostly micro-, small-,

and medium-sized enterprises), organised informal sector (mostly self-employed), and unorganised informal sector (mostly employed by other informal subgroups and the formal sector). The report states that the positive economic impact of the sector has been limited by its lack of access to financial services such as micro-credit, micro-savings, micro-insurance, remittance products, and micro-pensions.

To expand the access of Nigerians to a range of financial services which includes payments, savings, loans, insurance, pension, and capital market products, CBN has adopted the National Financial Inclusion Strategy. The target of the strategy is ‘to decrease the percentage of Nigerians that are excluded to 20% by the year 2020, from 46.3% in 2010.’

Stakeholders involved in the implementation of the strategy include financial providers (banks, insurance companies, and pension fund administrators), enablers (CBN, NAICOM, and the Nigerian Deposit Insurance Corporation), supporting institutions (government MDA), and users of financial services.

| Information sources | | | | | | |
|--|--------|--------|----------|---------|-----------|----|
| CBN | (2018) | Annual | Activity | Report: | available | at |
| www.cbn.gov.ng/Out/2019/FMD/Annual%20Activity%20Report%202018.pdf | | | | | | |
| Doing Business, available at www.doingbusiness.org/en/methodology/getting-credit | | | | | | |
| PwC, Journal of Financial Services in Nigeria: available at www.pwc.com/ng/en/assets/pdf/financial-focus-2018-updated.pdf | | | | | | |

10.1.5 Does the government identify and address weaknesses in the country’s health and education levels?

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

Investment in human capital development, through access to quality education and healthcare services, is essential to wealth creation, closing the inequality gap and setting a country on the path of sustainable growth.⁶⁰ Throughout the past decade, according to IIAG, Nigeria has been witnessing a deterioration of education outcomes even as its population grows. As at 2017, indices such as primary school completion and secondary and tertiary education enrolment have been showing warning signs of deterioration. Likewise, the quality of education and its alignment with market needs have retrogressed over the period. In 2018, the World Bank’s Human Capital

⁶⁰ http://cppresearch.org/nu-en-pl/wp-content/uploads/2019/05/the-full-paper_are-you-being-served.pdf.

Index showed that Nigeria ranked among the lowest 25% of countries in components such as expected years of schooling, learning-adjusted years of school, and harmonised test scores, with ratings lower than both sub-Saharan Africa and the global average.

Regarding healthcare, while the general outlook of health has been positive in the last decade; according to the IIAG, indices such as access to sanitation and the absence of undernourishment and communicable diseases worsened over the period. Notably, there was relative satisfaction with basic health services, public health campaigns, and immunisation within the period. In 2018, the World Bank’s Human Capital Index showed a 90% probability that a child would survive to the age of five; that only 56% of children under five are not stunted; and that there is a 65% chance that a 15-year-old in Nigeria would survive to the age of 60. Generally, within the last two years, Nigeria’s human development has ranked as low as an index of 0.532 as at 2018, above average for countries in the group (at 0.504) but below average among countries in sub-Saharan Africa (at 0.537).

Regarding budgetary allocation to the education and health sectors, the 2019 budget showed a 7.05% and 4.1% share respectively, a marginal increase from the previous year. Recurrent and capital expenditures for the education sector account for about 89% and 11% respectively. Likewise, for the health sector, recurrent expenditure accounts for 85%, while only 15% is allocated to capital expenditure. Stakeholders in both sectors have over the years worried about the lack of government’s will to increase budgetary allocations to both critical sectors.

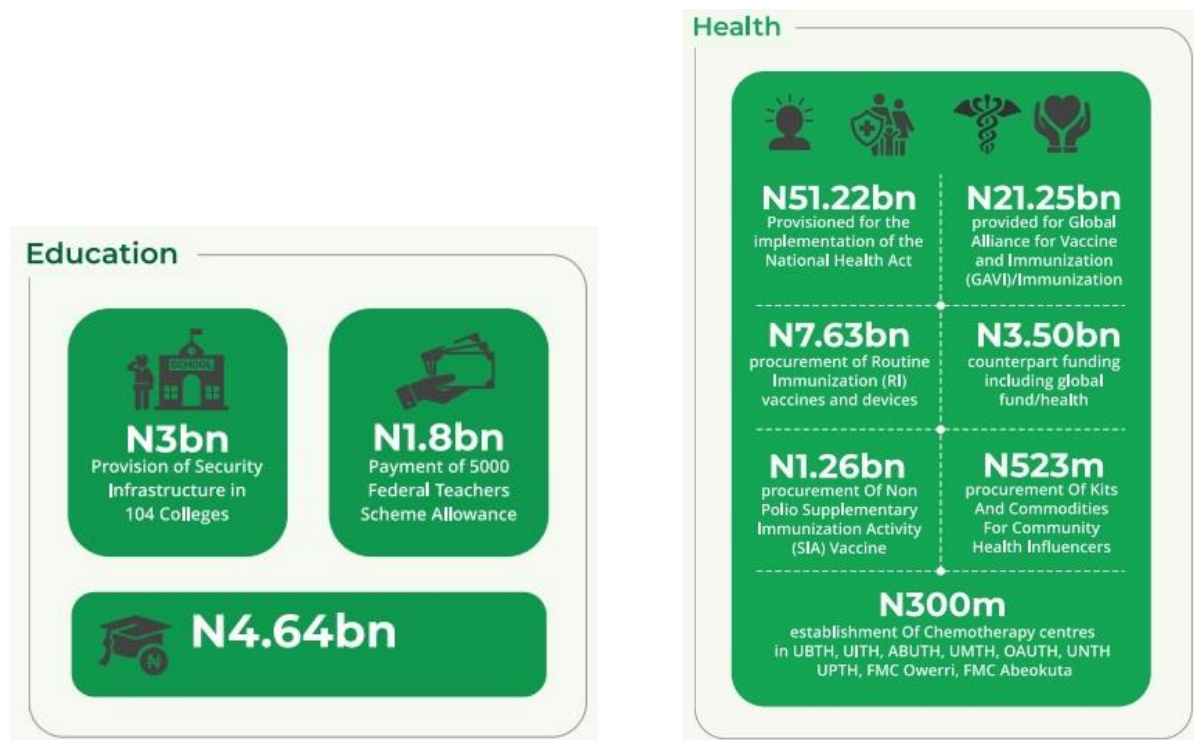


Figure 10.2: Some projects in the 2019 budget for the education and health sectors

Source: Federal Ministry of Budget and National Planning

To address this intractable problem, the Federal Government has set clear objectives on improving human capital development although performance so far falls short of anticipated targets. One of the broad objectives of the ERGP is to invest in people through investment in social inclusion, job training programmes, and human capital. The ERGP seeks to guarantee access to basic education for all and improve the quality of secondary and tertiary education. Also, the Universal Basic Education programme, established through the Universal Basic Education Act of 2004, seeks to provide greater access to and ensure the quality of basic education across the country. Through an action plan, proposed intervention projects or activities to be implemented by states in public primary and secondary schools are jointly and equally funded by each state of the Federation. For a state to qualify for the matching grant therefore, it must provide a 50% counterpart fund. However, several states are unable to access the funds. In 2018, 19 out of 37 states, including the Federal Capital Territory (FCT), were unable to access their matching grants, totalling over NGN 18 billion. Such funds could have been used to upgrade much-needed education infrastructures in the affected states.⁶¹ Insecure and dilapidated infrastructures, including sanitary facilities, in non-conducive environments for learning purposes are the bane of desirable education outcomes across the country. While some measure are being taken at the federal level, success is hampered by limitations at state and local government levels. Discussions on funding for universal basic education from the Federal Government includes a possible review of the existing 2% of the Consolidated Revenue Fund to 3%.

The Federal Government also plans to improve the accessibility, affordability and quality of healthcare through NHIS. NHIS, established under Act 35 of 1999, seeks to provide ‘easy access to adequate and affordable healthcare to improve the health of Nigerians, especially for those participating in the various programmes/products of the scheme.’ In 2018, the National Basic Healthcare Provision Fund (BHCPF) (backed by the National Health Act of 2014) was appropriated by the National Assembly for the first time as part of the 2019 budget and is also included in the 2020 appropriation bill. The provision is equivalent to 1% of the Consolidated Revenue Fund, equal to NGN 55.1 billion, in addition to contributions from donor organisations. The latter includes US\$ 1.5 million (out of US\$ 2 million) from the Bill and Melinda Gates Foundation and a commitment of US\$ 20 million from the Global Financing Facility, and £50 million from the UK Department for International Development (DFID) over a period of five years. The fund is expected to revive thousands of abandoned primary healthcare centres across the country. States are expected to co-fund the BHCPF by providing an initial contribution of NGN 100 million as an expression of interest, establish a primary healthcare development board and establish a state health insurance scheme. As at November 2019, 30 states had reportedly complied with the requirements and had begun to benefit from the fund. Furthermore, it is reported that a disbursement of NGN 6.5 billion from the BHCPF has been made to Social Health Insurance Agencies of some states through NHIS, one of three disbursement gateways of the fund. The

⁶¹ https://ubec-static.s3.amazonaws.com/media/grant/UPDATE_OF_MATCHING_GRANT_TO_STATES_AS_AT_22ND_JULY_2019_-_UNACCESSED.pdf.

other two gateways are the National Primary Healthcare Development Agency and the Federal Ministry of Health.

In 2018, the Senate enacted the National Health Insurance Commission Bill 2018 (SB 278) and repealed NHIS. The intent of the newly enacted bill, according to the Senate, 'is to address the gaps and lacuna in the existing National Health Insurance Act such as making health insurance mandatory as against its being optional; subsidising premium payment for those who cannot afford it; and guaranteeing Nigerians an explicit basic package of health, especially making the provisions of the National Health Act, 2014 reflect in the implementation of the National Health Insurance Scheme.' In September of the same year, FEC approved the National Strategic Health Development Plan (2018–2022), the health sector's plan for achieving universal health coverage in Nigeria. Finally, ongoing discussions by federal lawmakers' examines a potential catastrophic health fund to help address catastrophic health expenditure⁶² in Nigeria.

Information sources

IIAG (2018), p. 109: available at http://s.mo.ibrahim.foundation/u/2018/11/27173840/2018-Index-Report.pdf?_ga=2.91277018.1989544098.1548941645-1329949972.1548941645

Citizen's Guide to Understanding Federal Government of Nigeria's 2019 Budget of Continuity, Ministry of Budget and National Planning: available at www.budgetoffice.gov.ng/index.php/2019-fgn-approved-budget-citizen-s-guide/2019-fgn-approved-budget-citizen-s-guide/download

Federal Ministry of Budget and National Planning (2017) ERGP (2017–2020), p. 12: available at www.budgetoffice.gov.ng/index.php/economic-recovery-growth-plan-2017-2020/economic-recovery-growth-plan-2017-2020/download

Universal Basic Education Commission: available at www.ubec.gov.ng/grant/unaccessed/
<https://punchng.com/public-secondary-schools-turned-into-hideouts-by-hoodlums-as-facilities-rot/>
www.premiumtimesng.com/health/health/health-news/304833-buhari-rolls-out-basic-health-care-provision-fund.html

www.pulse.ng/news/local/fg-disburses-1st-phase-basic-healthcare-provision-funds-to-states/z3l7pn8

Report of the Senate Committee on Health on the National Health Insurance Commission Bill (2018) PLAC

Senate passes National Health Insurance Bill (2019) available at <https://punchng.com/breaking-senate-passes-national-health-insurance-bill-2019>

Daily Post: Senate speaks on scraping basic healthcare fund: available at <https://guardian.ng/news/no-plan-to-stop-basic-healthcare-fund-senate/>

Excerpts of engagement with Dr Rifkatu Nghargbu, NILDS, Abuja

⁶² Catastrophic health expenditure refers to any expenditure for medical treatment that could pose a threat towards the financial ability to maintain its subsistence needs. In simple terms, catastrophic health expenditure could be described as a large out-of-pocket payment for healthcare that could make a household become poor.

10.1.6 Does the government identify and address weaknesses in how women are able to fully contribute to the economy?

Old response: No

New response: Yes/No

UPDATE STATUS: Additional information included

Following the establishment of the National Gender Policy in 2006, a strategic results framework was designed to realign national resources, strengthen national institutions for gender mainstreaming, and support coordination mechanisms for the empowerment of women. The framework with a tenor of five years (2008–2013) was expected to focus on:

- establishing an institutional framework for the advancement of the status of women, as well as the achievement of gender equality;
- advocating the promotion of new attitudes, values, and behaviour and a culture of respect for all human beings; and
- strengthening the voice and leadership of women for continuous organising, advocacy, and ensuring that gender equality issues remain high on the national agenda.

However, there is no indication that a new strategic framework which should have lasted between 2014 and 2019 was designed, placing doubt on the implementation of the National Gender Policy.

The Nigerian 2006 Population Census estimated the male-to-female ratio at 51:49. The 2016 statistical report on women and men in Nigeria, as contained in the 2017 BER, also showed that the labour force participation rate of women and men was approximately 83% and 78% respectively, but there are generally more men who work across federal MDA across all cadres (Figure 10.3). At the state civil service (2014–2016), the share of employment tends to reduce for women as they proceed to higher cadres.

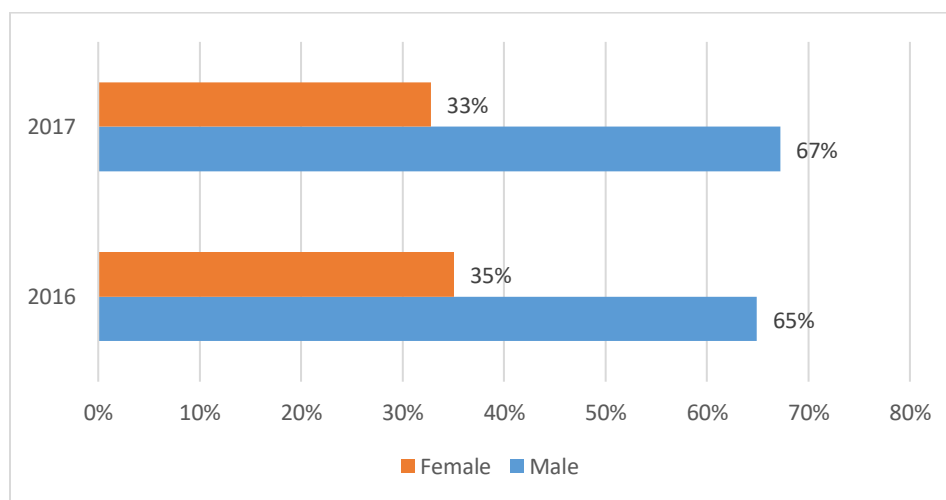


Figure 10.3: Share of employment at the federal MDA, by gender

Source: NBS (2018)

In Nigeria, the National Gender Policy (2006) also seeks to promote women’s rights and participation by ensuring that 35% of political offices are occupied by women. Despite these commitments, the share of women in governance is still low (Figure 10.4). In July 2019, the incumbent government was accused of ‘bias against women’, as only seven women out of 23 were among the first batch of ministerial nominees sent to the National Assembly for screening. Despite the criticism, by August 2019, only seven women out of a total of 44 new ministers took office, representing a meagre 16% of the total. Similarly, the Gender and Equal Opportunities Bill was voted down for the second time in 2018 at the National Assembly over disagreements with provisions in the bill to outlaw child marriage and protect inheritance by widows (among others). A fall-out which critics believe is a consequence of the poor representation of women in political offices. Goal 5.5 of the Sustainable Development Goals seeks to ‘ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life.’

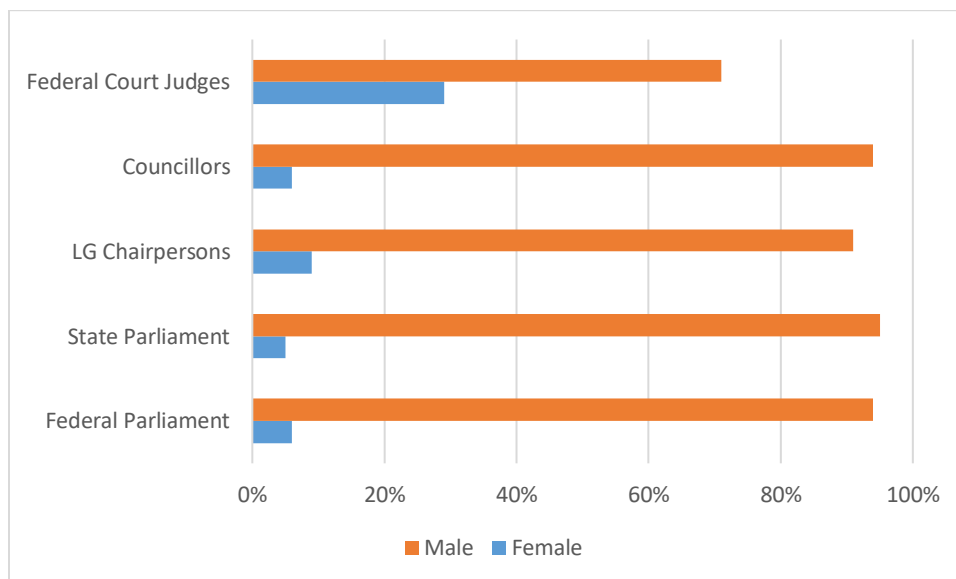


Figure 10.4: Representation at selected levels of governance, by gender (1999–2015)

Source: NBS (2018)

The ERGP (2016) prioritises women and girls in different sectors of the economy. For instance, in the manufacturing sector, it seeks to provide micro-loans for women through the Government Enterprise and Empowerment Programme and Women Empowerment Fund. It also seeks to ‘construct special schools for girls in 13 pilot states.’ In addition, it recognises mothers as champions in the implementation of social safety net programmes targeted at the vulnerable.

There have been increased calls for an increase in women’s involvement in decision making. In 2018, a group, the Women in Extractives made an appeal to the government for the inclusion of 35% affirmative action in all four components of PIGB. Specifically, the group asked that women should be appointed into top positions in bureaucracies that would emerge from the implementation of PIGB. In addition, the group argued that since women were most affected by

environmental issues in host communities, they should be appointed as members of trust committees.

Notwithstanding the aforementioned challenges, during the review period, efforts were being made by the government to promote increased participation of women in the economy. In October 2019, the NCDMB committed to review its strategy of administering the Nigerian Content Intervention Fund to support businesses owned by women. Deliberate action by the board reportedly ensured that two companies owned by women would be beneficiaries of the fund. The board also sought to increase the number of women who are trained to meet up with the demand for skilled labour in the oil and gas industry from the current share of about 20%. This is in addition to the board's support of the study of science, technology, engineering, and mathematics by young girls in secondary schools.

Furthermore, on behalf of the Federal Ministry of Women Affairs and Social Development, BOI has an NGN 90 million Business Development Fund for Women meant to provide soft loans to women entrepreneurs. At the state level, the Kaduna State government seeks to promote women entrepreneurship across the state. It intends to raise the allocation to the Kaduna State Women Empowerment Fund from NGN 400 million in 2019, its take-off year, to NGN 800 million by 2020 and NGN 1 billion in 2021.

Not being oblivious to the fact that the journey ahead for women empowerment in Nigeria towers in comparison to the efforts under observation, it is worth mentioning that more needs to and should be done. As more efforts are anticipated, future benchmarking exercises will offer an opportunity to assess the extent of impact of these interventions on improving women's participation in the Nigerian economy.

Information sources

Federal Ministry of Budget and National Planning (2017) ERGP (2017–2020), pp. 60, 90

Federal Republic of Nigeria, National Gender Policy Strategic Framework (Implementation Plan) (2008–2013)

NBS (2018) Statistical Report on Women and Men in Nigeria

www.un.org/sustainabledevelopment/gender-equality/

www.aitonline.tv/post-women_in_extractive_industry_call_for_35_affirmation_action

www.thisdaylive.com/index.php/2018/05/30/group-wants-35-involvement-of-women-in-implementation-of-pigb-others/

<https://ncdmb.gov.ng/2019/10/ncdmb-to-roll-out-gender-friendly-policies-for-oil-industry/>

www.thecable.ng/kaduna-women-are-coming

www.newsdeeply.com/womensadvancement/articles/2018/08/08/nigerias-looming-election-puts-gender-equality-bill-in-peril

10.1.7 Does the government identify and address weaknesses in business regulations?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

Within the review period, records show a slight improvement in the overall ease of doing business in Nigeria (Table 2). However, there is a lot to cover to reach the best possible mark for each performance indicator over time. During the period, it became more difficult to register property and resolve insolvency, while no changes occurred in the ease of getting credit and protection of minority investors. As mentioned in Section 10.1.3, both Lagos and Kano States made starting a business easier by reducing the time needed to register a company at CAC and introducing an online platform to pay stamp duties.

Table 2: World Bank Doing Business Reports (2018 and 2019)

| Item | 2018 score | 2019 score | Status |
|---|------------|------------|--------|
| Rank | 145/190 | 146/190 | |
| Overall distance to frontier (0–100) | 52.03 | 52.89 | ↑ |
| Ease of starting a business | 80.75 | 82.97 | ↑ |
| Ease of dealing with construction contracts | 57.81 | 57.84 | ↑ |
| Ease of getting electricity | 34.68 | 42.63 | ↑ |
| Ease of registering property | 29.07 | 28.89 | ↓ |
| Ease of getting credit | 85.00 | 85.00 | = |
| Ease of protecting minority investors | 66.67 | 66.67 | = |
| Ease of paying taxes | 53.03 | 53.53 | ↑ |
| Ease of trading across borders | 19.93 | 23.08 | ↑ |
| Ease of enforcing contracts | 57.61 | 57.90 | ↑ |

| | | | |
|-------------------------------------|-------|-------|---|
| Ease of resolving insolvency | 30.60 | 30.42 |  |
|-------------------------------------|-------|-------|---|

Source: World Bank (2018; 2019) Doing Business Reports

Through the government’s efforts in Lagos and Kano States, the largest improvement regarded the ease of getting electricity, as customers gained access to electricity once the pre-paid meter was installed. The reforms undertaken by PEDEC in Lagos made it easier to enforce contracts as government issued ‘new rules of civil procedure for small claims courts which limit adjournments to unforeseen and exceptional circumstances.’ As mentioned earlier, the nature of these improvements, which have to do with ‘registrations’ and ‘online’ activities, exclude the informal sector—the biggest portion of the Nigerian economy. According to the Ibrahim Index on Business Environment, the level of market-based competition and the quality of the competitive bidding process have been increasingly deteriorating for the past decade in Nigeria. ‘Satisfaction with employment creation’ has a low score of 30.1/100 and has only improved marginally within the period under review.

According to EY’s analysis, Nigeria has been unable to attract adequate foreign direct investments (FDI) as its ratio of FDI projects to GDP in 2017 is estimated at 0.16 (Figure 5). This implies that Nigeria receives less than one-fifth of a project for every US\$ 1 billion of GDP, ranking lower than smaller economies in Africa. Likewise, for the past decade, removing bottlenecks to foreign investments has been weak (Ibrahim Index, 2018).

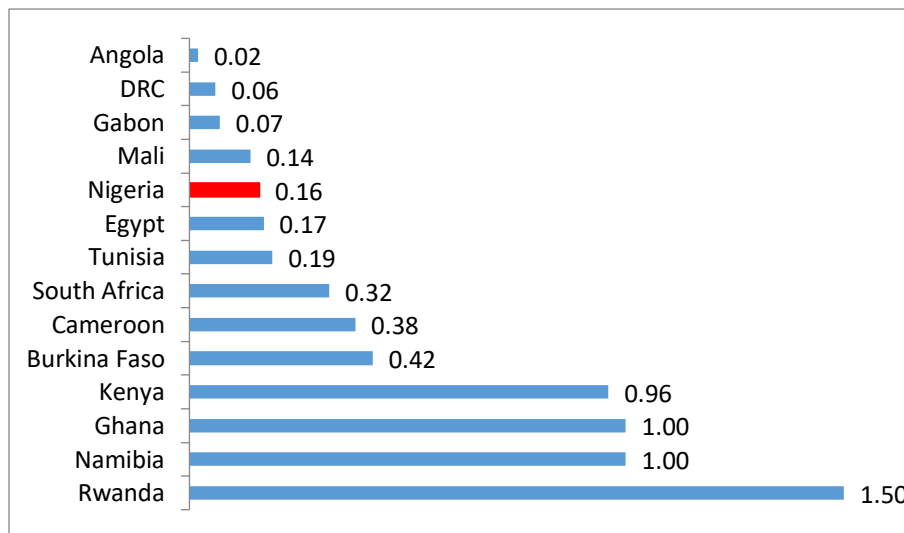


Figure 10.5: Ratio of FDI projects to GDP (2017) of selected African Countries
Source: EY Analysis

Information sources

IIAG (2018) Business Regulatory Environment, p. 109.

World Bank (2018) Doing Business: Reforming to Create Jobs: available at www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf

World Bank (2019) Doing Business: Training for Reform: available at www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf.

Turning Tides (2018) EY Attractiveness Programme Africa: available at [www.ey.com/Publication/vwLUAssets/ey-Africa-Attractiveness-2018/\\$FILE/ey-Africa-Attractiveness-2018.pdf](http://www.ey.com/Publication/vwLUAssets/ey-Africa-Attractiveness-2018/$FILE/ey-Africa-Attractiveness-2018.pdf)

10.2 Local content

10.2.1 Does the government remove barriers to local participation?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

Barriers to local participation in the oil and gas industry were identified and are being addressed by oil sector authorities. These barriers comprise access to capital, competence, and delivery possibilities.

In addressing barriers to capital, the NCDMB set up the Nigerian Content Intervention Fund in line with existing legislation. The US\$ 200 million fund is managed by BOI and is dedicated to meet the funding needs of indigenous manufacturers, service providers, and other key players in the Nigerian oil and gas industry by providing access to credit at single digit interest rates. The 2017 BER noted that access to the fund recorded little success as only a handful of beneficiaries had been documented. As part of efforts to encourage participants, in 2018 the NCDMB and BOI convened a stakeholder's forum in Lagos, Nigeria, to address the issues faced by applicants in processing their loans. At the forum, both organisations agreed to expand the criteria for collateral used to access loans. As at July 2019, US\$ 160 million out of the total had been disbursed to Nigerian companies which according to the Executive Secretary of the NCDMB, were used for the development of modular refineries and for capacity building. Success of the fund is however threatened by low repayment of the loans by beneficiaries who have already commenced operations in the industry.

Other mechanisms that the government has put in place to address barriers include the Nigerian Content Research and Development Council to integrate research initiatives of stakeholders and the NCDMB scheme; 'Equipment Components Manufacturing Initiative' to promote local manufacturing of equipment components, spare parts, and accessories for the oil and gas industry. The council was officially inaugurated in October 2018 and comprises members from academia, oil producers, oil marketers, and technology association. The council is expected to advise the NCDMB on promoting, utilising, and commercialising market-driven research in the oil and gas industry.

The equipment component manufacturing initiative aims to promote in-country manufacturing by issuing the Nigerian Content Equipment Certificate, a criterion for evaluation of technical bids, to original equipment manufacturers who commit to and set up factory in the country for manufacturing or assembling components, spares, equipment, systems, and packages. In 2013, the NCDMB secured US\$ 800 million in investment commitments spanning a period of three years through the initiative. Furthermore, oil and gas parks that would serve as manufacturing hubs are reported to have been started in oil-producing states through the Nigeria Oil and Gas Park Scheme. Construction began in 2018 with Rivers and Bayelsa States as the first beneficiaries.

Information sources

<https://ncdmb.gov.ng/2018/09/ncdmb-boi-set-flexible-conditions-for-us200m-nci-fund-applications/>

<https://punchng.com/ncdmb-disburses-160m-from-nigerian-content-intervention-fund/>

<https://ncifportal.boi.ng/ncif/public/>

<https://ncdmb.gov.ng/2018/10/kachikwu-sets-up-nigerian-content-rd-council/>

<https://ncdmb.gov.ng/2018/03/ncdmb-begins-construction-c-river-oil-gas-park/>

<https://ncdmb.gov.ng/2019/06/ncdmb-begins-phase-2-of-bayelsa-oil-and-gas-park/>

www.vanguardngr.com/2013/06/nigeria-secures-n128bn-from-equipment-manufacturers/

10.2.2 If the government does employ local content rules, are they consistent with local capacity, do they avoid excessive protection, and do they guard against corruption?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

The Nigerian Content Act aims to encourage increased participation of indigenous content in the Nigerian oil and gas industry. The act contains provisions that prioritise considerations for local content and Nigerian services, as long as they meet required standards and specifications and there is capacity to execute. In the event where these criteria cannot be met, the act allows the provision of the required services and capacity from non-indigenous companies and service

providers. As noted in the 2017 BER, the implementation of the Nigerian Content Act seeks to ensure industry efficiency while also promoting local capacity.

Nigerian content in the oil and gas industry has continued to increase from 5% before the implementation of the Local Content Act to current levels reported at 28%. The country recorded over 60% domestication and domiciliation of work and services on the Egina FPSO vessel, an ultra-deep offshore crude oil production platform built by TOTAL, which commenced operation in 2018. At present, 36% of 20,000 marine vessels that operate in the country's waters are owned by Nigerians. Prior to the Nigeria Content Act (2010), that figure was 3%. Indigenous producers currently account for 15% of crude oil production in the country. In addition, according to a Nigerian Content Development report by Shell, 92% of the total value of contracts awarded by the oil company in 2018 were given to Nigerian companies and 96% of people directly employed by the company as at December of the same year were Nigerians.

The 10-year strategic road map of the NCDMB reveals that the board has a target of raising Nigerian content levels to 70% by the year 2027. This also includes generating 300,000 jobs and retaining US\$ 14 billion in-country from the industry's annual spend.

Information sources

www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/nigerian-content-development.html

www.ncdmb.gov.ng/lcdm/LocalContentDigestQ418.pdf

10.2.3 Does the government monitor and enforce companies' adherence to local content rules and the government's own support measures?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

The Nigerian Content Act contains provisions that enable the NCDMB monitor oil and gas companies for compliance and performance. Instruments such as the Nigerian Content Compliance Certificate and the Nigerian Content Equipment Certificate are used to ensure that oil operating firms comply with local content requirements. These documents are included in the criteria for evaluating technical bids for project in the oil and gas industry. In addition, oil operating firms are statutorily required to submit reports on local content to the NCDMB.

According to the most recent Nigerian content compliance matrix published by the NCDMB and spanning the review periods of the first and second quarters of 2018, 81 companies operating in the oil and gas industry were monitored and evaluated for compliance with local content requirements. Of the 81 firms, only 21 were graded as compliant. 34 had only one non-compliance

issue, while the remaining 26 had multiple issues of non-compliance. The matrix was divided into two groups comprising service providers and operators. None of the companies in the latter category, consisting of IOCs and indigenous crude oil production firms, was compliant with local content requirements. The report had no details of sanctions deployed against the erring companies for non-compliance with local content rules.

In March 2019, the NCDMB introduced a revised Monitoring and Compliance Enforcement framework. The new framework was initiated with the aim of updating the existing template to contemporary standards and challenges as well as allow for simpler and easier implementation by operating firms. With the new framework, non-submission or late submission of reports would be regarded as non-compliance and attract the requisite sanctions.

Information sources


Nigerian Content Monitoring and Development Board (2019) Press Release: available at <https://ncdmb.gov.ng/2019/05/late-submission-of-reports-will-be-deemed-as-non-compliance-ncdmb/>

NCDMB (2018) Q1 and Q2 Monitoring and Evaluation Companies Compliance Matrix: available at www.ncdmb.gov.ng/images/ComplianceMatrix/Q1&Q22018CompaniesComplianceMatrix.pdf

PRECEPT 11: ROLE OF EXTRACTIVE COMPANIES



Companies should commit to the highest environmental, social, and human rights standards and to sustainable development.

| | |
|---|---|
| <p>Overall precept score</p> | |
| <p>Precept 11: Role of extractive companies</p> <p>There were improvements in this regard in the period under review. Notably, multinational oil companies have continued to initiate programmes and interventions to engage affected communities and contribute to national development. However, the level of engagement with affected communities is limited by the fact that Nigeria’s EIA Act and other legislations do not specifically make such engagements a mandatory requirement. Even when communities attempt to utilise the limited opening for public participation in the EIA Act, they are confronted with systemic challenges including their capacity to engage and contribute given their limited knowledge and understanding.</p> <p>In terms of benefit transfers, local content promotion policies have been integrated into oil industry practices as a way of ensuring that locals and the national interest benefits from the oil industry beyond direct revenue payments. However, the extent of compliance and enforcement is still substantially limited.</p> <p>The main oil companies operating in Nigeria have all produced strict policies on corporate integrity, especially against corruption. Measures have been put in place to ensure these policies are relevant to all staff and partners of the companies.</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

- The fact that there are no requirements in Nigerian law for oil companies to ensure the participation of communities in decisions on resource projects, leaves the decision to do so at the discretion of the companies. Despite this, companies have instituted GMOU processes with affected communities that provide them with a measure of decision making on community beneficial projects. However, this level of participation is limited and does not span all stages of resource projects.
- In many local communities, oil companies have been erroneously foisted with the role of government and are expected to meet demands for infrastructural development and provision of social services. This has inadvertently heightened the expectation communities have of oil companies and limited those on the governments.
- Local and international frameworks for mandatory disclosure has significantly improved the efficiency of oil company disclosure. However, while there have been significant improvements in fiscal disclosures, commensurate progress has not been made in disclosure of other categories of information. Also, while disclosure to home governments and regulatory agencies have improved, disclosure to other stakeholders including communities has remained low.
- Oil companies have committed to conducting their security arrangements in line with international best practices, respect for human rights, and the Voluntary Principles on Security and Human Rights. However, evidence indicates that companies routinely employ the services of combat military squads which, by their training and equipment, operate with maximum force. In several instances, this has resulted in rights abuses.

Sustainable development

- While there are fairly adequate environmental regulations in the oil and gas sector in Nigeria, as well as mentions of health and safety parameters, the major challenge has been the extent of their enforcement. Government agencies responsible for enforcing established regulations do not have the capacity, resources or will to do so. While oil companies claim that they operate with the highest environmental, health and safety integrity, the prevalence of practices such as gas flaring continues to attract attention.
- Through GMOUs, contributions to NDDC, and other CSR activities, oil companies are contributing to the realisation of the development priorities of the government and the areas they operate in.

Corporate integrity

- Most oil companies in Nigeria comply with tax and royalty obligations, their compliance has also been affirmed by NEITI. However, local oil companies continue to fail in their fiscal obligations. Local companies have also been complicit in practices that do not promote corporate integrity.
- 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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

There is no legislation requiring meaningful community participation in decision making on resource projects. From the decision to extract, engagements are coordinated principally between the resource companies and the Federal Government. The lack of any government policy requiring consultation with affected communities erodes the possibility of any far reaching formal structures for such engagement. In decisions relevant to exploration, development, operation, and the closure of extractive projects, community say is hardly sought. Nigeria's EIA Act is the most significant legislation on pre-resource project engagements with a broad spectrum of stakeholders. However, the act itself is weak as an instrument for ensuring the meaningful participation of communities. No section of the act provides opportunities for consultation with affected communities. Section 11 recognises only the state and local government area where the resource project is cited. It requires that where a project is likely to have significant environmental impact, the affected state or local government area are notified. It also prescribes 'timely consultations with the affected state or local government.' Other sections of the EIA Act that permits passive participation in the form of providing comments on the outcome of the EIA process, fails to specifically mention resource-affected communities.

However, research findings indicate that, in some cases, especially where projects are being expanded or being newly initiated, some level of engagement exists with communities. Such consultations are mostly limited to benefits that will accrue to affected communities, and is structured as a type of 'rite of entry'. Such engagements are hardly structured around key resource project decisions and does not continue throughout all stages of the project.

The Federal Government has recently approved an NPP, which (among other things) expresses the government's commitment to involving Niger Delta communities directly in infrastructure, social, and petroleum developments in their local community area.

The policy commits to:

- identifying small and marginal fields which it may be possible to develop in partnership with local communities;
- exploring mechanisms whereby local communities can be integrated into project developments;
- engaging local communities in projects in their local area; and

- small equity holdings for communities in oil operations in their areas.

It equally provides a policy for the integration and participation of communities in allocation of oil licences and leases:

Oil and gas licences and leases will no longer be awarded under opaque procedures with allocations of blocks or production. Under the Petroleum Policy all petroleum blocks, licences, leases, licence renewals and licence extensions will be awarded following a transparent competitive process. The process will also allow local community participation through local community vehicles.

Evidence from research indicates that this policy is not currently being implemented.

The failure of the government to expedite action on , especially the Petroleum Host and Impacted Communities Development Trust component with its provisions for community engagement, continues to weaken the prospects of community participation in the sector. In the period under review, the governance component of the bill suffered setbacks when the President declined to assent to it.

Most upstream oil companies have established MOUs with communities where they operate. These MOUs are products of consultations and interactions between the oil companies and communities, and typically contain benefits which the company will extend to the community. These include costed infrastructure projects, educational scholarships, and employment opportunities. However, these MOUs do not actually reflect any serious type of decision making or participation of communities. They are weakened by the fact that they are limited to benefit transfers and are not all legally binding. Research indicates that their implementation is mostly at the discretion of the companies. The MOUs do not also consider the needs of the often marginalised in the communities including women and people living with disabilities.

Information source

www.petroleumindustrybill.com/wp-content/uploads/2017/07/National-Petroleum-Policy-Approved-by-FEC-in-July-2017.pdf

11.1.2 Do companies ensure that stakeholder expectations are realistic?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

In the relationship between the Federal Government and oil companies, there are clearly spelt-out agreements that clarify the expectations of both parties. Unfortunately, there are no similar binding policies that places and defines responsibilities to communities by oil companies. In Nigeria's current oil and gas governance structure, communities are treated passively and without much consideration. Oil companies are not legally bound to provide any type of benefits to communities where they operate.

There are, however, important provisions where oil company contributions are structured to support communities and realise their expectations. Section 14 (2)(b) of the NDDC establishment Act specifically stipulates that 3% of the total yearly budget of oil-producing companies operating onshore or offshore in the Niger Delta area will be paid into the funds of the NDDC. The NDDC in turn is supposed to channel development benefits to communities in the region. Unfortunately, the reality on the ground is very different from the expectations. While communities in the Niger Delta have high development expectations from the NDDC, they have become lethargic towards the agency on account of its routine failures. The promise of development held out by the NDDC has not been felt. An overwhelming number of residents of the region believe the NDDC has not lived up to its mandate. A significant number believe the agency is saddled with a burden of corruption, ineptitude, and mismanagement.

In managing the expectation of communities, many oil companies have adopted the model of MOUs. These are mostly non-binding and non-legal contracts produced through consultation with communities. These MOUs typically contain plans for infrastructural development, educational scholarships and employment. They also serve as frameworks that describe what affected communities expect of the oil companies. A major weakness in the majority of these MOUs is that they are not legally binding: compliance is discretionary and there are no channels for affected communities to enforce fulfilment if the agreements are violated. In the course of our research, at least two instances were established where oil companies had violated the MOUs without any consequence. MOUs established by Chevron, on the other hand, have successfully addressed these obstacles. According to the company, their agreements with the communities are not only legally binding; they are also enforceable in court if there is a violation.

The use of MOUs amounts to an important tool for transferring benefits to communities, but it has not sufficed as an effective strategy for managing community expectations. This is partly because federal, state, and local governments in Nigeria have abdicated their responsibilities for local development. Communities tend to place all the burden of their development concerns on the oil companies. Unsurprisingly, this leads to expectations far beyond the mandate of oil companies

and the content of GMOUs. Non-fulfilment of these expectations remains a key source of conflict between communities and oil companies.

It is important to note that, while GMOUs overtly emphasise the benefits that will accrue to communities, there are no frameworks for managing expectations on other costs of resource projects including pollution.

Information sources

www.chevron.com/-/media/chevron/stories/documents/nigeria-case-study-GMoU.pdf

www.shell.com.ng/sustainability/communities/gmou.html

11.1.3 Do companies proactively disclose key information?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Some changes observed

In 2007, Nigeria enacted the NEITI Act, which imposes reporting and disclosure obligations on all extractive companies operating in the country as part of a larger audit process by NEITI. In the period under review, Nigeria made substantial progress in this regard. For instance, in March 2019, NEITI sent a letter of commendation to NNPC acknowledging NNPC's significant improvements, which have contributed to Nigeria's attainment of the highest compliance status in the global Extractive Industries Transparency Initiatives.

Recently, NEITI declared that 'self-disclosures' by agencies and companies in Nigeria are already common. EITI data is now available as part of reports, statistical bulletins, or other publications by companies and government agencies. The main challenges in-country arise when these efforts are not *systematic* or *regular*. However, most of the recent disclosures are not subject to analysis. Publications are irregular or do not constitute *open data* disclosures. Reporting often does not happen for several months or skips certain intervals, making the disclosures erratic and unpredictable. According to NEITI, 'still, disclosures have started and are here to stay.'

As part of efforts to institute greater disclosure, NEITI recently disclosed that it would unveil the owners or holders of Nigeria's crude oil blocks by January 2020.

Beginning in 2017, NEITI launched a Compliance Ranking to assess and rank companies on the basis of their compliance to EITI disclosure requirements. NEITI reports that an impressive number of companies had remarkable levels of disclosure compliance.

International frameworks also exist with disclosure requirements. Oil, gas, or mining companies registered in or listed on a regulated stock exchange in Canada, the EU, or the European Economic Area are required to disclose payments made to governments (including state-owned enterprises) in relation to extractive activities. Payments are expected to be attributed to projects where applicable. They include; production entitlements; taxes (on income, production, or profits); royalties; dividends; signature, discovery, and production bonuses; licence fees; and payments for infrastructure improvements. These requirements have significantly improved the disclosure of extractive companies operating in Nigeria.

While there have been improvements in financial disclosure, there have been no commensurate improvements in other levels of disclosure. The requirement that companies should proactively disclose key information about their activities to ensure that citizens have a realistic understanding of the progress and costs of resource extraction remains largely unrealised.

A 2018 study aimed at assessing the volume of social and environmental disclosure by listed Nigerian oil and gas companies concluded that there is lack of environmental accountability to stakeholders in the Nigerian petroleum industry and that this is 'attributed to weak government regulations; non-recognition of affected communities as powerful stakeholders; and non-recognition of Nigerian public as legitimate stakeholders.' It says listed Nigerian oil and gas companies are providing few words in their annual reports and accounts on social and environmental issues.

To fix some of the gaps observed in environmental and social disclosures, NEITI is planning to expand its disclosure requirement for extractive companies to include their social and environmental activities and compliance with set standards and will take effect from 2020.

It is nevertheless important to note that, beyond communication to national governments, regulators, and home government frameworks, there are no established structures of communications between resource companies and the communities in which they operate. In simple terms, there are no disclosures of any kind to affected communities.

Information sources

www.nnpcgroup.com/News-and-Media/News/Lists/Posts/Post.aspx?List=20b7f5cf%2D4d4b%2D499e%2D98da%2Dee0bbdc39041&ID=94&Web=080adea6%2D3f8c%2D4915%2D90a4%2Dd45df55fde2f

<https://eiti.org/blog/dealing-with-asystematic-disclosures-evolving-role-of-neiti>

www.energymixreport.com/neiti-to-unveil-owners-of-nigerian-oil-blocks-by-january-2020/

<https://neiti.gov.ng/index.php/media-center/news/377-12-companies-top-neiti-compliance-ranking-as-neiti-board-appoints-auditors>

<https://resourcegovernance.org/sites/default/files/documents/nigeria-oil-revenue.pdf>

www.journalajeba.com/index.php/AJEBa/article/download/10559/19008/

11.1.4 Do companies ensure that security arrangements relating to resource projects do not use excessive force?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

While several of the oil companies operating in Nigeria assert that they conduct their security arrangements in line with international best practices, respect for human rights and the Voluntary Principles on Security and Human Rights, evidence on the ground indicates that companies routinely employ the services of combat military squads which, by their training and equipment, operate with maximum force. In all onshore oil facilities visited, soldiers (mainly members of a special unit called the JTF) mount fortified barricades at the entrance to oil companies and escort their officials. Soldiers are posted to restrict entry in many of the communities where the flaring of AG continues, clearly at the service of the oil companies.

Recently, soldiers of the Nigerian Army guarding staff of SPDC raided an Ogoni community. The incident resulted in the death of a young man and other casualties. Several incidents have taken place involving the use of force to secure oil installations in the Niger Delta. There were at least three incidents in 2019 when the army has invaded communities in Rivers and Bayelsa States, killing civilians and burning houses and properties. In July 2019, the JTF invaded a community in the Degema local government of Rivers State where they torched 15 houses and killed at least one person. Petitions to the government to address the carnage were not responded to.

Even though it is well established that the JTF functions closely with oil companies, the companies deny any responsibility for the use of excessive force and human rights abuses in the protection of oil facilities and oil company workers. For instance, Shell absolved itself of any responsibility for the actions of the JTF:

... The Joint Task Force—comprising the Army, Navy, and Police. These are deployed by the government to provide security in the Niger Delta and waterways. In our discussions with the security authorities we have highlighted the UN Code of Conduct for Law Enforcement Officials and the Guidelines on Use of Firearms. But there is a challenge in engaging this group as they operate solely under the command and control of the Nigerian government or security headquarters.

It is important to note that the oil companies do not have any reasonable measure of control over the activities of Nigerian security forces. Available information indicates that the major IOCs routinely train security operatives on basic principles of human rights in line with the Voluntary Principles on Security and Human Rights, to which most companies subscribe.

Information sources

www.shell.com.ng/sustainability/safety/secure-operations-nigeria.html

www.chevron.com/corporate-responsibility/people/human-rights#security

<https://punchng.com/army-mosop-disagree-over-killing-of-ogoni-man/>

<https://medium.com/@Saatah/the-nigerian-terror-state-and-its-armed-wing-8a721c1c4751>

<http://nigerianewsday.com/2017/07/28/3786/>

<https://guardian.ng/news/rivers-community-demands-probe-on-jtf-invasion/>

11.1.5 Do companies respect the rights of indigenous people?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Under Nigerian laws, principally the Land Use Act (which places ownership of all lands and mineral resources therein within the jurisdiction of the Federal Government), the free, prior, and informed consent of indigenous people in resource sites were not sought prior to the commencement of exploitation. Such negotiations were only limited to the Federal Government and the oil companies.

In several instances, indigenous communities have expressed concern over rights abuses occasioned by the activities of extractive companies. A recent report by Amnesty International reveals that Shell and Eni are violating the environmental and livelihood rights of indigenous people by taking weeks to respond to reports of spills and publishing misleading information about the cause and severity of spills, which may result in communities not receiving compensation. Another community in the Niger Delta is suing Eni in Italy over environmental pollution. A community in Delta State where a new project is being established had an entire farmland with crops destroyed to make way for the project.

All the major oil companies in Nigeria have made strong commitments to the respect and protection of human rights. How these translate practically is debated by community members, who are largely of the opinion that oil companies tolerate the abuse of community rights.

Information sources

www.amnesty.org/en/latest/news/2018/03/nigeria-amnesty-activists-uncover-serious-negligence-by-oil-giants-shell-and-eni/

www.foeeurope.org/nigerian-community-oil-pollution-eni-lawsuit-090118

www.shell.com.ng/sustainability/safety/upholding-human-rights.html

www.total.com/sites/default/files/atoms/files/human_rights_-_briefing_paper_update.pdf?xtmc=ajax&xtnp=0&xtr=2?xtmc=ajax&xtnp=0&xtr=2?xtmc=ajax&xtnp=0&xtr=2

www.eni.com/en_IT/sustainability/operating-model/human-rights.page

11.2 Sustainable development

11.2.1 Do oil companies effectively mitigate the environmental, social, and health impacts of resource projects?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Nigerian law requires companies to conduct an EIA prior to the commencement of resource projects. This requirement is documented principally in Nigeria's EIA Act 1992. Provisions requiring EIA are also documented in the Land Use Act, the FEPA Act, and EGASPIN. DPR requires proponents of resource projects to 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 commence those projects. Similarly, Section 21 of the EIA Act requires that the outcome of the EIA process is integrated into planning the resource projects through providing alternatives or for mitigating negative impacts. 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.'

While there are fairly adequate environmental regulations in the oil and gas sector in Nigeria as well as mentions of health and safety parameters, the major challenge has been the extent of their enforcement. It has been observed severally that government agencies responsible for enforcing established regulations do not have the capacity, resources or will to do so. The monitoring of compliance with environmental, health, and social regulations has been a major and persisting challenge.

All oil companies operating in Nigeria affirm that they operate in compliance with all established environmental, social and health standards. However, research and interviews with resource-affected communities reveal a pattern of non-compliance and violations. One such example is gas flaring. Gas flaring remains a routine practice at most extraction sites in Nigeria. While the health, environmental, and livelihood costs of this practice on communities have been well-documented and there are better ways of managing AG, companies and their majority JV partner the NNPC continue to prefer the payment of compensatory fines over prevention because doing so is cheaper and more convenient.

Oil spills remain a regular occurrence in oil extraction sites in Nigeria. Complicity for the regularity of their occurrence has remained a source of debate, with communities and oil companies trading blame. While oil companies claim that only few of the occurrences are a result of the failure of their equipment, blaming most on the handiwork of oil thieves, communities claim the opposite. Independently verifying both claims is difficult. However, community members assert that, in those instances where oil companies accept blame for spills, remediation activities have been slow, inefficient, or non-existent.

In the laying of pipelines for oil and gas, environmentalists have cited some specific places where environmental laws have been violated and corners have been deliberately cut at the expense of the safety of the people. A case is reported at Joinkrama 4 (Edagberi/Betterland community) in the Ahoada West Local Government Area of Rivers State, where pipes for the movement of products were laid by the national oil company (NNPC) throughout the length of a community at an unsafe distance to human habitation.

Information sources

www.alliedacademies.org/articles/environmental-crime-liability-of-the-nigerian-government-in-its-oil-pollution-menace-9631.html

<https://qz.com/africa/1192558/nigeria-gas-flaring-oil-biz-escapes-tough-fines-for-environmental-damage/>

<https://punchng.com/pipeline-areas-dwellers-battle-endless-ecological-pollution-live-in-fear-of-unforeseen-explosions/>

11.2.2 Do companies work to identify national and local development priorities and concerns and measure progress against them?

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

Oil companies work with communities and governments at the national and sub-national levels to identify and implement key development priorities that are important to the people.

The major strategy used by oil companies is the joint planning and execution tool called the GMOU. SPDC defines its approach to GMOU thus:

Under the terms of the GMOUs, the communities decide the development they want while SPDC on behalf of its joint venture partners, provides secure funding for five years, ensuring that the communities have stable and reliable finances as they undertake the implementation of their community development plans.

This approach of joint planning and value transfer is a model currently used by most companies operating in the Niger Delta. Many companies have also utilised the model of scholarships and job trainings to develop capacity and local manpower. Some of the most notable of these interventions include Chevron’s Partnership Initiatives in the Niger Delta and Shell’s LiveWire in the Niger Delta.

Through the Nigerian content requirements, companies contribute significantly to promoting local and national development priorities. The majority of extractive companies in Nigeria’s oil and gas sector affirm that they are fully compliant with their local content obligations.

Section 14 (2)(b) of the NDDC Establishment Act specifically stipulates that 3% of the total yearly budget of any oil-producing company operating onshore and offshore in the Niger Delta area will be paid into the funds of the NDDC. Through these payments, extractive companies are contributing to local and national development priorities.

Information sources

BER (2017)

<https://ng.livewire.shell/>

www.shell.com.ng/media/2019-media-releases/niger-delta-entrepreneurs-receive-shell-livewire-grants.html

11.3 Corporate integrity

11.3.1 Do oil companies have clear internal policies relating to corruption?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Most of the oil companies operating in Nigeria have clear policies relating to anti-corruption. These policies are available mainly on their websites. For instance, Eni promotes a principle of ‘zero

tolerance' expressed in the company's Code of Ethics. It states that 'Eni addresses the high risks that the company faces in carrying out its business activities with an articulated system of rules and controls for the prevention of corruption (the so-called Anti-Corruption Compliance Program).' Though framed differently, the corporate integrity and anti-corruption policies of oil companies are similar. Most of the companies have also subscribed to global anti-corruption frameworks like the Global Compact (ExxonMobil does not). The majority have also instituted programmes for compulsory anti-corruption training.

However, some high-profile corruption cases involving oil companies continue to raise concerns about the efficacy of companies' internal policies against corruption. Notable is the Malabu scandal. Oil companies in Nigeria fail to dispel the opacity associated with the key corruption risk areas in the Nigerian oil sector:

- in awarding upstream licences;
- in awarding contracts; and
- in exporting crude and importing refined products.

Most oil sector activities in Nigeria are governed by contracts that are not readily available to the public, especially affected communities. There are no regulations mandating disclosure of contract agreements between oil companies and the government. This is a major weakness in correctly measuring the amount of taxes and royalties that accrue to the government through operation contracts and licences. 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.

Information sources

www.eni.com/en_IT/sustainability/operating-model/transparency/combating-corruption.page

www.shell.com/sustainability/transparency/transparency-and-anti-corruption.html

www.premiumtimesng.com/news/headlines/325855-malabu-scandal-court-orders-arrest-of-etete-adoke-others.html

www.u4.no/publications/reforming-corruption-out-of-nigerian-oil-part-one-mapping-corruption-risks-in-oil-sector-governance

11.3.2 Do oil companies meet their fiscal obligations?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

Available evidence indicates that oil companies largely meet their financial obligation. Unfortunately, certain categories of payments are more difficult to assess for research purposes. However, the NEITI Audit Report for 2016 has shown some discrepancies and failure of payment by some oil companies. According to the report, the following companies defaulted in tax payment in 2016: Aiteo; Allied Energy; Belema Oil; Britannia-U; Dubri Oil; Energia Limited; Midwestern; Pan Ocean; SA Petroleum; Seplat; Yinka Folawiyo; and Express Petroleum and Sheba Petroleum (did not provide relevant information to the audit).

The following companies defaulted in payment of royalty in 2016: Panocean; Shoreline; and Yinka Folawiyo.

The Audit Report also records underpayments in gas and oil royalties by companies. It is important to note that the defaulting companies listed in the report are all indigenous companies. None of the major players in the Nigerian oil sector was reported to have defaulted in payments.

Similarly, NEITI also reported that NNPC under-remitted NGN 77.92 billion from the domestic crude allocation which should have been paid into the Federation Account.

It is important to note that cases of non-compliance with fiscal obligations chiefly occur with local oil companies. In the course of this research, no case of non-compliance was recorded against an IOC.

Extractive companies have also been consistent with their contributions to NDDC in line with the requirement of the NDDC Act.

Information sources

BER (2017)

https://eiti.org/sites/default/files/documents/neiti-oil-gas-report-2016-full-report-211218_1.pdf

<https://punchng.com/nnpc-under-remitted-n78bn-to-federation-account-neiti/>

11.3.3 Do companies avoid seeking exemptions from their legal and regulatory obligations?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: No additional information included

Between 2009 and 2016, a number of ineligible oil companies were granted tax waivers under the pioneer status incentive by the Nigerian Investment Promotion Commission. Pioneer status is an investment promotion incentive of Nigeria's Federal Government which exempts certain companies from income tax. To be eligible for pioneer status, products or companies must introduce business ideas that are not already in the country. Companies with pioneer status are exempted from tax payments for a determined period.

According to NEITI, some oil companies applied and benefited from the scheme despite being clearly ineligible. According to NEITI, this caused the Federal Government to lose up to US\$ 1.56 billion in taxes it would have collected. Oil companies indicted by the report include Seplat Petroleum Development Company, Midwestern Oil and Gas, Britania Oil Nigeria Limited, Suntrust Oil Company Nigeria Limited, Niger Delta Petroleum Limited, etc. Investigations reveal that, in some instances, pioneer status waivers were given retrospectively, causing the government to refund taxes it had already collected. A point to note is that all the companies indicted are local players.

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 cause a shift in the deadlines to put a stop to the practice several times.

Information source

www.pressreader.com/nigeria/the-guardian-nigeria/20170616/281483571377346

11.3.4. Do companies ensure that their corporate integrity policies apply to partners, contractors, and subcontractors?

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

The major oil companies operating in Nigeria make commitments in their code of conduct to ensure that their corporate integrity policies apply to contractors and other partners they work

with. In 2016, for instance, Shell revealed that its internal investigations confirmed that 341 allegations reported through the Global Helpline were code of conduct violations. As a result, it dismissed or terminated the contracts of 114 employees, contract staff, or contractor employees.

Information sources

<https://corporate.exxonmobil.com/company/who-we-are/corporate-governance/code-of-ethics#overview>

www.shell.com/sustainability/our-approach/commitments-policies-and-standards/business-integrity.html

www.total.com/sites/default/files/atoms/files/total_code_of_conduct_va.pdf

PRECEPT 12: ROLE OF INTERNATIONAL COMMUNITY





Governments and international organisations should promote an upward harmonisation of standards to support sustainable development.

| | |
|---|--|
| Overall precept score | |
| <p>Precept 12: Role of the international community</p> <p>Despite the roll-back from the repeal of the Dodd-Frank Act in 2017, there have been some significant improvements in the efforts by international community in promoting upward harmonisation of standards to support sustainable development in resource countries. While the 2017 the NNRC report noted lack of enforcement mechanism in the standards promoted by the international community, the 2019 Benchmarking Exercise Report (BER) revealed significant efforts at ensuring compliance of resource projects to international best practices and standards with mechanisms to monitor implementation.</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


12.2.1 Do home governments expect companies to respect human rights and the highest standards of environmental, social, and health protection? 

12.2.2 Do donors support host states to fulfil their duty to protect human rights and environmental, social and health standards, and ensure company compliance with human rights standards? 

12.2.3 Do lenders require the companies they finance to respect human rights and the highest standards of environmental, social, and health protection? 

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? 

12.3.2 Do international organisations work to reduce illicit financial transactions? 

Summary of key findings

Transparency

Despite the US’s withdrawal from it, EITI has raised the bar on transparency and information disclosure. Voluntary, semi-voluntary, and different forms of corporate disclosures of payments have become increasingly commonplace inside and even outside of EITI-implementing nations. Actual compliance with EITI principles scored high, while the oil and gas extractive sector is becoming transparent due to actions of key players in the international community.

- Despite the roll-back on transparency by the repeal of the Dodd-Frank Act in the US, efforts by the EU have been scaled up with amendments to its disclosure directives, giving birth to a new country-by-country disclosure requirement that came into force in

December 2017 and has been transposed by the governments of the UK, France, and Italy, among others.

- Findings further reveal that, beyond the establishment of transparency frameworks, efforts are also being made by home governments of multinationals towards ensuring compliance with disclosure directives and other transparency frameworks as in the case of EU Black List and infringement procedures.
- The 2019 BER findings also show that, despite the withdrawal of the US from the EITI process, EITI has continued to raise the bar on transparency gains with corporate disclosure of payments becoming a norm inside and even outside of EITI-implementing nations (as in the case of Chinese and Russian companies).
- Other global strategies such as the OGP have also contributed to raising the bar on transparency with many countries including those under review expressing commitment towards and developing action plans to implement these commitments.
- The IFC, as part of the World Bank initiative to promote responsible business practices, developed a corporate governance framework through which financial intermediaries encourage their clients to adopt environmental and social responsibility principles in their lending practices as well as support measures for ensuring transparency and accountability.

Human rights and environmental, social, and health protection

Various established frameworks exist to safeguard environmental, human, health and social rights, with notable efforts towards improving stakeholder engagement.

- EU Directive 2014/95/EU requires multinational companies from 2018 to disclose non-financial statement in their annual reports which briefs on their policies as they relate to environmental protection, social responsibility and treatment of employees, respect for human rights, etc.
- Since the EU Directive came into force in 2018, many of the monitored companies have consistently complied with the reporting requirements of the Directive. Twenty-three EU countries have progressively harmonised the standard to even include some level of penalty for non-compliance.
- The European Parliament in 2019 approved a regulation for sustainability-related disclosure which requires financial institutions to disclose sustainability risks and impacts of business operation to society and environment.
- In June 2019, a new EITI standard was introduced for implementing countries to monitor environmental impact of extractive activities. The 2019 standard reiterates the need for EITI to cover material environmental payments by companies to governments and encourage disclosures of contextual information related to environmental monitoring.

Corruption and illicit financial flows

There were some important policy improvements influenced by the international community efforts to combat corruption and illicit financial flows. These included the actions of the Egmont Group, the World Bank Group in partnership with United Nations Office on Drugs and Crime (UNODC) on the Stolen Asset Recovery (STAR) initiative (STAR) among others

- In the US, the Foreign Corrupt Practices Act (FCPA) prohibits any form of corruption or

bribery by any American citizen outside America and also in American companies. In November 2017, a new FCPA Corporate Enforcement Policy was announced to allow for voluntary self-disclosure of violation and full cooperation as part of mechanism to enforce compliance with the FCPA.

- In May 2018, the 4th EU Anti-Money Laundering Directives were amended to accommodate a number of recommendations targeted at promoting the highest standard for anti-money laundering and to counter terrorism financing. This amendment gave birth to the 5th Anti-Money Laundering Directive and was to be transposed by all members by January 2020. The aim was to enhance transparency by setting up publicly available registers for companies (BOR) and enhancing the workings of the EU Financial Intelligence Units (FIUs).
- In line with the provisions of the Anti-Money Laundering Directives, In February 2017, the Egmont Group, a global body of 155 FIUs across the world that facilitates the exchange of financial intelligence, expertise, and capability, suspended Nigeria's membership of the body. This led to the signing of NFIU Bill into law by Nigeria, in line with the requirement of the Financial Action Task Force Standards and Article 14 of the UN Convention against Corruption on July 11 2018.
- The World Bank Group has a partnership with UNODC on the STAR initiative, an initiative that provides advisory services to help countries recover stolen assets.
- UNODC plays crucial role in codifying plethora of progressive instruments to curb organised and economic crimes which includes the UN Convention on Combating Corruption with regional and sub-regional operationalisation, as well as the African Union Convention on Combating and Preventing Corruption.

12.1 Transparency

12.1.1 Do home governments require companies to disclose comprehensive information relating to resource projects?

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

This precept examines the roles played by home governments of eight of the oil exploration companies operating in Nigeria—ADDAX, AGIP, Chevron, ExxonMobil, Shell, Sinopec, Statoil, and TOTAL Exploration and Production—in promoting development within the scope of resource extraction disclosure regimes in the areas of information disclosure and transparency; human and environmental rights; health; and social protection concerns, as well as curbing illicit financial flows. It identifies gaps (where they exist) in the enforcement of standards and compliance to regulations geared towards complimenting local efforts in the resource country. This research expands on the companies examined in the 2017 BER to include an assessment of the role of the government of China, as the home government of Addax Petroleum Corporation and Sinopec. This was done to accommodate the increasing level of Chinese investments in Nigeria's oil and gas sector. With the acquisition of Addax Petroleum Corporation by China Petroleum and Chemical Corporation in 2009 and the acquisition of TOTAL's 20% stake in an offshore oilfield, Chinese investments in Nigeria's oil and gas sector significantly increased. As at August 2019, Chinese investment in Nigeria's oil and gas sector had reached US\$ 16 billion, making it one of the biggest stakeholders in the Nigerian extractive sector. The Government of Norway, where Statoil originates from, was also examined.

- Following the repeal of the Dodd-Frank Act in February 2017 by a joint resolution of disapproval enacted pursuant to the Congressional Review Act. In August 2018, the US SEC adopted a final rule as an amendment to the disclosure requirement. This final rule was intended to facilitate information disclosure to investors; simplify compliance without significantly altering the total mix of information to investors. However, the content of amendment was a total departure from the provision of Section 13(q) of the Security Exchange Act which directs the SEC to issue rules requiring resource extraction issuers to include information in their annual report relating to payment made by companies to foreign governments. The new amendment in itself is meant to reduce or eliminate some of the SEC registrant disclosure obligations, thereby reducing the burden of compliance. The final rules also completely eliminated the words 'extractive issuer' from the rules and only apply to 'all US issuers, foreign private issuers, Investment Adviser, etc'., without being specific about the nature of issuer operation. As a result of this, some American oil firms have to date declined to disclose information on their payments to foreign

governments.

- Despite the US's withdrawal from it, EITI has continue to raise the bar on transparency gained. Voluntary, semi-voluntary, and different forms of corporate disclosure of payments have become increasingly commonplace inside and even outside of the EITI-implementing nations. The EU has given significant support to the full implementation of the EITI standards and, surprisingly, the Russian and Chinese oil companies are disclosing even more information about their deals around the world than their US counterparts. In Nigeria, however, the repeal of Dodd-Frank does not have any effect on information disclosure by oil companies. According to Dr Ogbonnaya Orji of NEITI, the repeal of the Dodd-Frank Act and the ultimate withdrawal of the US from EITI does not affect compliance by IOCs in Nigeria. Dr Orji noted that IOCs operating in Nigeria, especially Chevron, TOTAL, and Pan Ocean, have been cooperative, particularly with reforms in the oil and gas sector and the implementation of EITI in general. He further noted that, under the NEITI Act 2007, compliance with information disclosure is mandatory and there are sanctions for non-compliance.
- While China has not officially signed on to the EITI process, it has however expressed and shown support for global transparency declarations, including the EITI process. Chinese companies operating within 49 EITI-implementing countries are, like all extractive sector companies, required to disclose information in accordance with the EITI standard. According to an EITI report on Chinese reporting, about 130 Chinese companies are now involved in EITI reporting in 24 out of 43 countries that publish reports. They are also now involved in six EITI multi-stakeholder groups. In Nigeria, 65 companies participated in EITI Solid Mineral reporting between 2012 and 2013. Six Chinese companies out of these disclosed their payment information and four of six disclosed information on their beneficial owners, while the China National Offshore Oil Corporation (CNOOC) and China's National Petroleum Corporation were not captured in the EITI reporting in Nigeria due to not meeting materiality threshold. However, in 2018, the NEITI Audit Report of the oil and gas sector of 2016 captured two oil companies—Addax Petroleum Development Limited and Addax Petroleum Exploration Limited—both owned by China Petroleum and Chemical Corporation, as well as TOTAL, where CNOOC and Sinopec controls 45% and 20% stake respectively, as active in EITI implementation in Nigeria.
- In November 2013, a new mandatory country-by-country (EU CBCR) disclosure requirement was introduced into the EU Transparency Directive which came into force in 2017. The new disclosure requirements mandate oil and gas, mining and logging Companies to include in their interim (half-yearly) and annual reports details of their exploration, development, and mining production activities and a summary of expenditure incurred on these activities during the period under review. The extent to which this goal was achieved was subjected to fitness checks by the EU in 2018 through consultation with key stakeholders and consultants between March and July 2018. In any case, the EU Country-By-Country reporting (CBCR) requirements, as transposed by the UK, France, and Italy (among others), have been deemed effective in increasing the transparency of

payments made by companies to governments for the exploitation of natural resources. The UK centralised repository for disclosures established by Companies House is a best practical example as it provides central free access to all the CBCR reports of UK-registered companies within the scope of the legislation. As at the end of 2017, 90 UK companies have disclosed the fourth round of their annual public payment to the government. In 2018, Shell published its Payments Government Reports covering 34 countries (including Nigeria) where it has extractive activities in accordance with the UK Payments to Government Regulations.

- The Italian Legislative Decree No 139 of 08 August 2015, in line with the EU Accounting Directive, mandates that Italian companies (both parent and subsidiaries) should engage in exploration, prospecting, discovery, development, and extraction of minerals, oil and gas, and other natural resources to report on payments to governments where they have certain undertakings in line with this requirement, in 2018, Eni published its 2017 Report on Payment to Governments for the parent company, its subsidiaries and its proportionally consolidated entities. The Payment to Governments Report covers 49 countries, including Nigeria, where Eni engages in oil and gas exploration, development, and extractive activities. In May 2019, Eni again published its Report on Payment to Governments 2018, detailing its payment to government of countries where it operates, including Nigeria. A similar regulation known as the Norwegian Accounting Act was passed by Norway in 2015. In line with the new disclosure requirement, in March 2019, Statoil published unprecedented details of its payments to governments around the world (including Nigeria), making it the first of its kind in transparency efforts in Norway and representing a milestone in transparency efforts by both the Norwegian Government and Statoil.
- In December 2017, the European Parliament gave approval to amend Directive 2013/34/EU regarding disclosure of income tax information by certain undertakings and branches. The Directive mandates public disclosure of tax information by multinationals that have a worldwide turnover of €750 million, including information on how much tax they pay and where they pay it, and including taxes paid outside the EU. The transparency measure, known as Public CBCR, represented a milestone in ensuring unrestricted access to multinationals' tax payment information in terms of what was paid and where they were paid, including those paid outside the EU to prevent issues of tax avoidance and money laundry by EU companies. A major compliance mechanism set up by the European Commission to monitor compliance with the CBCR standards is the infringement procedure which is opened when a Member State failed to transpose the EU Directive within the given deadline which was April 2019. The infringement procedure proposed a court imposition of financial penalties which may either be a lump sum or daily payment for non-compliance with the Directive. An enforcement mechanism to the Directive requires all EU member states to provide penalties for non-compliance leading to the development of the EU Blacklist or EU list of non-cooperative jurisdictions in December 2017 to clamp down on tax avoidance and harmful tax practices. The idea of the list was to blacklist countries that failed to agree to tax good governance standards or that have continued to remain tax havens. However, over the course of 2018, 34

jurisdictions took positive steps to comply with the EU listing process, while 27 others including third jurisdiction countries delivered and also improved on their commitments as at the beginning of 2019. Compliance with this Directive has been monitored by the European Commission in close alliance with OECD, which takes on board assessments of countries' transparency standards and tax regimes as part of the monitoring process.

- In the EU, companies falling within the scope of the reporting requirements under the EU Directives (EU CBCR) tend to be compliant, particularly with national laws transposing the EU Directives. To ensure reporting compliance, the commission carries out annual monitoring of compliance and publish its monitoring report. According to an EU Monitoring Report in 2018, many companies were reported to have provided the required information, namely the payments to each government on project and by type of payment. The main errors and inconsistencies identified in the reporting related to unclear definitions of specific requirements such as the definition of projects, types of payments, and the approach of JVs. The OECD guidelines on CBCR through the Base Erosion and Profit Shifting Action 13 Report, in addition to providing reporting template for reporting, also provides reporting implementation package which consist of model legislation which could be used by a country to compel the ultimate parent of an entity to file the CBCR in its jurisdiction of residence based on bilateral tax conventions and tax information exchange agreement etc. It is in line with this process that third jurisdiction countries such as Nigeria developed it Income Tax Common Reporting Standards.
- In 2017, Nigeria became a signatory to the OECD's Common Reporting Standard Multilateral Competent Authority Agreement and, as a result, released the Income Tax (Common Reporting Standards) Regulation in 2018 through FIRS, which took effect from July 2019. The regulation provides guidance on how reporting financial institutions should identify reportable accounts and how to perform due diligence on the relevant financial information to be disclosed. It also outlines compliance obligations, the mode of compliance, and specifies penalties for non-compliance. To further strengthen the Income Tax Common Reporting Standard, the Nigeria FIRS released the Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines in October 2019, known as 'the Guidelines'. The Guidelines aimed at giving effect to Nigeria's commitment under the inclusive framework with respect to base erosion and profit-shifting and exchange of information. The FIRS Guidelines, therefore, demonstrate Nigeria's commitment to explore internationally approved standards in addressing the prevailing issue of base erosion and profit-shifting by ensuring the automatic exchange of information between Nigeria and other jurisdictions. However, the Guidelines are not clear on the nature of entities covered under the Income Tax Common Reporting Standards, but rather broadly categorises covered entities as either multinational enterprises operating with headquarters in Nigeria and with international affiliations, or enterprises with headquarters located outside Nigeria but with subsidiaries in Nigeria. The guideline only classified the multinational enterprises as with consolidated revenue of NGN 160 billion and above. This automatically places the oil companies such as Eni with a consolidated revenue of €1.5 billion, TOTAL Plc with US\$ 184 million revenue in 2018, and SPDC with a tax and royalty

contribution of US\$ 900 million (NGN 272.72 billion) under the obligation to report or disclose their tax information, as also reinforced by the EITI guidance on comprehensive disclosure of taxes and revenue.

- A key strategy to monitor activities of extractive companies in line with information disclosure is the OGP initiative, a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. Since it was launched by some founding governments (which include the governments of the resource companies under review, the US, Norway, the UK, etc.), 47 additional governments have expressed their commitment by developing action plans to implement its principles including Nigeria. Nigeria's commitments include sector transparency, tax reporting standard, open contracting, beneficial ownership disclosure register, anti-corruption information sharing, etc., which are reflected in its 2017–2019 NAP. A key aspect of the OGP commitment, which tends to align with other efforts of the international community, is that it pays critical attention to strengthening disclosure requirements, improving interoperability with other data sets, and verifying information, among other things that are key to extractive sector development. This strategy has further strengthened both home and foreign governments to monitor the activities of extractive companies regarding information disclosure.
- Beneficial ownership is key in the implementation of EITI. Many of the IOC home governments still remain critical pillars of the OGP initiative, as is evident in their NAPs, and this reflects an effective roadmap for the implementation of beneficial ownership and other critical commitment across the extractive sector governance value chains. Public disclosure of beneficial ownership could be very impactful towards dismantling the regime of opacity in the extractive sector governance generally. Accordingly, CSOs are pushing strongly for BOR in Nigeria and have in fact taken the campaign to the home governments of these IOCs across the globe. NEITI is also developing a roadmap for the implementation of beneficial ownership before the end of 2019 (according to NEITI's Communication Director, Dr Orji Ogbonna Orji), working closely with other regulatory agencies, DPR, and CAC.

Information sources

www.reuters.com/article/us-exxon-mobil-taxes/exxon-blocking-u-s-progress-on-energy-transparency-watchdog-chief-idUSKBN0TQ2PM20151207

https://eiti.org/sites/default/files/documents/eitis_role_in_addressing_corruption_en.pdf

<https://eiti.org/countries>

https://eiti.org/sites/default/files/documents/eiti_chinese_companies_reporting_updated_feb2016.pdf

<https://eiti.org/document/eiti-brief-chinese-companies-reporting-in-eiti-implementing-countries#DownloadPDF>

https://eiti.org/sites/default/files/documents/EITI_Chinese%20companies%20reporting_Chinese.pdf

<https://eiti.org/document/eiti-brief-chinese-companies-reporting-in-eiti-implementing-countries#Nigeria>

<https://neiti.gov.ng/index.php/neiti-audits/oil-and-gas/category/184-2016-audit-report>

http://transparency.eu/wp-content/uploads/2019/06/Findings_extractives_CBCR_consultreview_20-05-2019.pdf

<https://resourcegovernance.org/blog/uk-financial-regulator-confirms-extractive-companies-must-name-govts-they-pay>

<https://resourcegovernance.org/blog/shell-published-its-payments-governments-nigeria-has-taken-notice>

www.shell.com/media/news-and-media-releases/2019/shell-publishes-reports-on-industry-associations-sustainability.html

www.borsaitaliana.it/borsaitaliana/regolamenti/avvisi/avviso11484aim.en.pdf

www.eni.com/docs/en_IT/enicom/publications-archive/publications/reports/rapporti-2017/Report-on-payments-to-governments-2017.pdf

www.resourcegovernanceindex.org/country-profiles/NOR/oil-gas

<https://mnetax.com/eu-public-country-by-country-reporting-of-multinational-taxes-back-on-the-agenda-28112>

https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en

https://europa.eu/rapid/press-release_MEMO-19-1629_en.htm

<https://andersentax.ng/firs-releases-income-tax-common-reporting-standard-regulations-2019/>

www.eni.com/docs/en_IT/enicom/publications-archive/publications/reports/reports-2019/Interim-consolidated-report-June-30-2019.pdf

www.total.com/sites/default/files/atoms/files/2018-form-20-f-web.pdf

www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/economic-contribution.html

<https://eiti.org/guide/disclosure-taxes-revenues>

www.opengovpartnership.org/members/nigeria/

<https://eiti.org/blog/furthering-open-government-commitments-in-partnership-with-ogp>

www.oecd.org/tax/beps/beps-actions/action13/

12.1.2 Do lenders require companies to disclose comprehensive information about the resource projects they finance?

Old response: Yes

New response: Yes

UPDATE STATUS: Additional information included

To support efforts by countries to improve extractives transparency, the World Bank has recently released a new publication, *Licence to Drill: Manual on Integrity Due Diligence for Extractives Licensing*, which provides good practice options to strengthen regulatory integrity in licensing processes. As acknowledged in CBCR 2018 study, 'overall, extractive companies would favour the adoption of a unique reporting standard applicable to all stakeholders in the sector, for instance one designed by an international organisation.'

In 2017, the OECD, in consultation with leading investment managers and stakeholders, developed guidance on responsible business conduct for institutional investors, laying out due diligence approaches for identifying and responding to environmental and social risks in their portfolio. In line with this guidance, in April 2019, the European Parliament approved a landmark regulation known as the EU Regulation for Sustainability-related Disclosures in the Financial Service sector mandating financial institutions to disclose sustainability risks and impact of the operations of businesses they finance. The Regulation introduces transparency rules for financial institutions to integrate sustainability risks and impact in their process and financial products as well as requesting reports from their clients on the adherence to internationally recognised standards for due diligence in line with OECD Due Diligence Guidance for Responsible Business Conduct. In line with the EU Regulation on sustainability-related disclosure, EU financial institutions are expected to disclose information about resource projects they are financing to submit and exchange transactional information of their clients with governments.

The IFC, as part of the World Bank initiative to promote responsible business practice, developed a corporate governance framework through which financial intermediaries encourage their clients to adopt environmental and social responsibility principles in their lending practices as well as support measures for ensuring transparency and accountability. In line with this initiative, in 2018, the World Bank launched a toolkit under its Disclosure and Transparency Programme to enhance disclosure and transparency standards in countries it works, either as investor or adviser, through better annual reporting. The Disclosure and Transparency Programme seeks to maximise the benefits of disclosure and transparency at all critical links in investment value chain, which includes policy support to help stock exchanges and regulators raise disclosure and transparency standards in their markets through model guidance, frameworks, codes, listing requirements, and other mechanisms. The IFC Disclosure and Transparency Toolkit offers step-by-step model guidance for emerging market companies to prepare comprehensive and integrated annual reports and publicly disclose strategic, governance, and performance information about their Environmental Social and Governance (ESG) practices, together with financial results.

The IMF, in close collaboration with other international organisations, has over the years developed initiatives to encourage accountability by enhancing transparency in the disclosure of documents. These initiatives include the Fiscal Transparency Code. In January 2019, the IMF published a natural resource revenue management pillar with major emphasis on information disclosure. The IMF Pillar IV reflects both established transparency practices in the extractive industries, as well as emerging norms such as the publication of resource payments and contracts and the disclosure of beneficial owners of resource rights.

Information sources

<https://blogs.worldbank.org/african/making-extractives-work-for-the-people>

<https://mneguidelines.oecd.org/eu-financial-institutions-to-report-on-due-diligence-for-responsible-business-conduct.htm>

https://ec.europa.eu/info/business-economy-euro/banking-and-finance/green-finance_en

www.ifc.org/wps/wcm/connect/b4c4a14a-7686-4457-8eaf-ec652910eeb3/Disclosure_and_Transparency_Fact_Sheet.pdf?MOD=AJPERES&CVID=mH7GnwG

12.2 Human rights and environmental, social and health protection

12.2.1 Do home governments expect companies to respect human rights and the highest standards of environmental, social, and health protection?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

The EU Non-Financial Reporting rule requires multinational companies to publish regular report on social and environmental impact of their activities. The EU Directive requires large companies to disclose certain information on the way they operate and manage social and environmental challenges associated with their operations. The EU Directive 2014/95/EU requires companies from 2018 to disclose non-financial statement in their annual reports. Under Directive 2014/95/EU, large companies are mandated to publish reports on their policies as they relate to environmental protection, social responsibility and treatment of employees, respect for human rights, etc. Since its coming into force in 2018, many companies have consistently complied with the reporting requirements of the Directive. Twenty-three EU countries have progressively harmonised the standard to include some level of penalty for non-compliance. Many countries have developed their reporting framework which is in line with the EU framework, the country's own national framework, or some other international framework in compliance with the Directive on non-financial reporting standards.

The European Parliament in 2019 approved a regulation for sustainability-related disclosure which requires financial institutions to disclose sustainability risks and impacts of business operation to society and environment. As part of the transparency rule, financial institutions are required to recognise due diligence standard in line with OECD Due Diligence Guidance for Responsible Business Conduct. In recent times, there have been some levels of compliance in this regulation with many financial institutions having taken steps to implement strategies that take into consideration environmental and social impacts of business operation. However, the approach has not been widely mainstreamed or applied across financial institutions.

The 2019 EITI standard also provides requirement for implementing countries to monitor environmental impact of extractive activities. The 2019 standard reiterates the need for EITI to cover material environmental payments by companies to governments and encourage disclosures of contextual information related to environmental monitoring. This also implies that the government expects companies to respect the highest environmental standards in the course of their business operation as it is a mandatory requirement of the EITI.

The UN Guiding Principles (UNGP) on Business and Human Rights provides a set of guidelines for states and companies to help prevent, address and remedy human rights abuses committed in the course of business operations. To promote effective and comprehensive dissemination and implementation of the UNGP, the UN Human Rights Council set up a UN Working group on the issue of human rights and transnational corporations. The group renewed its mandate in 2014 to (among other things) identify, exchange, and promote good practices and lessons learned on the implementation of the UNGP; assess and make recommendations on the development of local or domestic legislation and policies relating to business and human rights; and seek and receive information from all relevant sources, including governments, transnational corporations, and other business enterprises, national human rights institutions, civil society, and rights-holders on compliance with the UNGP.

To further strengthen the UNGP, a comprehensive framework for reporting (the UNGP Reporting Framework) was developed in 2015 for companies to report on human rights issues in line with their responsibility to respect human rights in the course of their business operation. The Reporting Framework provides a concise set of questions to which any company should strive to have answers to know and show that it is meeting its responsibility to respect human rights in practice. It therefore proved to be an essential tool that enables investors to review companies' understanding and management of human rights risks. To monitor companies' compliance with this Reporting Framework, in September 2017, UNGP Assurance Guidance was launched to help internal auditors and external assurance providers determine the extent of companies' compliance with the protection of human right, communities' rights and other groups in the course of their business operations. In line with the mandate of the UNGP Assurance Guidance, a reporting database was launched to serve a repository companies' own reporting about how they are implementing the UNGP on Business and Human Rights. The database shows how companies' disclosure responds to the key questions about their performance posed in the UNGP Reporting Framework. France is among the 113 countries committed to implementing the UNGP on Business and Human Rights by adopting a duty of vigilance law. However, according to a Shift Report on the Maturity of Human Rights Reporting in France, 60% of companies listed on

Euronext Paris CAC had a policy commitment to respect human rights but many do not implement the human rights commitments or manage human rights risk resulting from their business operations.

Similarly, OECD has developed guidelines for Multinational Enterprises with a framework for addressing issues of human rights and environmental concerns in the course of business operations of multinationals in host countries. The Guidelines provide recommendations for responsible business conduct in areas such as human rights, the environment, corruption, taxation, and information disclosure that the home governments of the oil multinationals (including Italy, the UK, France, and the US) have agreed to adhere to. While the Guidelines are generally not mandatory, they encourage the multinational enterprises of member countries to observe them wherever they operate. Where there is a breach of the Guidelines, a National Action Point is set up to address each violation in compliant in home countries. The OECD Due Diligence Guidance for Responsible Business Conduct was also developed to help multinationals implement the guidelines.

On 14 October and 22 December 2015, the Ogale and Bille Nigerian communities respectively filed claims against the UK company Royal Dutch Shell PLC and its Nigerian subsidiary SPDC in the UK High Court. Both claims were brought by law firm Leigh Day on behalf of around 42,500 residents and citizens of Nigeria seeking a remedy for extensive oil pollution which considerably affected their livelihoods and the environment. The claimants argued that Shell had failed to adequately prevent oil spills and had not subsequently conducted a proper clean-up to avoid serious contamination of agricultural lands and waterways. On 26 January 2017, the UK High Court held that the communities could not seek redress against Shell in an English court, concluding there was insufficient evidence to prove that Shell had exercised a high degree of oversight, control, or direction over SPDC, and therefore that the parent company had no legal responsibility for the pollution by its Nigerian subsidiary.

The decision of the High Court was appealed by the claimant on the ground that the judge reached the conclusion before disclosure of relevant documents establishing a relationship between Shell and SPDC. In February 2018, the Appeal Court upheld the decision of the High Court, holding that Shell did not hold a duty of care towards the affected communities. Following the dismissal of the appeal, another decision was reached by the claimants to take the case before the UK Supreme Court. In April 2018, over 40 UK and international human rights, development, and environmental non-governmental organisations submitted a letter to the Supreme Court supporting the claimants' application to appeal. On 09 July 2018, the Supreme Court announced that the Appeal Panel had decided to defer consideration of the claimants' application to appeal until judgement had been given in a similar parent company liability case being examined at the Supreme Court, namely *Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)*. In May 2019, CSOs asked the UK Supreme Court to allow the fishing communities to appeal against the 2017 ruling that Shell did not hold a duty of care towards affected communities. In July 2019, the UK Supreme Court granted permission to appeal. The decision to hear the appeal reopens the possibility for British multinationals to be held liable at home for their subsidiaries' actions abroad.

In the same vein, the coastal community of Ikebiri in Southern Ijaw Local Council Area of Bayelsa State has taken Eni, the parent company of the Nigerian AGIP Oil Company, to an Italian court seeking compensation for an oil spill that occurred in 2010 and calling for clean-up and compensation of nearly NGN 690 million (around 2 million euros). In the petition, the community alleged that, as a result of the oil spill caused by the bursting of a pipeline operated by the Nigerian AGIP Oil Company, its sources of livelihood—such as a creek, fishing ponds, and trees—were damaged, and the Nigerian AGIP Oil Company had not made an effort to remediate the damage. A court case was initiated against AGIP Eni in Italy, the home of the oil giant. The first hearing was held on 09 January 2018 at a Milan tribunal, and a second held on 18 April 2018. However, by December 2018, AGIP had opted for an out-of-court settlement and the case was settled with Eni AGIP paying a compensation of NGN 4.5 million in compensation and NGN 4 million in litigation fees, while it also embarked on an electricity light project and other community development projects costing NGN 1 billion.

Findings from field interviews show that actions against companies for violations do not go beyond initial court proceeding, as most are settled out of court with the erring company agreeing to certain compensation terms and thus avoiding sanction by their home government (if there would be any sanction at all). There have therefore never been sanctions imposed by home governments for violating the highest standards of environmental, social, and health rights. No specific instances were mentioned of the sanctioning of erring companies. Accordingly, Reverend Edward Obi stated that ‘AGIP has polluted the environment more than other oil companies and has built an impregnable system that allows them to continue with immunity.’

Information sources

<https://neiti.gov.ng/index.php/neiti-audits/oil-and-gas/category/184-2016-audit-report>

https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

www.cpajournal.com/2018/07/25/mandatory-nonfinancial-reporting-in-the-eu/

www.globalreporting.org/resource/library/NFRpublication%20online_version.pdf

<https://mneguidelines.oecd.org/eu-financial-institutions-to-report-on-due-diligence-for-responsible-business-conduct.htm>

<https://eiti.org/news/eiti-launches-2019-eiti-standard>

www.business-humanrights.org/en/working-group/about-the-working-group

www.shiftproject.org/resources/collaborations/human-rights-reporting-assurance-frameworks-initiative/

www.ungpreporting.org/assurance/

www.shiftproject.org/news/ungp-reporting-database-launches/

www.ungpreporting.org/will-frances-new-duty-of-vigilance-law-push-companies-to-improve-their-reporting-on-human-rights/

www.elevenjournals.com/tijdschrift/dogu/2013/4/DQ_2211-9981_2014_001_004_003

www.business-humanrights.org/en/shell-lawsuit-re-oil-spills-ogale-bille-communities-in-nigeria-okpabi-v-shell

www.business-humanrights.org/en/nigeria-uk-supreme-court-grants-permission-to-nigerian-communities-in-their-fight-against-shell-over-oil-spills-in-niger-delta

www.business-humanrights.org/en/eni-lawsuit-re-oil-spill-in-nigeria

Focus Group Discussion with Barrister Chima Williams at Eko Hotel, 15 October 2019

www.worldbank.org/en/projects-operations/environmental-and-social-framework

www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards

<http://pubdocs.worldbank.org/en/360141554756701078/World-Bank-Environmental-and-Social-Policy-for-Investment-Project-Financing.pdf>

12.2.2 Do donors support host states to fulfil their duty to protect human rights and environmental, social, and health standards and ensure company compliance with human rights standards?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

The donor community has consistently worked with other international development agencies to develop initiatives to help host states to fulfil their duty to protect human rights and environmental, social and health standards. In 2017 Department for International Development (DFID), the Ministry of Foreign Affairs of the Netherlands, and others supported a year-long research to examine companies' performance on human rights issues through the Corporate Human Rights Benchmarking. The report, was published in 2018, focused on some of the world's largest companies in high human rights risk sectors, which included the extractive sector. The research assessed the performance of 41 largest oil companies, including Shell, Eni, TOTAL, StateOil (Equinor), Chevron, CNOOC, China Petro Chemical, Exxon Mobile, and PetroChina, on embedding respect and human rights due diligence. Findings from the study showed an abysmal performance for Eni. Shell and TOTAL scored between 40 and 60%, while Equinor, Chevron, and Exxon Mobile scored between 20% and 30%. Chinese oil companies are the worst offenders with

scores ranging between 0% and 10%. The study was supported to serve as advocacy tool for fostering change in corporate human rights performance by oil multinationals.

As part of its programme of promoting sustainable development and eliminating poverty, DFID has over the years supported governments of developing countries to achieve sustainable development in its extractive sector, among others. For close to a decade, DFID has funded projects aiming to support positive governance reforms in resource extraction, such as stemming revenue loss, map oil spills and curb gas flaring. One such project is Foster II, which seeks to benchmark Nigeria oil and gas performance against global best practices. The aim was to promote advocacy around effective reforms that focus on improving policy outcomes for local communities affected by resource extraction.

In November 2018, USAID concluded a five-year project to strengthen the capacity of Nigerian CSOs to advocate government institutions for reforms that improve transparency, accountability, and inclusive governance. The project, tagged Strengthening Advocacy and Civic Engagement, (SACE) has supported increased engagement and efficacy of civil society to influence public institutions that serve citizens' interests with a component focusing on extractive sector transparency and development. Through the project's extractive cluster, CSOs were empowered to advocate for policy and legislative reforms in the extractive sector including the passage of PIGB—a piece of legislation that aimed to promote good governance of the extractive sector, protect the environment, and host community rights.

In 2018, UNEP, in partnership with the Government of Norway, commenced an initiative known as the Oil for Development Programme to provide capacity building for resource countries on environmental management of oil and gas sector. Through another initiative known as the Poverty Environment Initiative, both the UN Development Programme and UNEP work to ensure that the links between poverty and the environment were recognised and accounted for in national policies and budgets. UNEP, through its Oil and Gas Methane Partnership, works with oil giants such as Eni and TOTAL to reduce carbon emissions, which greatly impacts on the environment and, by extension, on some fundamental human rights.

UNEP is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system, and serves as an authoritative advocate for the global environment. In 2018, building on its 2011 Environmental Assessment of Ogoni Land, UNEP began a new project aimed at strengthening HYPREP and its governing council to discharge their responsibilities better and clean up oil contamination in Ogoni Land. The project is designed in response to a request from the government and the agreement has already been signed with the Government of Nigeria. This project comes as an integral part of UNEP's continuing support to the Government of Nigeria to clean up the environmental contamination in Nigeria and achieve lasting peace in the region. Ensuring long-term sustainability is a much bigger challenge—one that will require coordinated and collaborative action from all stakeholders.

Information sources

www.business-humanrights.org/en/corporate-human-rights-benchmark-releases-2018-ranking-results-on-human-rights-performance-of-101-companies

www.usaid.gov/nigeria/press-releases/11-08-2018-usaid-celebrates-civil-society-advocacy-achievements

www.unenvironment.org/explore-topics/disasters-conflicts/where-we-work/nigeria

www.shell.com.ng/sustainability/environment/unep-environmental-assessmen-of-ogoniland.html

www.unenvironment.org/explore-topics/extractives/what-we-do/strengthening-laws-and-governance

www.unenvironment.org/explore-topics/extractives/what-we-do/promoting-innovation-and-better-business-practices

12.2.3 Do lenders require the companies they finance to respect human rights and the highest standards of environmental, social, and health protection?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

In October 2018, the World Bank Group introduced a new environmental and social framework to guide bank investment and project financing. The framework enables the World Bank and borrowers to better manage environmental and social risks of projects and to improve development outcomes. The Directive sets mandatory requirements for the implementation of the Environmental and Social Policy for Investment Project Financing. The main objective of the framework is to help companies or borrowers to develop and implement projects that are environmentally and socially sustainable and to enhance their capacity to assess and manage the environmental and social risks and impacts of their projects. To this end, the World Bank has defined specific environmental and social standards designed to avoid, minimise, reduce, or mitigate the adverse environmental and social risks and impacts of projects. The environmental and social standards set out borrowers' responsibilities for assessing, managing, and monitoring environmental and social risks and impacts associated with each stage of a project supported by the World Bank through investment project financing to achieve environmental and social outcomes consistent with the environmental and social standards. The World Bank, under the Environmental and Social Framework (ESF), assists borrowers in their application of the environmental and social standards to projects supported through investment project financing in accordance with this Environmental and Social Policy for Investment Project Financing (Policy). In achieving this, the World Bank focuses on undertaking a due diligence of proposed projects, one that is proportionate to the nature and potential significance of the environmental and social risks and impacts related to the project. It also aims to support borrowers to carry out early and continuing engagement and meaningful consultation with stakeholders, in particular affected communities, and in providing project-based grievance mechanisms. The ESF also seeks to ensure that borrowers agree to the conditions under which the World Bank is prepared to provide support to a project, as set out in the Environmental and Social Commitment Plan.

Information sources

<http://pubdocs.worldbank.org/en/360141554756701078/World-Bank-Environmental-and-Social-Policy-for-Investment-Project-Financing.pdf>

www.worldbank.org/en/projects-operations/environmental-and-social-framework

<http://pubdocs.worldbank.org/en/822011487174249256/DFID-Economic-Development-Strategy-2017.pdf>

www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards

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?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

A plethora of anti-corruption legislation policies and frameworks exist for IOCs operating in foreign countries. The US FCPA prohibits any form of corruption or bribery by any American citizen outside America and also even American companies. It is not only limited to those countries that are American but companies listed on the Stock Exchange Commission of the US.

Other frameworks include the Convention On the Fight Against Corruption involving EU officials that guide the operation of countries belonging to any Member State of the EU, preventing any form of corruption in the countries of operation, as well as developing countries. Also, the UN Convention against Corruption and the OECD Anti-Bribery Convention are targeted at combating the bribery of foreign public officials. The OECD deals with corruption and corrupt practices, international organisations, and companies.

Developed countries such as the Italy and the UK have anti-corruption laws and frameworks such as the Independent National Commission for Evaluation, Transparency, and Integrity in Italy and the UK Anti-Corruption Strategy since December 2017. These laws are currently used to prosecute Shell and Eni in the UK and Italy respectively for alleged involvement in bribery and other corrupt practices relating the purchase of offshore oil block in Nigeria. In June 2019, investigation into the corruption case involving the two oil giants was widened by the Italian prosecutors to include obstruction of justice. It is based on these international anti-corruption

frameworks that some ongoing investigations, are at advanced stages with prospect of possible prosecution in the Netherlands. Based on the acquisition of the oil block licence in Nigeria, the notorious OPL 245 Malabu by both Eni and Shell, Mr Suraju Lanre stated in an interview session: 'There are quite a number of them. The only challenge is the activation of some of these policies and also the failure to deal with some of these conspirators in the countries of operation especially in developing countries. Some of the public office holders that are found to have been in conspiracy against the IOCs are not found to be charged in Nigeria. The companies and officials of the companies are currently standing trial in Italy, none of the public officers in Nigeria are being charged because part of the OECD agreement guidelines does not allow them to do that.'

Concerted efforts are being made at the level of international community to reduce the flow of illicit financial transactions, curb corruption, and reduce the financing of terrorism from proceeds of crimes. In the US, under the Foreign Corrupt Practices (FCPA) Act of 1977, the anti-bribery provision of the act makes it unlawful for foreign firms, US entities and individuals to make payments to foreign government officials in furtherance of a business deal. This includes activities of publicly traded companies, as well as their director, officials, shareholder and third parties like consultants, agents etc. The act applied to actions that occurred worldwide and was intended to deter corruption and abuse of power.

The FCPA also requires companies whose securities are listed in the US to meet its accounting provisions. These accounting provisions were designed to operate in tandem with the anti-bribery provisions of the FCPA and 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. To enforce the anti-bribery provision of the FCPA, the US Department of Justice and the SEC have set up enforcement mechanisms. The enforcement mechanism has seen over 60 US companies being sanctioned between 2016 and 2018. The enforcement efforts however have focused on multinationals corporation but by 2015 the US Department of Justice established a new policy to strengthen the focus on prosecution of individual both criminally and civilly. Both Italy and China have enacted policies that incentivise self-reporting and acceptance of responsibility.

In May 2018, the 4th Anti-Money Laundering Directives were amended to accommodate a number of recommendations targeted at promoting the highest standard for anti-money laundering and to counter terrorism financing. This amendment gave birth to the 5th Money Laundering Directive. The new directives which are expected to be transposed by all members by January 2020, targeted at enhancing transparency by setting up publicly available registers for companies (BOR); enhancing the powers of EU FIUs and providing them with access to broad information for carrying out tasks; broadening the criteria for the assessment of high-risk third countries; improving the safeguards for financial transactions to and from such countries; and other measures.

To further strengthen the recommendation of the 5th Directives, in July 2019, the European Commission issued a report assessing the framework for FIUs to cooperate with third countries and obstacles and opportunities to enhance cooperation between Financial Intelligence Units

within the EU. The report emphasises the need for FIUs to receive quality information on transactions or attempted transactions that could be linked to proceeds of crime or to financing of terrorism. The Anti-Money Laundering Directive requires obliged entities to, on their own initiative, inform the FIU in the Member State where they are established of any suspicious funds involved in a transaction and are perceived as proceeds of criminal activity or are related to financing of terrorism and by promptly responding to requests for additional information by the FIU. The US, the UK, and the Netherlands are among countries that have transposed the EU Anti-Money Laundering Directive. In fact, in July 2019, the UK Financial Conduct Authority published its annual Anti-Money Laundering Report 2018/2019 where it was revealed that there are ongoing 60 Anti-Money Laundering investigations incorporating both criminal and regulatory investigation with total penalty of £227.3 million. In the US, in line with the Directive, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the US Department of the Treasury's Financial Crimes Enforcement Network issued their Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision, which aimed at providing greater clarity regarding the risk-focused approach used in Bank Secrecy Act (BSA)/Anti-Money Laundering examinations.

In line with the provisions of the Anti-Money Laundering Directives, In February 2017, the Egmont Group, a global body of 155 FIUs across the world that facilitates the exchange of financial intelligence, expertise, and capability, suspended Nigeria membership of the body. This led to the signing of NFIU Bill into law in line with the requirement of the Financial Action Task Force Standards and Article 14 of the UN Convention against Corruption on 11 July 2018. Further threats by the international financial watchdogs to sanction Nigeria due to financial abuse and lack of autonomy status for the NFIU led to the separation of duty between the EFCC and NFIU. The NFIU moved into action, issuing a new financial guideline on the operations of the local government accounts entitled 'Guidelines to Reduce Vulnerabilities Created by Cash Withdrawals from LG Funds throughout Nigeria', effective 01 June 2019.

Recent revelations in the report by the OECD show that illicit financial flows cost African countries at least US\$ 50 billion every year. The sum is more than sum of developmental aid to the continent. Following up on this, President Muhammadu Buhari on 26 September 2019 at the 74th United Nations General Assembly in New York, called on other African leaders to seek pragmatic ideas on how to strengthen anti-corruption institutions to reduce or effectively eliminate illicit financial flows. The Nigerian President Muhammadu Buhari disclosed that the country lost an estimated US\$ 157.5 billion to illicit financial flows between 2003 and 2012, quoting figures from the 2014 Global Financial Integrity Report.

Information sources

¹www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2014-September-8-10/Responses_NV/Italy_EN.pdf

¹www.regulationtomorrow.com/eu/uk-government-releases-year-1-update-on-its-anti-corruption-strategy-2017-2022/

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769403/6.5128_Anti-Corruption_Strategy_Year1_Update_v7_WEB.PDF

¹www.justice.gov/criminal-fraud/foreign-corrupt-practices-act

¹www.sec.gov/spotlight/fcpa/fcpa-cases.shtml

¹www.butlersnow.com/2019/09/2019-developments-and-trends-in-the-federal-corrupt-practices-act-fcpa-global-anti-corruption-efforts-part-2-of-3/

¹<https://bac.hoganlovellsabc.com/the-global-outlook/europe>

¹<https://fcpablog.com/2018/11/14/china-creates-more-anti-bribery-prosecution-tools/>.

¹https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENG

¹https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/anti-money-laundering-and-counter-terrorist-financing_en

¹https://ec.europa.eu/info/sites/info/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf

12.3.2 Do international organisation's work to reduce illicit financial transactions?

Old response: Yes/No

New response: Yes/No

UPDATE STATUS: Additional information included

International organisations such as the IMF, the World Bank, UNODC, and OECD have been assisting country governments in providing technical expertise with policies and guidelines to curb illicit financial flows. The OECD has been monitoring and tracking illicit financial flows in developing countries and have developed a number of policies and guidelines for tax evasion and other forms of illicit financial flows. One is the national risk assessment tool developed in 2017 to prevent money laundering and combat terrorism financing. The World Bank Financial Integrity is another initiative that provides client countries with tools for increasing transparency and for preventing and pursuing illicit financial flows to reinforce the integrity of the financial system. In 2018, the OECD developed a new initiative called OECD Anti-Corruption and Integrity Hub to be launched in 2020. The Anti-Corruption and Integrity Hub aims at strengthening collective impact by providing a point of reference for the global anti-corruption and integrity community to learn, connect, and take action.

Several international organisations, especially UNs systems and its agencies such as UNODC, have played a crucial role in codifying plethora of progressive instruments to curb organised crimes and economic crimes, including the UN Convention on Combating Corruption with regional

and sub-regional operationalisation such as the African Union Convention on Combating and Preventing Corruption.

However, the International Multilateral Financial Institutions, particularly Bretton Woods Institutions such as the World Bank and the IMF, have been criticised for being lacklustre by a report entitled 'World Bank Oversight of Asset Returns Lacking Clear Vision', indicating the World Bank has not translated its framework on financial due diligence into significant progress. Put simply, the international financial institutions have not helped much.

The World Bank Group has a partnership with UNODC on the STAR initiative, an initiative that provides advisory services to help countries recover stolen assets. The STAR initiative is a partnership that supports international efforts to end safe havens for corrupt funds. STAR works with developing countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.

STAR provides platforms for dialogue and collaboration and also facilitates contact among different jurisdictions involved in asset recovery. Since its establishment 10 years ago, STAR has assisted many countries in developing legal frameworks, institutional expertise, and the skills necessary to trace and return stolen assets.

STAR works with partners around the world to develop the most effective tools to tackle and prevent the theft of assets critical to development. STAR works with global organisations including the Conference of States parties to UNCAC, the G8, the G20, and the Financial Action Task Force to influence and liaise with policymakers.

The International Corruption Hunters Alliance hosted by the World Bank Group brings together heads and senior officials of corruption investigation and prosecution agencies in over 130 countries to set global standards, encourage best practices and enforcing positive norms in anti-corruption. In October 2018, the International Corruption Hunters Alliance held a conference in Copenhagen with about 200 participants, including prosecutors and other anti-bribery professionals from over 100 countries, to reaffirm their commitment to fight corruption. Through the forum, they seek to build connections across borders, exchange techniques, build trust, and learn from each other to staunch illicit financial flows, address tax evasion, and facilitate asset tracing.

In April 2018, the IMF launched a new policy framework as a review of its 1997 Guidance Note on Governance, seeking to strengthen IMF engagement on governance and corruption. The new policy framework is designed to enable the IMF to assess the nature and severity of governance vulnerability, including corruption but with particular emphasis on fiscal governance, financial sector oversight, central bank governance and operations, market regulation, rule of law, and anti-money laundering and combating the financing of terrorism.

ECOWAS has also consistently promoted discuss to strengthens regional efforts at combating corruption. In April 2019, it held consultative meeting with the Network of Anti-Corruption

Institutions in West Africa to fashion out ways for developing faculties for training on Corruption Risk Assessment, an initiative of the ECOWAS to train and build the capacity of anti-corruption officials to appreciate, understand, and cope with the changing and emerging trends of corruption and corrupt practices in the region. The aim is to direct efforts not only on enforcement but the focus is also and more essentially on preventive measures to combat corruption. In January 2019, ECOWAS launched an anti-corruption initiative called the Anti-Corruption Integrity Promotion Programme aiming to help partner administrations implement new measures to fight corruption and promote integrity in accordance with the Revised Arusha Declaration, improving the business environment for cross-border trade.

Information sources

<https://bankinformationcenter.org/en-us/update/world-bank-oversight-of-asset-return-projects>

www.worldbank.org/en/topic/financialsector/brief/antimoney-laundering-and-combating-the-financing-of-terrorism-risk-assessment-support

<https://anticorruption-integrity.oecd.org/>

www.imf.org/en/news/articles/2018/04/21/pr18142-imf-board-approves-new-framework-for-enhanced-engagement-on-governance

<https://fcpablog.com/2018/10/31/corruption-hunters-event-energizes-compliance-community/>

www.worldbank.org/en/topic/financialmarketintegrity

www.wcoomd.org/en/media/newsroom/2019/april/building-a-regional-framework-for-customs-integrity-in-west-africa.aspx

www.dailytrust.com.ng/ecowas-develops-training-on-corruption-assessment.html