



# NIGERIA NATURAL RESOURCE CHARTER

Benchmarking Exercise Report

NOVEMBER 2014

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## ABOUT THE BENCHMARKING REPORT

The Nigerian Natural Resource Charter (NNRC) has carried out its second assessment of the governance of Nigeria's petroleum wealth. Using the Natural Resource Charter (NRC) framework, a tool developed by diverse set of internationally renowned experts on natural resource management, the latest benchmarking report systematically catalogues critical aspects of the governance of petroleum wealth in Nigeria and identifies crucial changes that have taken place since 2012, when the first assessment was completed.

The NNRC is a Nigerian initiative, led by an esteemed panel of experts on natural resource governance that convenes on a biannual basis to analyse the governance issues relating to petroleum in the country. The NNRC is supported by the Natural Resource Governance Institute, a non-profit policy institute that promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. For the 2014 edition, the NNRC entered into a partnership with the Lagos-based think-tank, the Centre for Public Policy Alternatives, to carry out much of the assessment's research.

### What is the Natural Resource Charter?

The NRC is a set of principles intended for governments, societies and the international community on how best to manage natural resource wealth so that it benefits current and future generations of citizens. The Charter does not prescribe specific approaches but instead identifies 12 broad 'precepts', which cover the main decisions required to transform assets under the ground into development above ground.

- **Precept 1: Maximising benefits for all citizens:** The development of a country's natural resources should be designed to secure the greatest social and economic benefit for its people. This requires a comprehensive approach in which every stage of the decision chain is understood and addressed.
- **Precept 2: Promoting transparency and accountability:** Successful natural resource management requires government accountability to an informed public.
- **Precept 3: Better fiscal regimes and contracting:** Fiscal policies and contractual terms should ensure that the country gets full benefit from the resource, subject to attracting the investment necessary to realise that benefit. The long-term nature of resource extraction requires policies and contracts that are robust to changing and uncertain circumstances.
- **Precept 4: Better sector governance:** Competition in the award of contracts and development rights can be an effective mechanism to secure value and integrity.
- **Precept 5: Environment, society and local benefits:** Resource projects can have significant positive or negative local 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.
- **Precept 6: The role of national resource companies:** Nationally owned resource companies should operate transparently with the objective of being commercially viable in a competitive environment.
- **Precept 7: Investing the revenues:** Resource revenues should be used primarily to promote sustained, inclusive economic development through enabling and maintaining high levels of investment in the country.

- **Precept 8: Smoothing revenue volatility:** Effective utilisation of resource revenues requires that domestic expenditure and investment be built up gradually and be smoothed to take account of revenue volatility.
- **Precept 9: Better public spending:** Government should use resource wealth as an opportunity to increase the efficiency and equity of public spending and enable the private sector to respond to structural changes in the economy.
- **Precept 10: Encouraging private investment:** Government should facilitate private sector investments at the national and local level for the purposes of diversification, as well as for exploiting the opportunities for domestic value added.
- **Precept 11: The role of international governments:** The home governments of extractive companies and international capital centres should require and enforce best practice.
- **Precept 12: The role of international companies:** All extraction companies should follow best practice in contracting, operations and payments.

### Who carried out the benchmarking exercise?

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

Expert panel	Expertise	Expert panel	Expertise
Dr Ebi Omatsola	Upstream issues	Mr Tunji Lardner	Social issues
Dr Jibrin Ibrahim	Social issues	Mrs Lois Machunga	Upstream issues
Dr Otive Igbuzor	Social issues	Prof Ademola Ariyo	Public finance
Mr Bode Augusto	Public finance	Prof Adeola Adenikinju	Public finance
Mr Demola Adeyemi-Bero	Upstream issues	Prof Akpan Ekpo	Public finance
Mr Gbite Adeniji	Upstream issues	Prof Asisi Asobie	Social issues
Mr Odein Ajumogobia	Upstream issues	Prof Ukoha Ukiwo	Public finance

The detailed research to identify the changes in the oil and gas sector since the first benchmarking exercise of the industry in 2012 was carried out by the Centre for Public Policy Alternatives (CPPA), an independent public policy think tank, on behalf of the NNRC.

Oversight and coordination was provided by the local secretariat of the NNRC.

### How was the exercise conducted?

For each of the 12 precepts, a series of questions were devised and answered using publicly available information. A 'traffic light' system was adopted to assess whether each answer was positive (green), negative (red) or partial (amber), enabling users of the benchmarking exercise to easily identify the relative strengths and weaknesses.

Some benchmarking questions could be answered categorically “yes” (green) or “no” (red). For example, “Are terms for contract awards made publicly available?” Other questions required judgment and deeper knowledge of the Nigerian petroleum sector, governance environment and economy, such as “Does the fiscal regime take account of the economy’s short-term absorptive capacity?” In some cases, the answer to the question was theoretically “yes” but the panel of experts’ knowledge of the reality led them either to qualify the “yes” or even to score it a ‘red’; “no”. This issue was particularly common when dealing with questions about legislation: in many instances, legislation was in place but not enforced.

In order to obtain the information to answer these questions, CPPA interviewed industry experts, practitioners and civil society organisations. Interviews focused upon identifying changes in Nigeria’s petroleum sector across the 12 precepts of the Charter. A comprehensive literature review was also conducted in order to provide further evidence for answering the benchmarking questions.

**How can this report be used?**

Evaluating and scoring relative performance against each of the precepts will expose policy areas that may require strengthening and enhancing. Being the second time Nigeria has been scored against the 12 precepts, this report also tracks policy, institutional and regulatory change since 2012, allowing a comparison of scores to assess any improvements in performance. The findings of the report can therefore be used to shape the policy agenda that can be taken forward by Government. This Evaluation Report provides a focal point for public engagement and civic action, and acts as a reference tool for holding government and key stakeholders accountable for their decision-making. Each red mark presents an advocacy area which can be taken up by oversight actors to work towards an improved governance of the oil sector.

<b>Overall Precept scores</b>	
<p><b>Precept 1: Securing benefits for all</b>                      No significant change since 2012, Nigeria still does not meet the NRC benchmark. Declining exploration activity and a stalled Petroleum Industry Bill suggest the government still lacks a comprehensive strategy for petroleum management.</p>	
<p><b>Precept 2: Transparency and accountability</b>                      No significant change since 2012. Scarce or inadequate information, insufficient audits and poor financial reporting standards for public entities like the NNPC continue to undermine transparency and accountability.</p>	
<p><b>Precept 3: Fiscal regime and contractual terms</b>                      No significant change since 2012, Nigeria only partially meets the NRC benchmark. The government is still not receiving a rising share of revenue in periods of increased profitability and is still incurring extensive revenue losses due to weak cost regulation.</p>	
<p><b>Precept 4: Award of contracts and sector roles</b>                      No significant change since 2012, Nigeria still does not meet the NRC benchmark. There is a persistence of political influence and conflict of interest arising in the awarding of oil contracts. Sector roles for awarding oil licenses remain opaque.</p>	

<p><b>Precept 5: Managing local impacts</b></p> <p>No significant change since 2012, Nigeria still does not meet the NRC benchmark. Although the local content bill has improved economic and social impacts, negative environmental impacts such as increasing oil spills remains a challenge. Very limited mechanisms for host communities to seek redress exist.</p>	
<p><b>Precept 6: Nationally owned resource companies</b></p> <p>No significant change since 2012, Nigeria still does not meet the NRC benchmark. The commercial viability of the NNPC remains disputed. Political interference in commercial decisions of NNPC executive management and board continue. Opacity remains the default tendency in its operations.</p>	
<p><b>Precept 7: Investing for growth</b></p> <p>No significant change since 2012, Nigeria still does not meet the NRC benchmark. A disconnect remains between the country's macroeconomic expenditure model and national development planning. Recurrent spending has increased whilst capital expenditure declines, suggesting the government is not yet investing a reasonable proportion of revenues for growth.</p>	
<p><b>Precept 8: Stabilising expenditure</b></p> <p>No significant change since 2012, Nigeria only partially meets the NRC benchmark. The Sovereign Wealth Fund, in its third year, is still grossly underfunded, whilst having to compete with the better funded Excess Crude Account for legitimacy within government.</p>	
<p><b>Precept 9: Efficiency and equity of public spending</b></p> <p>There has been a decline in performance against the NRC benchmark since 2012. Symptomatic of the challenges in this area include the ineffectiveness of the Subsidy Reinvestment and Empowerment Programme despite its significant budget and the failure of the Amnesty for militants to deliver impact on job creation.</p>	
<p><b>Precept 10: Private sector investment</b></p> <p>There have been improvements since 2012 but Nigeria still only partially meets the benchmark. Positive developments include increased local content investment by international oil companies and investment in a refinery, fertiliser and petrochemical complex.</p>	
<p><b>Precept 11: Role of Home governments</b></p> <p>There have been improvements since 2012 but Nigeria still does not meet the NRC benchmark. Positive developments include international transparency measures such as US Dodd Frank Section 1504 and similar EU legislation will allow investors to properly assess risk and citizens to see the value of their oil.</p>	
<p><b>Precept 12: Role of private sector companies</b></p> <p>No significant change since 2012, Nigeria still does not meet the benchmark. Oil companies are still not sufficiently engaging community stakeholders for a social license to operate, with significant tensions remaining between extractive companies and local communities.</p>	

# PRECEPT 1: SECURING THE GREATEST SOCIAL AND ECONOMIC BENEFITS FOR THE PEOPLE OF NIGERIA

The development of a country’s natural resources should be designed to secure the greatest social and economic benefit for its people. This requires a comprehensive approach in which every stage of the decision chain is understood and addressed.



Overview of the questions and ratings	
<b>1.1 WEALTH TRANSFORMATION</b>	
1.1.1 Is the transformation of subsoil assets into productive assets effective?	●
1.1.2 Is the exploration process effective?	●
<b>1.2 STRATEGIC VISION</b>	
1.2.1 Does Nigeria have a strategic vision for natural resources and is this up to date?	●
1.2.2 Is the strategic vision ‘well designed’?	●
1.2.3 Is the institution responsible for coordinating the response to the strategic vision able to do so effectively?	●

## Summary of key findings

### Wealth transformation

- A broad look across sector policy suggests that the transformation of sub-soil assets to wealth for the people of Nigeria remains unlikely. Nigeria has constantly focused on a commercial or transactional methodology for the development of its natural resources. Such approach diminishes the place of a transformational point of view, which needs to be encoded in every transaction completed and aligned at every decision point of the value chain towards achieving the ultimate existential outcome of transformation to wealth.
- Nigeria has not, for the most part, transformed the subsoil assets that have been extracted into investment in productive capital, such as infrastructure, health and education.
- Several factors illustrate how the overall approach to the sector may be falling short. Government has repeated its ambitions to increase crude oil production to 4 million barrels per day and reserves to 40 billion barrels by 2020. However, rig count, a practical measure of exploration activity in the industry has been on the decline over the past two years. In 2013 there were still 43 active rigs across the country whereas by April this year the number had plunged to 33. Proven reserves declined from 37.2 billion barrels in 2011 to 35 billion barrels at the end of 2012. Such declines, when taken as a proxy, indicate ineffectiveness in the regulation of the exploration process.
- Downstream, the continued decline in the capacity utilisation of Nigeria's four petroleum refineries have meant an unsustainable reliance on petroleum imports which are delivered together with the economic burden of subsidies.

### Strategic vision

- The Petroleum Industry Bill – the government's roadmap for reforming the sector – remained stalled at the National Assembly, further causing uncertainty across the sector.
- It is also unclear whether Nigeria is executing a conscious response to shifts in the global oil market. The shale oil revolution in the United States and new oil discoveries in neighbouring African countries have led to glaring declines in imports of Nigerian oil to the American market.
- In the 2012 NNRC report, the Transformation Agenda was mentioned as presenting the oil and gas sector as one of the growth drivers of Nigeria. Such earlier focus on the Transformation Agenda is reviewed in this report and rather shifted towards the Vision 20:2020, a preferable strategic document for national development.
- The Vision 20:2020 has not been updated given the new realities to fundamental strategy components within the oil and gas sector such as gas development, revised economic growth, product cost computation and investment incentives.

## 1.1 Wealth transformation

### 1.1.1 Is the transformation of subsoil assets into productive assets effective?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

The transformation of Nigeria's subsoil assets into productive assets cannot be achieved without a robust and active socioeconomic strategy for asset development. This would mean that a social development perspective was included in all policy discussions, thus going beyond the simple pursuit of an economic or export-oriented direction for all extractive activity. Such a change in orientation will require that management of the oil and gas assets is conceived as a truly national industry and not merely a federal government industry, as is presently the case. This is in line with the concept of beneficiation – the African mining vision adopted by African Union (AU) leaders in February 2009 as a determination to add value to their extractive industries for the overall benefit of their citizens.

Evidence of a positive strategy will begin to manifest in social returns like employment for a significant proportion of the population, an increase in participation of local players and a growing savings rate for the economy. However, as previously identified in the 2012 Benchmarking Exercise (BE), there is still evidence that Nigeria's real savings rate continues to decline or at best stagnate at around -30% of GDP, while local content figures remain below the target of 70% participation and the unemployment rate in the country is still as high as 30% in some places.

In specific terms, the 2012 BE report highlighted that for most of the time that data are available, since 1980, Adjusted Net Savings (ANS) – which is the difference between total investments (mostly economic capital) and total divestments (mostly subsoil assets) – has been negative or around zero. This only changed in 2005, with the introduction of the Excess Crude Account (ECA). However, for the most part Nigeria has not saved or invested any of the natural resource wealth extracted to date.

For Nigeria, the ultimate goal of resource extraction should be to transform its subsoil wealth (oil, gas and minerals) into assets above the ground that can deliver a sustained welfare increase for its people in the most efficient manner possible. This is the defining measure of a country's performance in regard to natural resource governance, and all the precepts analysed in this report work towards this goal.

This question takes a high-level statistical view of the performance of the entire resource management system. It compares the amount of subsoil assets that have been extracted in Nigeria with the amount that the country has invested in productive capital such as infrastructure, health and education. As Precept 7 of the Nigerian National Resource Charter (NNRC) suggests, some of the value from extraction should probably be used for consumption to provide an immediate increase in welfare for Nigerians. However, the overwhelming majority should be saved and invested in the country for sustainable increases in welfare for current and future generations.

This question therefore compares the value of subsoil assets that are extracted against the value invested by the country. If a substantial amount of resource revenues are seen to have been invested, it is a strong indication that the country's management of the resource extraction process has gone well.

Looking solely at crude oil production, Figure 1.1 shows that, over the most recent five-year period, Nigeria produced an average of 850 billion barrels per year. This is an improvement from the lowest production levels seen in the 1980s, in which production stayed below 550 billion barrels per year. However, the rise in production has stalled. Production peaked in 2005 at 931 billion barrels per year and, after four years of decline, has yet to regain this position.

**Figure 1.1: Crude oil production (1980-2012)**



**Notes:** Source data presented in terms of production per day. This has been converted into annual production by multiplying daily production by 365.

**Source:** BP Statistical Review, and authors' calculations.

While crude oil production growth has stalled, at the same time Nigeria's reserves have been depleted due to a lack of investment in exploration. The next part of the question is to consider to what extent the proceeds from this (and other subsoil assets in the country) have been transformed into productive investments in Nigeria.

To provide an indication of this performance, this report uses ANS. Also known as 'Genuine Savings', this measure is the difference between total investments and total divestments in all forms of capital. It tries to encapsulate both the effects of investment in economic capital such as infrastructure, health and education and the divestment in other forms of capital such as subsoil assets (defined as energy and minerals) and environmental degradation.

It is calculated as follows:

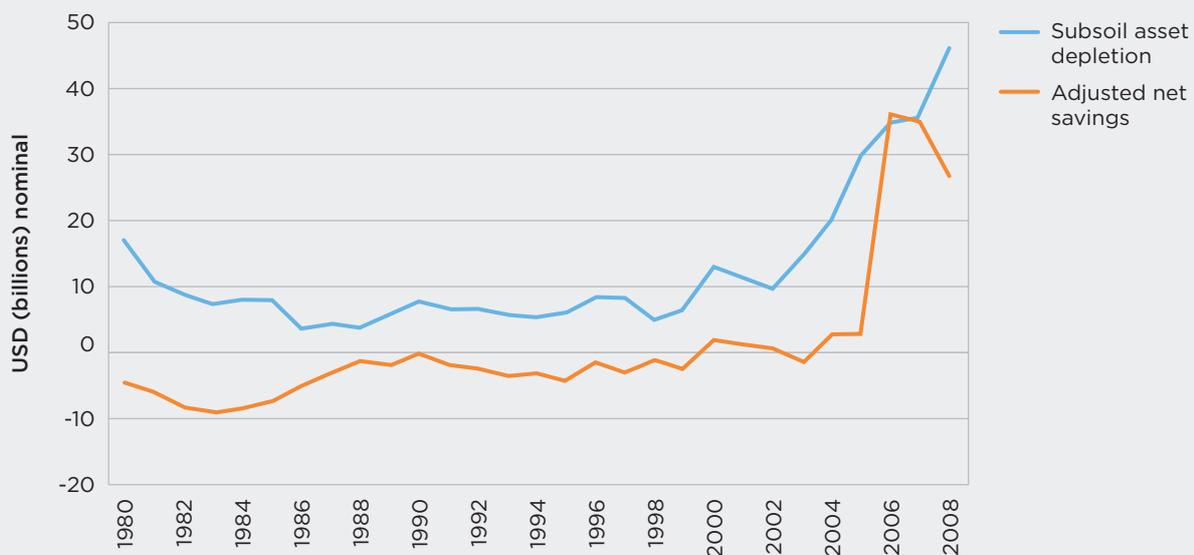
ANS = Gross National Saving less Consumption of Fixed Capital plus Education Expenditure less Net Forest Depletion less Energy Depletion less Mineral Depletion.

ANS estimates the net increase in wealth of the country taking into account changes in economic capital (including human capital, which is expressed by the variable 'Education Expenditure'), and the depletion of forestry, energy and mineral assets – of which energy assets consisting mainly of crude oil comprise the overwhelming majority of this asset class.

This measure is useful as it indicates the extent to which Nigeria is saving the return it gets from depleting its subsoil wealth. For instance, a negative value indicates that the value of subsoil and forest asset depletion is greater than the increase in the value of investment in the country. In other words, a negative value shows that the extraction of subsoil assets has led to an overall decline in the wealth of Nigerians.

For much of the period for which data are available Nigeria performed poorly in this regard. ANS only became consistently positive from 2000 onwards; in other words, until 2000 Nigeria was systematically depleting its wealth. Since 2006, the data suggest a substantial improvement. While production and commodity prices have risen precipitously, Nigeria has also managed to invest a larger proportion of the proceeds. One cause for worry, however, is that as potential proceeds from resource extraction climbed even higher in 2008, Nigeria's ANS fell. This is significant: the gap at this time between resource rents and ANS represented 42% of resource rents. While smaller than the amount consumed before 2006, this still represents a potentially large lost opportunity. This could be a consequence of the global economic recession at this time, during which the government may have encouraged greater consumption to alleviate short-term suffering. An alternative cause might be that extraction costs have risen higher than is estimated in the data. However, the worry is that the data from 2009 onwards might show a similar downward trend in performance.

**Figure 1.2: ANS and subsoil asset depletion (1980-2008)**



**Notes:** Gross National Savings data for Nigeria are missing in the Changing Wealth of Nations dataset. For this report, the authors calculate these values using the World Economic Outlook data types: GDP and Gross National Savings as Percentage of GDP.

**Source:** World Bank Changing Wealth of Nations, World Economic Outlook Database, and authors' calculations.

If the resource management system in Nigeria had worked ‘perfectly’, in the sense that all the value of extraction had been invested, what would the picture look like? The series in Figure 1.2 labelled ‘Subsoil Asset Depletion’ is the estimated value of rents from the extraction of Nigeria’s oil, gas and minerals (see the Table of Definitions below). It shows the hypothetical case in which Nigeria invests all the rents from extraction. This is the minimum level of savings that Nigeria would have had each year if it had invested all the proceeds from extraction.

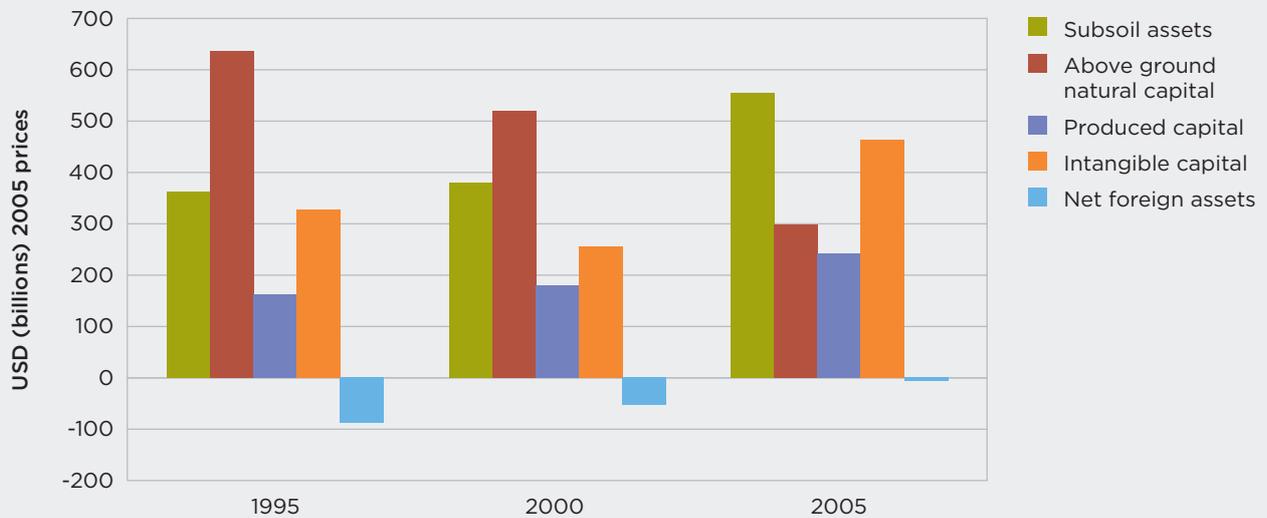
**Table 1.1: Table of definitions**

Statistical item	Definition
<b>Subsoil asset depletion</b>	<p>The ratio of present value of rents, discounted at 4%, to exhaustion time of the resource. It covers crude oil, natural gas, coal, bauxite, copper, iron ore, lead, nickel, phosphate, tin, zinc, gold, and silver. Exhaustion time = <math>\text{Min} (25 \text{ years}, \text{Reserves}/\text{Production})</math>. Rents = <math>(\text{Unit Price} - \text{Unit Cost}) * \text{Production}</math>.</p> <p>This is a summation of the Energy and Mineral Depletion series as provided in Changing Wealth of Nations.</p>
<b>Gross national saving</b>	The difference between gross national income and public and private consumption, plus net current transfers.
<b>Education expenditure</b>	Current operating expenditures in education, including wages and salaries and excluding capital investments in buildings and equipment.
<b>Net forest depletion</b>	The product of unit resource rents and the excess of roundwood harvest over natural growth. Rents = $\text{Rental Rate} * \text{Unit Price} * (\text{Production} - \text{Increment})$ .

**Source:** World Bank Changing Wealth of Nations database.

Finally, this question looks at how the composition of Nigeria’s wealth has changed over time to understand how well the transformation process has performed in the country. Figure 1.3 shows the changes to the overall composition of Nigeria’s wealth in 1995, 2000 and 2005. The figure shows that the value of subsoil assets has risen. The section on Question 1.1.2 explains that exploration has been minimal during this period. The rise is therefore accounted for by an overall rise in commodity prices including oil, gas and other minerals, as well as being due to increases in proven reserves as a result of normal operations in existing fields (see Question 1.1.2 for details). Note that this increase in the value hides the fact that significant amounts have been depleted, as has already been discussed in this question. While subsoil natural capital has risen, the value of above-ground natural capital has fallen – while this is outside the core focus of the NNRC Report, it is nevertheless a worrying trend. Set against the depletion of these assets is a rise in produced capital, intangible capital (such as the education levels of Nigerians) and a fall in debt owed to foreign countries (shown as the negative values of Net Foreign Assets moving towards zero).

**Figure 1.3: Composition of Nigeria’s wealth by asset class (1995-2005)**



Source: World Bank Changing Wealth of Nations database.

**Information source:**

Venables, T. (2012). Managing Resource Revenues. University of Oxford. IMF Seminar Series. <https://www.imf.org/external/np/seminars/eng/2012/kinshasa/pdf/av.pdf>

Extracts from Expert Panel Interview/Discussion with Prof. Assisi Asobie, June 2014.

**1.1.2 Is the exploration process effective?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The 2012 NNRC BE Report noted that almost all exploration has been stalled for several years due to constraints in the government’s ability to fund cash calls for joint ventures (JVs), the uncertainty over the Petroleum Industry Bill (PIB) and the failed licensing rounds. Furthermore, there is little evidence on the value of discoveries. The Nigerian National Petroleum Corporation (NNPC) used to publish annual reserve data but they stopped several years ago. The statistical bulletins still have some drilling and seismic information, but are silent on reserves. There is no systematic way of publishing figures and the reserve numbers available are from ad-hoc pronouncements by oil-sector officials, OPEC data, or US Environmental Impact Assessment (EIA) and BP statistical review estimates.

To make some sense of these data, this report provides an estimation of the additions to reserves measured in barrels of crude oil. Measuring the performance of the exploration process is challenging. By its very nature there is uncertainty over the size and value of discoveries, which can only be fully resolved after extraction. Defining reserves is also problematic. This exercise uses proven reserves, which can be affected by both the exploration process, information revealed during the course of standard operations, and changes in technology and market price.

To provide a basic indication, this report estimates additions to proven crude oil reserves by comparing crude production and proven reserves in each decade for which data are available. The results, shown in Table 1.2, suggest that 84 million barrels have been added to Nigeria's proven reserves since 1990; this is almost three times Nigeria's stock of reserves in 2011. Furthermore, these estimates suggest the rate of additions has improved over each decade since 1990, particularly since 2000. Given that exploration has stalled in recent times, much of these additions may have come from discovering greater reserves in brownfield sites currently in operation.

**Table 1.2: Estimated additions to proven reserves (millions of barrels)**

	Cumulative production	Proven reserves	Estimated additions to proven reserves
<b>1980</b>	8.4	16.7	
<b>1990</b>	13.7	17.1	14.1
<b>2000</b>	20.6	29.0	32.5
<b>2011</b>	28.9	37.2	37.1

**Notes:** Estimated additions to proven reserves calculated as:  $R_t - R_{t-1} + P_t$ , where R = Proven Reserves, P = Production, and t denotes decade.

**Source:** Cumulative Production from OPEC Statistical Bulletin 2012, Proven Reserves from BP Statistical Review of World Energy 2012, and authors' calculations.

As an update to the 2012 Report, this edition further considers declining exploration activity as a precursor to understanding recent events in the exploration process. Exploration activities for oil and gas can be relatively measured by a variable known as Rig Count. This variable shows the number of drilling rigs working in a particular geographical location at a point in time, and has become a leading indicator of demand for the products used in drilling, completing, producing and processing hydrocarbons. Osam Iyehen, Senior Vice President, Oil and Gas, Africa Finance Corporation (AFC), notes that Rig Count is largely a reflection of the level of exploration, development and production activities occurring in the oil and gas sector.

New information on Rig Count across Nigeria's oil and gas industry landscape shows that there are significant challenges facing the exploration process. According to recent statistics from the Department of Petroleum Resources (DPR), in April 2014 there were 33 active rigs in the country, 23 stashed rigs (under storage perhaps for lack of contracts), and five rigs on stand-by. In August 2013, the number of active rigs in the country was put at 43. This information contrasts with global data from Baker Hughes, a leading supplier of information on oilfield services, products and technology. In December 2013, Baker Hughes reported worldwide Rig Counts at 3,478, up by 26 from the 3,452 counted in November 2013 and up by 88 from the 3,390 counted in December 2012.

Recent trends of assets divestment by international oil companies (IOCs) operating in Nigeria, a decline in capital investment, and the non-passage of the PIB are major factors attributed to the decrease in the number of active drilling rigs in Nigeria’s oil and gas industry. Other factors include competition for available rigs due to increase in oil discoveries in different parts of the world, funding shortfalls on the part of the NNPC for JV activities, delay by regulatory authorities in giving permits to oil companies to bring in rigs, and security challenges in the country.

Such uncertainties and long delays in the industry make it difficult for IOCs to continue to invest in oilfield development, partly explaining the rising rate of divestment in oil field stakes. Also, as new locations across Africa make successful oil discoveries, rig owners perceive the attractiveness of these new sites and move their equipment. This has ensured that Nigeria, Africa’s top oil producer, has seen its crude oil reserves decline from 37 billion barrels to 35 billion barrels, a development inconsistent with the target to increase reserves to at least 40 billion barrels by 2020.

**Information source:**

Asu, F. (22 May 2014). IOC asset sales, deferred investment, PIB harm oil drilling activities. *Business Day*. Online.

<http://businessdayonline.com/2014/05/ioc-asset-sales-deferred-investment-pib-harm-oil-drilling-activities/#.U4MOJPIdWSo>

## 1.2 Strategic vision

### 1.2.1 Does Nigeria have a strategic vision for natural resources and is this up to date?

**Old response: Yes**

**New response: No**

**UPDATE STATUS: Some changes observed**

Nationally, as a federation there is the Vision 20:2020 document, which contains overarching direction and principles. From this, policy drive should implicitly emerge. Policy is required to flow from the Vision and not otherwise. Yet neither the Vision nor any policy has been carefully tasked to provide actionable implementation plans and updates for the extractive sector. The declining reserves, drop in oil sales, increasing oil theft, agitated host communities, increase in poverty statistics around exploration activity and other similar challenges all lend credence to the fact that government is not systematic about the issues.

Notwithstanding these issues, at the federal level the local content policy drive within the Federal Government of Nigeria's (FGN) Transformation Agenda, which is being implemented by the Nigerian Content Development and Monitoring Board (NCDMB), has yielded some positive results. Some of these include reversal of capital flight, increase in domiciliation of overall industry spend, creation of direct jobs for Nigerians and increase in performance levels of indigenous players in engineering, fabrication and manufacturing.

**Information sources:**

Nigeria Oil and Gas Intelligence Reports, 2014.

*Extracts from Expert Panel interviews/discussions with Mr Tunji Lardner and Dr Otive Igbuzor, June 2014.*

**1.2.2 Is the strategic vision 'well designed'?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

Although the Vision 20:2020 document contains oil and gas provisions, it focuses mostly on an export-oriented, commercial view of exploring the resources with too much emphasis on Foreign Direct Investment (FDI). Most of the growth models proposed are public-private initiatives that do not operationally benefit the poor. This means that the Vision specifies the development of the oil sector as a conclave economy that can only benefit a few and does not create a lot of employment. Also, the document is not well articulated enough to take changing circumstances into consideration. Existing insecurities in the sector have not been adequately addressed.

Except for the Nigerian content aspect, a lot of the impetus behind the Transformation Agenda has also not been sustained over the years owing to ineffective design. Local content, monitored by the NCDMB (which is responsible for measurement of indigenous performance levels), is the only component showing forms of progress.

**Information source:**

Extracts from Expert Panel interviews/discussions with Dr Otive Igbuzor, June 2014.

**1.2.3 Is the institution responsible for coordinating the response to the strategic vision able to do so effectively?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

Ideally, economic coordination should be done by the Economic Management Team, chaired by the Vice President, with bottom-up input from each of the local government areas through the states up to the FGN as stipulated by the Constitution.

According to the 2012 NNRC BE, the National Planning Commission is responsible for securing this process, i.e. coordinating the response to the strategic vision for natural resources to make sure that planning starts from the grassroots. However, the agency continues to show signs of strain in terms of coordinating Nigeria's national development plans (NDPs). Over the last two decades, there seems to have been a form of numbness in its role as coordinator. Plans are often published with severe delays and there have been periods with no plans published at all. When these plans have existed even in draft form, they have not been implemented. This challenge may be attributed to the fact that the position of the 'Coordinating Minister for the Economy' is not within this agency, giving room to incidences of conflict of interests on policy direction.

## PRECEPT 2: TRANSPARENCY AND ACCOUNTABILITY

Successful natural resource management requires government accountability to an informed public.



### Overview of the questions and ratings

#### 2.1 TRANSPARENCY AND AVAILABILITY OF INFORMATION

<b>2.1.1</b> Has the government published detailed and up-to-date legislation governing the resource sector?	●
<b>2.1.2</b> Is there a regulatory requirement for disclosure of information in the natural resource sector?	●
<b>2.1.3</b> Is there a regulatory requirement for public officials to disclose information about their financial interest in any extractive activity or JV?	●
<b>2.1.4</b> Do any government bodies or state-owned companies publish information on: (a) Reserves?	●
<b>2.1.5</b> Do any government bodies or state-owned companies publish information on: (b) Production volumes?	●
<b>2.1.6</b> Do any government bodies or state-owned companies publish information on: (c) Prices?	●
<b>2.1.7</b> Do any government bodies or state-owned companies publish information on: (d) Value of oil exports?	●
<b>2.1.8</b> Do any government bodies or state-owned companies publish information on: (e) Investment in exploration and development?	●
<b>2.1.9</b> Do any government bodies or state-owned companies publish information on: (f) Production costs?	●
<b>2.1.10</b> Do any government bodies or state-owned companies publish information on: (g) Companies' operating costs?	●

<b>2.1.11</b> Do any government bodies or state-owned companies publish information on: (h) Quasi-fiscal activities?	
<b>2.1.12</b> Do any government bodies or state-owned companies publish information on: (i) Disaggregated oil revenue streams?	
<b>2.1.13</b> Are monthly or more frequent reports or statistical databases on revenue generation published by (i) Ministry of Finance; (ii) Ministry for the Extractive Sector; (iii) Central Bank of Nigeria (CBN); or (iv) any state-owned company?	
<b>2.1.14</b> Is Nigeria compliant with the Extractive Industries Transparency Initiative (EITI)?	
<b>2.1.15</b> Has Nigeria published an EITI report?	
<b>2.2 ACCOUNTABILITY</b>	
<b>2.2.1</b> Is there freedom of the press?	
<b>2.2.2</b> Is information on natural resource-related revenues freely available to the public?	
<b>2.2.3</b> Are civil society organisations free of government interference?	
<b>2.2.4</b> Does a parliamentary committee scrutinise audit reports on resource revenues?	
<b>2.2.5</b> Are mechanisms used to verifiably measure resource production rates at source?	
<b>2.2.6</b> Does the agency or agencies in charge of receiving payments from resource companies have internal controls to monitor assets and payments?	
<b>2.2.7</b> Is there independent, objective regulation and oversight of: (a) Resource management?	
<b>2.2.8</b> Is there independent, objective regulation and oversight of: (b) Environmental management?	
<b>2.2.9</b> Is there independent, objective regulation and oversight of: (c) Occupational health and safety?	
<b>2.2.10</b> Is there independent, objective regulation and oversight of: (d) Revenue management?	
<b>2.2.11</b> Is there independent, objective regulation and oversight of: (e) Commercial roles?	

## 2.3 INVESTIGATION AND SANCTION

<p><b>2.3.1</b> Are there regular independent audits to international standards of: (a) National natural resource companies?</p>	
<p><b>2.3.2</b> Are there regular independent audits to international standards of: (b) International natural resource companies?</p>	
<p><b>2.3.3</b> Are there regular independent audits to international standards of: (c) Government ministries, departments and agencies (MDAs)?</p>	
<p><b>2.3.4</b> Are administrative sanctions in place for failure to abide by sector laws or regulations?</p>	
<p><b>2.3.5</b> Are judicial sanctions in place for failure to abide by sector laws or regulations?</p>	
<p><b>2.3.6</b> Are the standards enforced in practice?</p>	

### Summary of key findings

#### Transparency

- Inconsistency in information published by government agencies gave rise to the Central Bank of Nigeria (CBN) accusing the Nigerian National Petroleum Corporation (NNPC) of non-remittance of about \$20 billion to the Federation account over a period of 18 months.
- Disclosure of information in the natural resource sector is limited. The legislation governing the sector is outdated (i.e. the Petroleum Act (1969) and NNPC Act (1977)) and there is no overarching framework that mandates disclosure of information.
- The lack of regular audits for the NNPC within the government as well as poor financial reporting standards has permitted the complexity that exists in public revenue procedures to linger.
- The Nigeria Extractive Industries Transparency Initiative (NEITI) has conducted comprehensive audits in support of extractive revenue transparency. Although its publications are usually delayed, it is worrying that when eventually available most of the recommendations are not implemented.
- The draft PIB proposed to the National Assembly in 2012 contains strong provisions to ensure transparency in the sector, but its passage into law continues to stall. In fact, it seems that of all the topical issues for debate before the National Assembly in 2014, the issue of the PIB is perhaps of least priority.

- The government publishes some information on reserves, production volumes, prices, the value of resource exports and companies operating in the sector. However, the information is rarely up to date or complete, and is often only published on an annual basis (again late). Furthermore, the government does not publish information on investment in exploration and development, production costs, quasi-fiscal activities or disaggregated oil revenue streams.
- There are timely monthly reports on oil revenue generation published by the CBN (i.e. the CBN Monthly Economic Report).

### **Accountability**

- The information on natural resource-related revenues available to the public is both of limited quality and openness. Nigeria is ranked 80th of 98 countries surveyed in the 2012 Open Budget Index (OBI) and also received a 'weak' score of 42, ranking 40th out of 58 countries on the Resource Governance Index (formerly the Revenue Watch Institute Index). These indices measure openness of public organisations on information concerning revenues.
- Despite having participated actively since 2004, NEITI has no regulatory authority within the natural resource sector and only actually reviews activities in the industry ex-post. Thus, NEITI's role in ensuring accountability is minimal.
- Parliamentary committees have the mandate to scrutinise audit reports on resource revenues but evidence suggests this is not done effectively.
- There are significant weaknesses in the metering mechanisms and framework for measuring resource production rates at source. This appears to be deliberate, since technology of flow control systems provides the opportunity to ascertain such information with accuracy.
- There are significant weaknesses in the capabilities of government agencies to provide independent, objective regulation and oversight of resource management, environmental management, occupational health and safety, revenue management or commercial roles.
- The overall citizen perception of transparency and accountability performance in the resource sector continues to be one of reduced confidence and increasing doubt in regard to the sincerity of public officials in dealing with the issue.

### **Investigation and sanctions**

- As in the case of NEITI reports, even reports of legislative house committees monitoring oil revenue procedures do not attract any form of sanctions for either offending agencies of government or individuals found culpable.
- There are no regular independent audits of the NNPC to international standards, and there is no scrutiny, accountability or transparency for any audits that are conducted.
- Administrative and judicial sanctions for failure to abide by sector laws are rarely enforced in practice.

## 2.1 Transparency and availability of information

### 2.1.1 Has the government published detailed and up-to-date legislation governing the resource sector?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

Despite the significance of the sector as the lifeblood of Nigeria's economy, the government is yet to articulate, publish and operationalise detailed and up-to-date legislation to govern the resource sector. As noted in the 2012 NNRC BE, although amended many times along the way, the Petroleum Act (1969) remains an old document that was designed for an industry in its infancy. Similarly, the NNPC Act (1977), despite various amendments, is also outdated and out of sync with contemporary global business realities.

The legal framework regulating the exploration, production and transportation of crude oil and natural gas and the supply, distribution, storage and marketing of petroleum products is not available in a single compendium at present. To provide a detailed regulatory framework, the Nigerian government inaugurated the Oil and Gas Sector Reform Implementation Committee (OGIC) in April 2000 through the National Council on Privatisation. The main product of the OGIC is the PIB, which is expected to be the most comprehensive and up-to-date legislation to govern the sector but it is yet to pass at the National Assembly.

#### **Information sources:**

Ayoola-Daniels, N. (2008) Nigerian Laws, Cases and Materials on Oil and Gas, Petgas Global Consulting, Ltd.

[http://www.iogl.org/index.php?option=com\\_content&view=article&id=82&Itemid=113](http://www.iogl.org/index.php?option=com_content&view=article&id=82&Itemid=113)

<http://www.nnpcgroup.com/PublicRelations/PetroleumIndustryBill.aspx>

<http://www.dregbogah.com/documents/69.html>

**2.1.2 Is there a regulatory requirement for disclosure of information in the natural resource sector?****Old response: Yes****New response: No****UPDATE STATUS: Some changes observed**

The existing requirements for disclosure of information are more conventional than regulatory. These include the Code of Conduct practice, Freedom of Information (FOI) Act and the NEITI Act. The apparent information starvation within the system raises process issues that need to be addressed for any improvements in transparency to occur. Although in the 2012 Report, NEITI's role was discussed as one of the most important transparency organisations working with regulatory agencies and civil society, this 2014 Report notes that such a role can only be marginal. Despite having participated actively since 2004, NEITI has no regulatory authority within the natural resource sector and only actually reviews activities in the industry ex post.

The FOI Act (2011) and other similar laws to the effect of information disclosure are only useful to citizens who actively seek and request such information, rather than encouraging mandatory disclosure of information in the public interest. The 2012 NNRC Report noted that the draft PIB submitted to the National Assembly in July 2012 contains good provisions for ensuring transparency and non-confidentiality in relation to the upstream licence and lease award process, work programmes, relinquishments, development plan approval, unitisation and production. However, it unfortunately grants complete discretionary powers to the President to grant licences and leases which, if exercised, would significantly limit transparency and accountability.

**Information sources:**

<http://www.neiti.org.ng>

<http://www.eiti.org>

**2.1.3 Is there a regulatory requirement for public officials to disclose information about their financial interest in any extractive activity or JV?****Old response: No****New response: No****UPDATE STATUS: Additional information included**

According to the earlier NNRC benchmarking report, there is no requirement for public officials to disclose information about any financial interests (whether conflicting or otherwise) in the current regulatory or legislative framework (including the NEITI Act), and this has not been addressed in the 2012 draft of the PIB.

The Constitution establishes a Code of Conduct for Public Officers, which stipulates that 'A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities'. Subsequently, the Code of Conduct Bureau was legally enshrined in 2004 and mandated to receive asset declarations by public officers. However, such declarations are only legally required every four years or at the end of term of office.

For example, in the 2005 bidding round there were indications that the company New Tigerhead PSTI Limited, which partnered with Conoil Producing Limited (Conoil) as a Local Content Vehicle (LCV), won an offshore oil block named Oil Prospecting Licence (OPL) 257. Incorporation records in 2009 showed that 80% of New Tigerhead was controlled by Mr Lee Maeba, whose name and profile match that of Senator Lee Maeba - a then serving Senator of the Federal Republic in the upper legislative House and Chairman of the Senate Committee on Petroleum (Upstream), directly responsible for the oversight of oil block licensing. The Senator has never publicly denied this connection.

Since existing requirements for disclosure of information, including the Code of Conduct practice, Fiscal Responsibility Act and FOI Act, are more conventional than regulatory, this means that, in practice, it is much more difficult to enforce such laws. There is an ongoing case on the use of the FOI Act to determine if the NNPC falls under the category of agencies the law applies to. Presently, there is no legal requirement to do that. Also, the DPR says in public that it conducts checks on the directorship structure in the award of assets and licences to companies.

#### 2.1.4 Do any government bodies or state-owned companies publish information on: (a) Reserves?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The 2012 NNRC BE Report noted that on the official website of the NNPC, there is information that Nigeria's oil reserves stood at 34 billion barrels as of 2003, and natural gas at 159 trillion standard cubic feet (scf). On the NNPC's 'upstream opportunities' site, it states that Nigeria has 32.5 billion barrels and 187 scf of proven oil and gas reserves respectively.

#### Information sources:

*<http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/InvestmentOpportunities/UpstreamOpportunities.aspx>*

*<http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasInNigeria/DevelopmentoftheIndustry.aspx>*

**2.1.5 Do any government bodies or state-owned companies publish information on:  
(b) Production volumes?**

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: No observable changes**

From the 2012 Report, we see that information on the production volumes of crude oil can be sourced from the NNPC Annual Statistics Bulletin and Monthly Petroleum Information (MPI), which is a monthly summary of Nigerian oil and gas industry activities featuring data on all aspects of upstream and downstream operations. According to the NNPC Annual Statistics 2011, which is the most current, the crude oil production volume for the year 2011 was 866,245,232 barrels. The most up-to-date MPI is for April 2012, which states production for the month at 68.60 million barrels.

**Information source:**

*<http://www.nnpcgroup.com/PublicRelations/OilandGasStatistics.aspx>*

**2.1.6 Do any government bodies or state-owned companies publish information on:  
(c) Prices?**

**Old response: Yes/no**  
**New response: No**

**UPDATE STATUS: Some changes observed**

Accurate and appropriate pricing continues to be a challenge for many commodities within the country. Even where prices are standardised (as is the case for petroleum products), information on prices is not publicly available or verifiable. For this reason, the downstream sector constantly experiences price variability across the country, particularly in areas far away from the oil depots and tank farms.

Within the upstream sector, since prices are internationally determined, they can be verified. However, despite the CBN publishing statistical information on crude oil prices (as mentioned in the 2012 NNRC Report), information on official selling prices, which are used for calculating royalties and sales of Nigeria's Profit and Equity Oil, are not made available in an open and timely manner.

**Information source:**

*<http://www.cenbank.org/rates/crudeoil.asp>*

**2.1.7 Do any government bodies or state-owned companies publish information on:  
(d) Value of oil exports?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

The CBN keeps information on the value of oil exports. According to its 2013 Annual Statistical Bulletin, the value of Nigeria's oil exports in 2013 was NGN 12,660,929.59, a rise of NGN 98,111.62 on the previous year. This represents an increment of approximately 0.8% of the value of oil exported in 2012. In 2012, the value dipped to NGN 12,562,817.97 from NGN 12,674,132.38 recorded in 2011, representing a percentage loss of about 0.9% from the previous year. These fluctuations are driven by increases in international oil prices and volumes of crude oil exports as well as rising crude oil theft and vandalisation of pipelines.

**Information source:**

<http://www.cenbank.org/rates/crudeoil.asp>

**2.1.8 Do any government bodies or state-owned companies publish information on:  
(e) Investment in exploration and development?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

Information on the government's investment in exploration and development is not published or easily accessible. The recent allegation of an unremitted US\$ 20 billion by former CBN Governor Sanusi Lamido Sanusi referred to the proceeds of some investment accounts totalling US\$ 6 billion made through the NPDC on behalf of the NNPC. According to the report, the NPDC entered into certain strategic alliance agreements (SAAs) with two business partners to develop its portion of fields transferred from Shell divestments held in custody for the NNPC. Information on these SAAs continues to be very complicated, making it difficult to ascertain their constitutionality and the exact amount of investments involved.

**Information source:**

'Memorandum submitted to the Senate Committee on Finance on the non-remittance of oil revenue to the federation account' by Sanusi Lamido Sanusi, CBN Governor, on 3 February 2014

**2.1.9 Do any government bodies or state-owned companies publish information on:  
(f) Production costs?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The National Petroleum Investment Management Services (NAPIMS) represents government interests in both JVs and Production-Sharing Contracts (PSCs), and is charged with controlling the costs incurred by operating companies. However, neither NAPIMS nor the NNPC (or, indeed, any other government agency) publishes information on production costs. The NNPC Annual Statistical Bulletin is the annual version of the MPI. This bulletin provides a general review of petroleum industry activities, data on seismic activities, crude oil production, lifting, allocations and exports by destination, receipts, gas production, utilisation, sales, transmission and exports. However, the publication does not contain information on the costs incurred in the production of oil.

**2.1.10 Do any government bodies or state-owned companies publish information on:  
(g) Companies' operating costs?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The 2014 NNRC Report notes that the NNPC Annual Statistics Bulletin and MPI contain information on oil-producing companies and oil marketing companies operating in Nigeria.

**Information source:**

*<http://www.nnpcgroup.com/PublicRelations/OilandGasStatistics.aspx>*

**2.1.11 Do any government bodies or state-owned companies publish information on:  
(h) Quasi-fiscal activities?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Quasi-fiscal activities include activities such as social and environmental expenditure or provisions for subsidies to producers or consumers without explicit budget support from IOCs or the NNPC. The main quasi-fiscal activity undertaken by the Nigerian government, through the NNPC, is subsidising petroleum products. Information on subsidies and other forms of quasi-fiscal activities, such as the amounts spent on charity donations and local community development, is not readily available. Controversies around the subsidy regimes remain unresolved partly as a result of information incoherence and scarcity.

**2.1.12 Do any government bodies or state-owned companies publish information on:  
(i) Disaggregated oil revenue streams?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

From the 2012 NNRC Report, we note that NEITI provides information on disaggregated revenue streams in the oil and gas sectors but currently only for the period 2005 to 2008. The disaggregated revenue streams consist of royalties, special taxes, dividends, bonuses and other streams. However, no institution publishes up-to-date and comprehensive information on other disaggregated revenue streams.

**Information source:**

*<http://www.neiti.org.ng/sites/default/files/auditors2006/NEITI-2006-2008-Financial-Report-Final-300112.pdf>*

**2.1.13 Are monthly or more frequent reports or statistical databases on revenue generation published by (i) Ministry of Finance; (ii) Ministry for the Extractive Sector; (iii) CBN; or (iv) Any state-owned company?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

Statistical information on oil revenue is provided in the CBN's Monthly Economic Report. This report is normally published at the end of each month. The Economic Report for April 2014 reveals that gross oil receipts totalled NGN 622.90 billion, representing 67.6% of total revenue for the month.

According to new ranking reports on the Reporting Practices Index, Nigeria scored 38%, ranking 42nd of 58 economies considered. This low 'failing' score of 38 depicts a lack of contract transparency and incomplete reporting on most aspects of the petroleum industry. The Petroleum Resources Ministry publishes little information on the upstream licensing process, fiscal and production arrangements, contracts, EIAs or operational data. It publishes no reports on revenues.

In contrast, the Finance Ministry occasionally publishes information on production volumes, prices, value of resource exports, estimates of investment in exploration and development, production costs, costs of subsidies, production stream values, royalties, special taxes, and the government's share in PSCs. The CBN regularly publishes information on production volumes, prices, the value of crude oil exports, production costs, production streams' value, royalties, and special taxes. In addition to these, Nigeria's 2012 EITI report covers the 2009–2011 fiscal years and includes comprehensive information on industry operations and disaggregated revenue streams.

**Information sources:**

*<http://www.cenbank.org/Documents/monthlyreports.asp>*

*[www.premiumtimesng.com/oilgas-reports](http://www.premiumtimesng.com/oilgas-reports)*

*<http://www.revenuewatch.org/countries/africa/nigeria/overview>*

**2.1.14 Is Nigeria compliant with the EITI?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

Nigeria is EITI compliant as it has undergone validation, which is an essential element of the EITI as an international standard. It provides an independent assessment of countries implementing the EITI and what measures they should take to make better and faster progress. An independent validator carries out the assessment of whether all the requirements outlined in the EITI rules have been met. The EITI Board, through the EITI Secretariat, oversees the validation process. The International EITI Board reviews all validation reports.

Nigeria has also domiciled the EITI standards in the form of the NEITI Act of 2007, a locally passed law.

**2.1.15 Has Nigeria published an EITI report?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

NEITI has published four NEITI/EITI reports, which were significantly delayed but quite comprehensive, including financial, physical and process audits of Nigeria's petroleum industry for the period 1999 to 2011. The most recent of these is the 2009 to 2011 Audit Report, which revealed that Nigeria earned US\$ 143.5 billion in three years from the oil and gas industry.

## 2.2 Accountability

### 2.2.1 Is there freedom of the press?

**Old response: Yes**

**New response: Yes**

#### **UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, Section 39 (1-3) of the Constitution of the Federal Republic of Nigeria 1999 states that 'every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference ... every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.' Section 3 (22) of the Nigerian Constitution also states that 'the press, radio, television and other agencies of the mass media shall at all times be free to ... uphold the responsibility and accountability of the Government to the people.'

In addition, the FOI Act (2011) was established to make public records and information more freely available. This provides for public access to public records and information, protects public records and information to the extent consistent with the public interest and the protection of personal privacy, protects serving public officers from adverse consequences for disclosing certain kinds of official information without authorisation, and establishes procedures for the achievement of those purposes.

Nonetheless, according to Freedom House, press freedom is partial. In addition, there are socio-political constraints in practice that engender self-censorship, low-quality reporting and malpractice, among other problems. Freedom of the press on its own has little impact on accountability because, while increased scrutiny of the system may be a sign of progress, the public does not yet understand how to appraise, so there is a time lag between comprehension and action. Notwithstanding this, certain civil society groups have been able to use the FOI Act to make incremental progress in their demands for public information by pursuing successful cases through the law courts. One notable example is that of Socioeconomic Right and Accountability Project (SERAP), which has taken both the federal and state governments to court on the back of the FOI Act. For example, in July 2013 SERAP took FGN to court over NGN 700 billion expenditure.

#### **Information sources:**

Extracts from Expert Panel Interview/Discussion with Mr Tunij Lardner, June 2014.

[http://www.freedomhouse.org/sites/default/files/inline\\_images/Nigeria\\_FOTN2011.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/Nigeria_FOTN2011.pdf)

<http://newafricanpress.com/2013/07/21/foi-serap-drags-fg-to-court-over-n700bn-expenditure/>

<http://icirnigeria.org/court-declares-freedom-of-information-act-applicable-in-all-states/>

### 2.2.2 Is information on natural resource-related revenues freely available to the public?

**Old response: Yes/No**

**New response: No**

**UPDATE STATUS: Some changes observed**

Information scarcity (as described in relation to Question 2.1.2 above) creates significant difficulties for the accountability efforts of pressure groups, including civil society, which struggle to obtain high-quality, credible information from the appropriate institutions. As mentioned in the previous NNRC Report, information on oil and gas-related revenues such as royalties, Petroleum Profit Tax (PPT), signature bonuses and other oil and gas sector-specific flows is published in NEITI's Audit Report, but is only available through retrospective audits that are completed often only after significant delays, which limit their usefulness. Revenue information is not made available in a timely, regular manner, which would make it more reliable and useful. Nigeria is ranked 80th of 98 countries surveyed in the 2012 OBI and also received a 'weak' score of 42, ranking 40th out of 58 countries on the Resource Governance Index (formerly Revenue Watch Institute Index). On the specific question of whether the executive budget of Nigeria identifies the different sources of tax revenue, Nigeria received a score of 0. In 2011, Transparency International reviewed 44 national oil companies as part of its report on 'Oil and Gas Companies Promoting Revenue Transparency'. The NNPC was ranked the least transparent; it earned a score of 0% on organisational disclosure.

As citizens continue to ask critical questions about situations like the allegation of the unremitted US\$ 20 billion by the NNPC to the Federation Account, more scrutiny is placed on the process for information availability. However, the interrogation of the system is not sufficient in itself. Accountability is diminished because, despite the culprits being largely known, they have not been punished or sanctioned appropriately.

**Information sources:**

'Memorandum submitted to the Senate Committee on Finance on the non-remittance of oil revenue to the federation account' by Sanusi Lamido Sanusi, CBN Governor, on 3 February 2014.

Open Budget Survey: <http://survey.internationalbudget.org/#rankings>

### 2.2.3 Are civil society organisations free of government interference?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

To a very large extent, this is the case, with the exception of lobbyist groups bankrolled by the government and used for specific purposes such as election campaigning. As indicated in the 2012 NNRC Report, any NGO or civil society institution in Nigeria accredited by government or an international body is free from government interference in carrying out its duties and obligations as stated in the Nigerian Constitution (Section (40) - Freedom of Association).

In the CIVICUS report (2007), Nigeria scores 2 out of 3 in civil society structure (meaning it is quite strong); 1.3 out of 3 in terms of resources, as it has been attracting qualified professionals; 2 out of 3 in terms of values, considering how leaders are selected and the control members have over decision making; and 2.2 out of 3 on impact, as civil society organisations have been successful in influencing public policy and holding public and private entities accountable.

That said, there have been recent attempts by government to introduce new legislation on the registration of civil society organisations, which could affect their ability to hold government to account.

**Information sources:**

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

[https://www.civicus.org/new/media/CSI\\_Nigeria\\_Country\\_Report.pdf](https://www.civicus.org/new/media/CSI_Nigeria_Country_Report.pdf)

## 2.2.4 Does a parliamentary committee scrutinise audit reports on resource revenues?

**Old response: Yes/No**

**New response: No**

**UPDATE STATUS: Some changes observed**

The 2012 NNRC Report notes that the Auditor-General audits and submits its reports to the Public Accounts Committee (PAC) of both chambers of the National Assembly, which uses the findings to hold responsible agencies to account. The committees have the power to examine any accounts or report on statutory corporations and boards after they have been laid on the table for the Senate and House of Representatives, and to report their findings to the Senate and House of Representatives. The committees also have the power to send for any person, papers and records to report to the National Assembly.

However, it is not clear to what extent the PACs are capable of effectively and regularly scrutinising reports on resource revenues. The quality of the reports submitted by the Auditor-General's Office is also questionable. Nigeria scores low in the Revenue Watch Institute's Transparency Index in relation to parliamentary scrutiny of audit reports of resource revenues. The recent allegations of unremitted funds (US\$ 20 billion) have also lent credence to the fact that nothing in the activities of the PAC suggest that there is thorough scrutiny of audit reports on resource revenues.

**Information sources:**

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

<http://www.nassnig.org/nass2/committees.php?id=37&Submit=GO>

<http://www.nassnig.org/nass/committees.php?id=47&Submit=GO>

### 2.2.5 Are mechanisms used to verifiably measure resource production rates at source?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, it is the contractual responsibility of companies to install or provide measurement mechanisms at the export terminal. DPR, as the regulator of the petroleum industry, is charged with responsibility for ensuring implementation and compliance by operating companies. NEITI audit reports have identified significant weaknesses in DPR's procedures for ensuring compliance and robust metering systems. Moreover, there is considerable resistance from oil companies to moving to a royalty regime based on measuring production rates in the field because of the difficulties in preventing theft from pipelines.

Efforts to establish a verifiable measuring system for the oil resources in Nigeria have not been successful. A recent call was issued by the Chairman of the Revenue Mobilisation, Allocation and Fiscal Commission (RMAFC), Engr. Elias, for stakeholders – particularly the Oil Producers Trade Section (OPTS) – to address the issue of metering in order to ensure increased accountability in the sector.

Accurate oil metering debates continue to be the centre of discussions at annual oil and gas conferences. At these discussions, proof that such measurement is possible with a digital flow control system has been established.

**Information sources:**

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

RMAFC wants oil producers to address metering mess. Hamisu Muhammad. Daily Trust, 27 May 2014 (accessed 28 May 2014).

<http://www.dailytrust.info/business/25145-rmafc-wants-oil-producers-to-address-metering-mess>

Extracts from Expert Panel interview/discussion with Prof. Assisi Asobie, June 2014

### 2.2.6 Does the agency or agencies in charge of receiving payments from resource companies have internal controls to monitor assets and payments?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

The controls are present but they are not subject to transparent scrutiny or accountability. According to law, the CBN acts as repository of receipts, while the DPR collects royalties and the Federal Inland Revenue Service (FIRS) collects PPT.

However, the law is not properly adhered to. The CBN receives payments from resource companies that are being paid into the Federation Account, and the account is supposed to be monitored by an auditor of the internal audit unit of the Federal Ministry of Finance. Unfortunately, there are wide-ranging arguments over discrepancies in resource receipts and payments figures between the reports of the CBN, the DPR, the NNPC and the Federal Ministry of Finance. These discrepancies are the basis of recent allegations of unremitted or missing funds up to about US\$ 20 billion within a period of 19 months from January 2012 to July 2013.

**Information sources:**

<http://www.cenbank.org/OUT/2010/PUBLICATIONS/REPORTS/RSD/Link%20Files/PART%20TWO.pdf>

[http://www.budgetoffice.gov.ng/newupdate/2010\\_1.pdf](http://www.budgetoffice.gov.ng/newupdate/2010_1.pdf)

**2.2.7 Is there independent, objective regulation and oversight of:  
(a) Resource management?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The ability of the DPR to perform its regulatory functions in an independent, objective and fair manner in the resource sector has been watered down by the influences of the Ministry of Petroleum Resources and the NNPC.

**Information sources:**

<http://www.nnpcgroup.com/NNPCBUSINESS/BusinessInformation.aspx>

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

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

<http://www.cmi.no/publications/file/3348-reforming-corruption-out-of-nigerian-oil-part-two.pdf>

<http://www.cmi.no/publications/file/3295-reforming-corruption-out-of-nigerian-oil-part-one.pdf>

**2.2.8 Is there independent, objective regulation and oversight of:  
(b) Environmental management?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The standard guidelines to regulate the environment in the resource sector are contained in Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002, published by DPR, and within the functions of the National Environmental Standards and Regulations Enforcement Agency (NESREA). However, the regulatory powers of DPR to deliver its duties independently and fairly are limited by its lack of capacity and resources.

**2.2.9 Is there independent, objective regulation and oversight of:  
(c) Occupational health and safety?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

It is the regulatory function of DPR to ensure that resource companies carry out their operations in such a way that occupational health and safety is guaranteed. The regulatory powers of DPR are greatly limited by its own lack of capacity and resources, which makes it vulnerable to regulatory capture.

**2.2.10 Is there independent, objective regulation and oversight of:  
(d) Revenue management?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The RMAFC has the mandate to monitor all accruals of revenues of the NNPC and royalty payments from DPR, as well as to check crude oil sales and distribution. The payments received from resource companies are paid into the Consolidated Revenue Fund of the Federation, which is kept with the CBN. Although independent, both RMAFC and the CBN have limited capacity and information in order to provide effective oversight. They are simply informed of receipts, and little information is provided in terms of revenue projections, under- or over-payments and the breakdown and controls over receipts. In addition, the National Assembly has a Committee on Public Accounts, which possesses the power to question and scrutinise any ministry or corporation's financial reports.

### 2.2.11 Is there independent, objective regulation and oversight of: (e) Commercial roles?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The NNPC is the most visible and resourced government agency in the resource industry. Despite being an active commercial participant in the upstream and downstream sectors of the industry, the NNPC is able to use its structure to exert significant influence on the regulator, DPR. Although DPR is designed to be the regulator for all resource companies, the statutory powers of the Department to carry out its regulatory roles on the NNPC have been undermined by various factors including corruption, political influence and the involvement of public office holders in the activities of the resource sector. There is therefore no independent, objective and fair oversight of commercial roles in practice. In addition, the Crude Oil Marketing Division (COMD) of the NNPC, the Petroleum Products Pricing Regulatory Agency and the Pipelines and Products Marketing Company all play commercial roles with little oversight.

#### Information sources:

<http://www.nnpcgroup.com/NNPCBUSINESS/BusinessInformation.aspx>

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

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

## 2.3 INVESTIGATION AND SANCTION

### 2.3.1 Are there regular independent audits to international standards of: (a) National natural resource companies?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, there are no regular comprehensive and independent audits of the national oil company or other natural resource companies in Nigeria. The NNPC claims it regularly audits its accounts and has been sending the detailed financial reports to the Senate, House of Representatives and the office of the Auditor-General. However, there is no scrutiny, public accessibility, accountability or transparency for any such audits.

Recently, in February 2014, the FGN ordered that a forensic audit should be done following allegations of the unremitted US\$ 20 billion from the NNPC. The NNPC sometimes claims that its audited reports exist for 2005. This information is not available to the public and so it is quite difficult to tell if they had been done to international standards.

**Information sources:**

Sanusi hits back, says NNPC not audited since 2005. Vanguard, 21 February 2014.

<http://www.vanguardngr.com/2014/02/sanusi-hits-back-says-nnpc-audited-since-2005/>  
<http://dailytimes.com.ng/article/nnpc-says-it-has-audited-accounts>

NNPC Faults Auditor-General on Audited Accounts.  
Factual Reporters.

<http://www.factualreporters.com/index.php/news/news-today/9-nnpc-faults-auditor-general-on-audited-accounts-says-agf-statement-smacks-of-hallucination> (accessed 29 June 2014)

The Nigerian Voice. 17 October 2011.

<http://www.thenigerianvoice.com/news/72264/1/nnpc-faults-auditor-general-on-audited-accounts.html>

**2.3.2 Are there regular independent audits to international standards of:  
(b) International natural resource companies?**

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: No observable changes**

The international resource companies in Nigeria are listed on international stock exchanges that require regular, independent audits to international standards.

**Information sources:**

<http://www.chevron.com/countries/nigeria/>

[http://www.jangola.com/index.php?option=com\\_content&view=article&id=1306:revealed-the-kpmg-audit-report-on-nnpc-&catid=45:business&Itemid=87](http://www.jangola.com/index.php?option=com_content&view=article&id=1306:revealed-the-kpmg-audit-report-on-nnpc-&catid=45:business&Itemid=87)

### 2.3.3 Are there regular independent audits to international standards of: (c) Government MDAs?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Government MDAs related to the resource sector in Nigeria, such as the Ministry of Petroleum Resources and DPR, do not regularly audit their respective financial reports using best practice standards. If they do undertake such audits, this information is not publicly accessible.

### 2.3.4 Are administrative sanctions in place for failure to abide by sector laws or regulations?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

There are administrative sanctions such as fines, seizures, assessments of damages, and compensation costs for failures to abide by resource sector laws or regulations in Nigeria. Some of these sanctions are contained in the Petroleum Act and Environmental Protection Agency Act.

However, the challenge is in applying and enforcing these laws. For instance, in the legislation there are penalties for gas flaring after a certain date but the date keeps on being delayed and penalties are not applied.

#### Information sources:

<http://www.babalakinandco.com/resources/lawsnigeria/LAWS/90350petroleum%20act.htm>

<http://www.placng.org/lawsofnigeria/files/F10.pdf>

### 2.3.5 Are judicial sanctions in place for failure to abide by sector laws or regulations?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

Judicial sanctions such as a jail sentence for contempt of court, a fine or a reprimand are in place for failure to abide by resource sector laws or regulations in Nigeria. Some of these sanctions are contained in the Nigerian Constitution, the Petroleum Act and the Environmental Protection Agency Act. As above, the problem is also that of enforcement.

The EIA Act (1992), which covers the environmental activities of the petroleum industry, also specifies that any person or entity failing to comply with the provisions of the Act commits an offence and is liable, as an individual, to a fine or to a term of imprisonment of up to five years, while companies can be fined. Most of these offences are classified as civil cases.

**Information sources:**

*<http://lawnigeria.com/Federationlaws/LawsoftheFederation/StandardOrganizationAct.html>*

*<http://www.placng.org/lawsofnigeria/files/F10.pdf>*

**2.3.6 Are the standards enforced in practice?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

As in the 2012 NNRC Report, these standards are not systematically enforced in practice. However, there are examples where regulations are enforced. For instance, there have been cases where DPR has sealed up or withdrawn the operating permits of filling stations that sold adulterated petroleum products, tampered with their machines or sold fuel at exorbitant prices. Moreover, failure to comply with environmental rules by any resource company is a legally punishable offence. However, these examples are insignificant given the far larger scale of other more serious problems within the sector, such as non-payment of royalties and oil spills.

**Information sources:**

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

*<http://www.mondaq.com/article.asp?articleid=53804>*

## PRECEPT 3: FISCAL REGIME AND CONTRACTUAL TERMS

Fiscal policies and contractual terms should ensure the country gets full benefit from the resource, subject to attracting the investment necessary to realise that benefit. The long-term nature of resource extraction requires policies and contracts that are robust to changing and uncertain circumstances.



### Overview of the questions and ratings

#### 3.1 FISCAL REGIME

<b>3.1.1</b> Does the fiscal regime ensure that the government receives a rising share of revenues (i.e. rents) during periods of increased profitability?	
<b>3.1.2</b> Does the fiscal regime ensure that the government has a minimum revenue stream in all production periods?	
<b>3.1.3</b> Does the fiscal regime provide robustness to changing circumstances?	
<b>3.1.4</b> Is the fiscal environment designed to encourage long-term investment in the sector?	
<b>3.1.5</b> Is the fiscal system appropriate for the level of administrative capacity in the country?	
<b>3.1.6</b> Is government in a position to assess good value and make the argument for better fiscal terms?	
<b>3.1.7</b> Are contractual terms made publicly available?	
<b>3.1.8</b> Do contractual terms, while providing stability and assurances for investors, include mechanisms for resolving disputes and adjusting to changed circumstances?	
<b>3.1.9</b> Are clear legal remedies in place for dealing with breaches of contract?	
<b>3.1.10</b> Is there an effective national court system?	
<b>3.1.11</b> Do contractual terms allow for international arbitration for investors where domestic legal institutions are inadequate or disputes cannot be resolved domestically?	

## Summary of key findings

### Fiscal regime

- According to industry experts, the country is yet to review certain fundamental strategy components for the sector since the 1993 PSCs leading to weak cost regulation.
- The fiscal regime does not ensure that the government receives a rising share of revenues during periods of increased profitability as the fiscal terms in the contracts covering almost all of Nigeria's oil production (1993 PSC contracts and memoranda of understanding (MOUs) covering JVs) are regressive.
- The fiscal regime does ensure that the government has a minimum revenue stream in all production periods, with the exception of signature bonuses and royalties except for deepwater operations under the 1993 PSC contracts, for which the royalty rate is zero.
- The fiscal regime does not provide robustness to changing circumstances as it often requires the government and IOCs to re-negotiate when circumstances change, and many previously agreed contractual terms are still under dispute.
- Nigeria has a reputation as a high-investment-risk location, and thus fiscal regimes and contracts usually contain provisions that assure investors and secure their interest, providing room for renegotiation. The lack of transparency in the awarding of licences further undermines investor confidence.
- Nigeria is not yet taking the opportunity of expiring PSC contracts to renegotiate their terms in favour of the country.
- There is a general consensus among stakeholders that FIRS lacks sufficient capacity to administer and enforce the tax system effectively. This includes understanding the fiscal arithmetic such as k-factor computations for oil revenues.
- Oil contracts in Nigeria are notoriously shrouded in secrecy, which allows for no public scrutiny or oversight of contractual terms and revenues deriving to government.

## 3.1 Fiscal regime

**3.1.1 Does the fiscal regime ensure that the government receives a rising share of revenues (i.e. rents) during periods of increased profitability?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The principal legislation governing petroleum operations in Nigeria is the Petroleum Profits Tax Act of 2007. Its main fiscal instrument is the PPT, a resource rent which focuses on profitability.

This tax is considered progressive as it taxes only increases in profitability with Net Present Value (NPV) threshold rate calculation. Under the PPT, the tax rate is set at 67.5% for the first five years of taxable operation by the company and 85% thereafter.

As mentioned in the 2012 NNRC Report, the 2005 PSC fiscal regime is progressive, providing for a higher government take under higher oil prices, which allows for increases in the profit oil split. However, the fiscal terms in the 1993 PSC and the MOUs covering the JVs, under which almost all of Nigeria's oil is produced, are regressive – this means that government takes drops during periods of high prices and increased profitability.

According to industry experts, extensive revenue losses persist due to weak cost regulation. At the time of signing the 1993 PSCs, the conditionality for petroleum products including industry cost for production was low. Till date, the country is yet to overhaul the “fundamental strategy components” that will address contemporary market conditions.

Government take under the 1993 PSC reduced when oil prices went up and profitability increased, while the reverse was the case under the 2005 PSC. The 2005 PSC arrangement was shown to contain a progressive fiscal element in the form of the R-factor sliding scale for profit oil split. This basically readjusts the exorbitant Investment Tax Credits (ITCs) that were set at 50% under the 1993 PSCs, despite not being consistent with prevailing discount rates at the time.

Opportunities to renegotiate the fiscal and other contractual terms of PSCs exist today with the recent expiration of a number of contracts despite the non-passage of the PIB. Moreover, for contracts that have not actually expired all three re-opener conditions including; the price of oil rising above \$20 per barrel, mega discoveries of reserves above 500 million barrels and a ten-year date from the first contract have been met. It is unclear if political considerations are responsible for maintaining the status quo.

#### **Information sources:**

[http://www.dundee.ac.uk/cepmlp/gateway/files.php?file=cepmlp\\_car13\\_54\\_594097227.pdf](http://www.dundee.ac.uk/cepmlp/gateway/files.php?file=cepmlp_car13_54_594097227.pdf)

<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/386/Why-We-Increased-Government-Take-in-SPC-Blocks-Alinson-Madueke---Says-Proposed-Fiscal-Regime-Will-Support-Gas-Master-Plan.aspx>

<http://www.templars-law.com/media/SMI%20Legal%20Issues%20in%20Oil%20%20Gas%20Conference.pdf>

<http://www.napims.com/dynamic.html>

Extracts from Expert Panel Interview/Discussion with Miss Lois Machunga, June 2014.

<http://www.neiti.org.ng/NEITI-ETI-Core-Audit-Report-Oil-Gas-2009-2011-310113-New.pdf>

Revenue Watch Index 2013.

[www.revenuwatch.org/countries/africa/nigeria/overview](http://www.revenuwatch.org/countries/africa/nigeria/overview)

<http://www.themixoilandwater.com/2011/01/fiscal-background-to-nigerias-petroleum.html>

### 3.1.2 Does the fiscal regime ensure that the government has a minimum revenue stream in all production periods?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No changes observed**

The 2012 NNRC Report notes that the fiscal regime under the PSCs allows revenue flow from the pre-production period through the payment of signature bonuses upon successful bids. This is, however, a one-off payment.

Thereafter, government receives royalties depending on the volume of production at varying rates up to 1,000 metres water depth offshore, when it drops to 0% in the 1993 PSC contracts or 8% in the 2005 PSC contracts. Generally, the government continues to receive royalties as long as production continues from all but deepwater fields.

#### Information sources:

<http://www.nigerianlawguru.com/articles/oil%20and%20gas/FISCAL%20REGIMES.pdf>

<http://pengassan.org/pdf/History%20of%20Nigerian%20Oil%20and%20Gas%20Industry.pdf>

[http://www.dundee.ac.uk/cepmlp/gateway/files.php?file=cepmlp\\_car13\\_54\\_594097227.pdf](http://www.dundee.ac.uk/cepmlp/gateway/files.php?file=cepmlp_car13_54_594097227.pdf)

[http://www.academia.edu/4803264/Would\\_Nigeria\\_Government\\_Take\\_for\\_PSCs\\_in\\_Nigeria\\_among\\_the\\_highest\\_in\\_the\\_world](http://www.academia.edu/4803264/Would_Nigeria_Government_Take_for_PSCs_in_Nigeria_among_the_highest_in_the_world)

### 3.1.3 Does the fiscal regime provide robustness to changing circumstances?

**Old response: Yes/No**

**New response: No**

**UPDATE STATUS: Additional information included**

The 2012 NNRC Report mentions that the Deep Offshore Act of 1993, which established all the current PSCs in the country, contains flexibility clauses. The government has the right to review the terms of the contracts by way of renegotiations after a period of 15 years, and every five years thereafter. Fiscal terms under the JVs have also been re-negotiated through successive MOUs.

The 1993 PSC contracts permitted a review in 2008. Faced with non-cooperation from the IOCs, former Minister Lukman forwent this opportunity, assuming that the companies would oppose any changes and costly court battles would ensue. Instead, he chose to address the issue via the PIB to drastically increase tax and royalty rates on PSC production and make it much easier for the government to adjust the fiscal regime in the future. Of course, the PIB is still unresolved and the experience shows that a robust, flexible regime is not achieved by merely making the overall legislation flexible.

The political underpinnings of such contractual arrangements make it difficult to activate renegotiation clauses that seem obvious. The a priori agreements in the 1993 PSCs that allowed major oil and gas investors claim an ITC up to about 50% interest, which was grossly inconsistent with the discount rates at the time, makes the situation difficult to reverse.

To be robust to changing circumstances, the PSCs should contain provisions that can automatically adjust the contract terms, without necessarily bringing the government and the IOCs to a negotiating table. These should be contained in policy and in law to ensure that the government is not losing in economic terms in times of extremely attractive prices. The recent trends in global fiscal terms in this era of rising oil prices have built-in mechanisms for increased government share in windfall prices through increased royalties or taxes and linkages of royalty or tax rates to prevailing prices to ensure automatic adjustment of government share to price increases. Countries that have introduced this approach include Angola, Malaysia, Trinidad and Tobago, India, Libya and Russia.

**Information sources:**

<http://dailyindependentnig.com/2014/03/how-pib-will-determine-future-of-nigerias-petroleum-sector/>

<http://www.themixoilandwater.com/2011/01/fiscal-background-to-nigerias-petroleum.html>

<http://www.ngex.com/news/public/article.php?ArticleID=2123#>

<http://www.napims.com/dynamic.html>

<http://www.nigerianlawguru.com/articles/oil%20and%20gas/FISCAL%20REGIMES.pdf>

<http://www.lbs.edu.ng/downloads/FiscalCompetitivenessstoNigeria.pdf>

<http://www.thisdaylive.com/articles/fg-int-l-law-experts-differ-on-nigerian-oil-contracts/73658/>

Trends in international oil and gas taxation, Pedro van Meurs, Gubkin Oil and Gas University, Moscow, 4 September 2009.

T. Oyewunmi (2011). 'Stabilisation and Renegotiation Clauses in Production-Sharing Contracts: Examining the Problems and Key Issues'.

Machunga, L and Z. Machunga (2012) 'Sustainable management of natural resources and the need for revenue transparency, subsidy reform and full deregulation'.

Extracts from Expert Panel Interview/Discussion with Mr Odein Ajumogobia, June 2014.

Extracts from Expert Panel Interview/Discussion with Miss Lois Machunga, June 2014.

### 3.1.4 Is the fiscal environment designed to encourage long-term investment in the sector?

**Old response: Yes/No**

**New response: No**

**UPDATE STATUS: Some observable changes**

The fiscal regime under the JVs relies on the government making sufficient resources available to meet 'cash call' requirements to fulfil planned work programmes. The government's failure to make sufficient resources available has led to significant under-investment in the JVs, which still govern over half of all production. More recently, a number of alternative funding mechanisms have been devised by some IOCs to enable the large investments required for offshore field developments in those shallow water areas covered by JV agreements. In the 1991 MOU amendments to the JVs, there are fiscal incentives for companies that increase their reserves by more than their actual production of gas.

The fiscal regime under the PSCs was designed to attract exploration in deepwater areas, which requires huge investments and bears high risks. Hence, royalty rates decrease on a sliding scale for deeper water exploration. The 1993 PSCs set no limit on how much cost can be recovered by the company, but the 2005 PSCs set a limit of 80%. The PSCs also allow for cost recovery before profit tax deduction. There are also cost-based incentives, i.e. the so-called ITCs or Investment Tax Allowances of 50% for qualifying capital expenditure for companies in the deep offshore. Those in onshore operations and shallow waters enjoy a Petroleum Tax Allowance of 5% to 20% on qualifying expenditure. Provision for capital allowance is also given generously: for each of the first four years it is 20%, and then 19% in the fifth. Presently, companies are exempt from paying Company Income Tax. Losses can be carried forward indefinitely. All levies and other impositions to government, or state and/or local governments or their agencies – including, without limitation, CBN commissions, other than royalties and PPT – are treated as allowable costs.

Downstream investments receive accelerated capital allowances of 90% of cost of plant and machinery expenditures in the first year with 10% retention. Downstream gas projects receive a three-year tax holiday that begins on the first day of production and is renewed for a further two years, and accumulated capital allowances can be carried forward until the end of the holiday. Qualifying dividend distributions during the tax holiday are free of all tax. Downstream projects are allowed to fully deduct interest on project financing for corporate income tax purposes. There are no specific thin capitalisation rules in Nigeria, although interest on loans between related parties is limited to LIBOR.

**Information sources:**

[http://www.gbc-law.com/investing\\_in\\_Nigeria\\_OandG%20Industry.pdf](http://www.gbc-law.com/investing_in_Nigeria_OandG%20Industry.pdf)

<http://oilandgasbrief.com/knowledge-base/fiscal-incentives-nigerian-oil-gas-industry/327/>

[http://www.cragus.com/news/GTG\\_Nigeria.pdf](http://www.cragus.com/news/GTG_Nigeria.pdf)

### 3.1.5 Is the fiscal system appropriate for the level of administrative capacity in the country?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

There is a general consensus among stakeholders that the tax system presents a major challenge to tax authorities.

Regulatory and government agencies are thought to lack the technical capacity to effectively monitor and verify interest on loans and production costs. There seems to be limited ability to investigate and capture transfer pricing and inflated costs, which could be used for manipulating taxable profits, at both the DPR and FIRS.

#### Information sources:

*www.nig-oil-gas.com/doing\_business*

Revenue Watch Index.

### 3.1.6 Is government in a position to assess good value and make the argument for better fiscal terms?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

As indicated in the 2012 NNRC Report, the government does not have adequate fiscal models, which makes it difficult to negotiate with the industry. Fiscal models would allow negotiations to focus on specific assumptions, stated costs and other factors, which can then lead to an overall negotiated tax structure. This is indicative of the overall capacity of government to conduct negotiations and administer existing fiscal systems.

### 3.1.7 Are contractual terms made publicly available?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

One of the notorious characteristics of oil contracts in Nigeria is their secrecy. The dominant position of the infamous 'confidentiality clauses' has remained an issue. The various contracts entered into by the government and the oil companies are inaccessible. The fiscal terms are only known to the parties and to a few scholars or professionals who are close to the oil companies or government.

As in the previous NNRC Report, recent results from the Resource Governance Index show that the country has a weak score on availability of information. Nigeria's 'partial' score of 66 in the Institutional & Legal setting of the Resource Governance Index for 2013 reflects substantial public access to information but incomplete revenue disclosure policies. On Reporting Practices, Nigeria ranks 42nd of 58 countries. A lack of contract transparency and incomplete reporting on most aspects of the petroleum industry led to a 'failing' score of 38 in the Resource Watch index for 2013.

**Information sources:**

Revenue Watch Index 2013.

[www.revenuewatch.org/rgi](http://www.revenuewatch.org/rgi)

[www.energydev.net/file/650/download/650](http://www.energydev.net/file/650/download/650)

<http://www.lbs.edu.ng/downloads/FiscalCompetitivenessstoNigeria.pdf> pg. 15

[http://thelagosoilclub.com/index.php?option=com\\_k2&view=item&id=26:who-is-afraid-of-nigeria%E2%80%99s-petroleum-industry-bill?&Itemid=1](http://thelagosoilclub.com/index.php?option=com_k2&view=item&id=26:who-is-afraid-of-nigeria%E2%80%99s-petroleum-industry-bill?&Itemid=1)

**3.1.8 Do contractual terms, while providing stability and assurances for investors, include mechanisms for resolving disputes and adjusting to changed circumstances?**

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the contractual terms include mechanisms for resolving disputes, which is the standard in contract drafting in Nigeria. The need to attract investors plays a major role in the negotiation of contracts. This is because Nigeria has a reputation as a high-investment-risk location. Consequently, the fiscal regimes and contracts usually contain provisions that assure investors and secure their interests. For example, contracts make provision for periodic review, providing room for renegotiation.

However, Nigeria's history of contracting licences and leases provides investors with little confidence and undermines the value realised through licensing rounds, as more and more of the major companies with substantial balance sheets and financing options have tended to steer clear. In previous rounds, the then President (who was also Minister of Petroleum Resources) retained discretionary control, which undermined the auction. The winning bidder often did not end up with the block, companies were directed to enter 'forced marriages', and the effort to increase local participation through the LCV programme was chaotic and undermined by politics. Moreover, the 'right of first refusal' programme was opaque and failed in its objective of using oil blocks to attract viable gas, refining and power investment. As a result, many of the blocks awarded during these three rounds remain mired in court battles, held by companies that are either unable to operate them or are dormant.

Companies constantly operate within 'worst case scenario' business models to accommodate the high-risk environment in the country's oil and gas industry. Again, the political interferences make the Nigerian case peculiar since companies cannot often completely characterise the political economy of bid rounds.

**Information sources:**

[http://esqlaw.net/index.php?option=com\\_content&view=article&id=76](http://esqlaw.net/index.php?option=com_content&view=article&id=76)

Extracts from Expert Panel interview/discussion with Mr Ademola Adeyemi-Bero, July 2014.

**3.1.9 Are clear legal remedies in place for dealing with breaches of contract?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

There are legal remedies for dealing with breaches, usually contained in the contracts themselves, including arbitration clauses. The remedies range from subjecting the issue to the Nigerian courts or arbitration, in accordance with either Nigerian law or international arbitration. PSCs provide for arbitration in accordance with the Arbitration and Conciliation Act 1990, which provides for arbitration in the event of a dispute from OML (s. 11; Para 14); note s. 251 of the Constitution of the Federal Republic of Nigeria vests exclusive jurisdiction in the Federal High Court. Indeed, the interpretation of the PSC is currently under independent arbitration. The contracts also make provision for periodic review, usually after five years, again providing room for renegotiation.

**Information source:**

[http://esqlaw.net/index.php?option=com\\_content&view=article&id=76](http://esqlaw.net/index.php?option=com_content&view=article&id=76)

**3.1.10 Is there an effective national court system?****Old response: Yes****New response: Yes****UPDATE STATUS: No observable changes**

The Supreme Court of Nigeria oversees the national court system, and has presided over cases such as the revocation of the licence for OPL 248, as illustrated by the case of FGN vs. Zebra Energy Limited in December 2002. Similarly, after OPL 321 and OPL 323 were awarded to the Korean National Oil Company in the 2005 bidding round and subsequently revoked by FGN in January 2009, a Federal High Court sitting in Abuja later quashed the revocation by August of the same year.

That said, some court cases in Nigeria have produced dysfunctional outcomes, such as Statoil's case over the Agbami oil field. In addition, because of the long time it takes to go to trial in Nigeria, dispute clauses predominantly provide for arbitration in outside jurisdictions.

**Information source:**

*<http://www.energy-pedia.com/news/nigeria/knoc-consortium-wins-appeal-over-revoked-exploration-licences-opl-321-and-opl-323>*

**3.1.11 Do contractual terms allow for international arbitration for investors where domestic legal institutions are inadequate or disputes cannot be resolved domestically?****Old response: Yes****New response: Yes****UPDATE STATUS: No observable changes**

This is subject to the 1998 version of the International Chamber of Commerce Rules and Nigeria's Arbitration and Conciliation Act 1988, which is derived from the UN Commission on International Trade Law Model Law.

**Information source:**

*[http://esqlaw.net/index.php?option=com\\_content&view=article&id=76](http://esqlaw.net/index.php?option=com_content&view=article&id=76)*

## PRECEPT 4: AWARDING OF CONTRACTS AND SECTOR ROLES

Competition in the awarding of contracts and development rights can be an effective mechanism to secure value and integrity.



### Overview of the questions and ratings

#### 4.1 SECTOR ROLES

4.1.1 Are clear standards set for all actors involved in the natural resources industry?



4.1.2 Are the institutions that manage exploration licences effective?



4.1.3 Are the institutions involved in environmental and technical regulatory practices effective?



4.1.4 Are the institutions involved in financial regulatory practices effective?



#### 4.2 OIL CONTRACT AND LICENCE ALLOCATION

4.2.1 Does the contracting process require the demonstration of requisite management, technological and financial capability from investors?



4.2.2 Is geological information made public for areas subject to licensing prior to the contracting process?



4.2.3 Are the rules and terms for contract allocation established in either law or regulation?



4.2.4 Are the criteria for allocating contracts and licences the same for private and state-owned companies?



4.2.5 Is the licensing and contracting process open to all interested companies?



4.2.6 Is the licensing and contracting process based on competitive bidding?	
4.2.7 Is the authority in charge of contract or licence allocation independent of state or private operating companies?	
4.2.8 Are there any measures to prevent public officials awarding contracts to companies or associated companies in which they, their relatives or proxies have an interest?	
4.2.9 Are contract and licensing decisions justified according to the contract and licensing criteria and made publically available?	
4.2.10 Are awarded contracts, agreements, or negotiated terms for exploration and production disclosed to the public?	
4.2.11 Is there a process to appeal licensing and contracting decisions?	
4.2.12 Does the legislative branch have the authority to ratify oil and mining contracts?	
4.2.13 Are discretionary actions carefully controlled?	

## Summary of key findings

### Sector roles

- There is still a high sense of political influence and cases of conflict of interest in awarding oil contracts. This situation persists despite sufficient criteria, rules and terms for allocating oil contracts and licenses.
- There are no clear roles or standards for the main government actors involved in the industry. The NNPC often plays the role of both industry participant and regulator, although the regulatory role is in theory with DPR. NAPIMS, the industry’s cost regulator within the NNPC, oversees spending by the JVs in which the NNPC has majority shares – a clear case of self-regulation. In addition, the NNPC has been used to finance many unrelated activities by government.
- The relationship between the NNPC and DPR suggests regulatory capture, as the DPR’s limited resources and capacity make it reliant on the oil companies to fulfil even basic monitoring functions and it is unable to provide any real oversight over the NNPC or the other companies.

### **Sector roles (continued)**

- The process for awarding leases and licences has undermined the value that could have been realised for the country because too many have been subject to interference from the government, even when the DPR has tried to establish auction systems for the awarding of licences.
- The DPR has significant weaknesses in its ability to enforce environmental, safety and operational regulatory measures, in part due to its lack of sufficient technical and financial resources and in part due to regulatory capture by the NNPC. For example, if the DPR penalises JV operations for gas flaring violations, the costs are largely borne by the NNPC (and therefore government), so there is little incentive to impose penalties.
- The NNPC does not provide effective mechanisms for cost control. Because the FGN bears the costs of cash calls through the budget, NAPIMS is not effectively managed or incentivised to keep costs down. Similarly, because of the weak cost structure in NNPC's operations, inflated costs on PSCs only reduce the amount of revenue accruing to the FGN while the NNPC remains unaffected.

### **Oil contract and licence allocation**

- Although the contracting process requires the demonstration of requisite management, technological and financial capability from investors, in practice these are thought to be ignored due to the continued strong presence of actors with undue influence and connections, as well as because contracting decisions are made with little transparency or accountability.
- The process for allocating contracts and licences is based on competitive bidding and is open to all companies. However, there is extensive evidence of collusion and corruption, which leads to many firms staying away from Nigeria and consequently reduces competition and the value created for the country.
- The Marginal Field Bid rounds of November 2013 have since been quietened without further information on its status. Although the procedure has so far involved steps toward competitiveness – announcements, road shows and listings (not public) of qualification criteria, there is no clarity on next steps towards conclusion.
- Although there is a process to appeal licensing and contracting decisions, in practice there are examples of modifications to terms without following due process.
- There are sustained agitations that provisions within the proposed PIB giving a lot of discretionary power to the Minister of Petroleum Resources over the allocation and approval of licences should be reviewed.

## 4.1 Sector roles

### 4.1.1 Are clear standards set for all actors involved in the natural resources industry?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the Ministry of Petroleum is mandated with overall oversight of the oil sector and leads in policy-making. Up until recently, the President has mostly served as the Minister for Petroleum Resources, and even with an independent minister this post has wide-ranging discretionary powers across the sector that look likely to be maintained in the post-PIB regime. The NNPC controls a large range of upstream and downstream activities. Within the NNPC, NAPIMS is the industry's concessionaire, entering into contracts with oil companies on behalf of government, and COMD is responsible for managing sales and collecting revenues from exports of crude oil. The DPR is the industry regulator, operating under the Ministry of Petroleum and mandated to allocate oil blocks, collect royalties, enforce sector regulations (safety, environment, gas flaring, etc.) and fulfil other technical oversight tasks.

The relationship between the NNPC and DPR suggests regulatory capture, as the DPR's limited resources and capacity make it reliant on the oil companies to fulfil even basic monitoring functions and it is unable to provide any real oversight over the NNPC or the other companies. The relative strength of the NNPC's human and financial resources has allowed it to extend its scope well beyond purely commercial functions. The NNPC's role is often seen both as industry participant and regulator. NAPIMS represents government interests in both JV and PSC affairs. For the JVs, it transfers the cash call funds to the operators and monitors their use by approving operator work plans and expenses. With PSCs, NAPIMS signs contracts with the individual companies on behalf of government and therefore leads the negotiation of work programme requirements and fiscal terms. NAPIMS therefore plays a direct role in determining how much government earns from its assets. As the industry's cost regulator, NAPIMS oversees spending by the JVs in which the NNPC has majority shares – a clear case of self-regulation.

The government, through the incumbent Minister of Petroleum Resources, exercises untoward influence over the NNPC. Like many national resource companies, the NNPC has been used to finance many unrelated activities by the government. An investigation found that Nigeria's government owes the state-owned oil firm for several improper, informal loans used to cover a range of expenses completely unrelated to the oil sector, from a presidential helicopter to maritime security.

In 2014, going by the current version of the PIB before the National Assembly, the Minister of Petroleum Resources will have greater discretionary power post-PIB regime than the current fiscal and administrative regime allows. After much public disagreement with such a position, the PIB House ad-hoc Technical Committee has made changes to the PIB provisions relating to the powers of the minister. However, this is yet to be passed by the larger House.

**Information sources:**

<http://www.globalwitness.org/rigged/index.htm> pg. 23 (Broken link – Global Witness is moving websites, and so the link cannot currently be found).

[http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4)

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

<http://www.nnpcgroup.com/NNPCBusiness/UpstreamVentures.aspx>

<http://www.reuters.com/article/2012/07/16/us-nigeria-nnpc-debts-idUSBRE86F0DF20120716>

**4.1.2 Are the institutions that manage exploration licences effective?**

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

The 2012 NNRC Report noted that, in principle, the management of the exploration licences is within the mandate of DPR. At the time of the report, the most recent licensing rounds had occurred in 2005, 2006 and 2007 under the government of President Obasanjo. The three rounds utilised the auction format that is widely endorsed as the most efficient way to establish the market value of such assets. In addition, the pre-bidding and bidding processes were relatively transparent; NEITI was involved in 2005 and some new rules helped, including the immediate payment of a portion of signature bonuses.

Nevertheless, there were grounds for concern in 2012. The President at the time of the auctions was also Minister of Petroleum Resources and retained discretionary control, which undermined the hands-off logic of an auction. As a result, many of the blocks awarded during these three rounds remain mired in court battles, held by companies that are either unable to operate them or are dormant.

However, in this 2014 NNRC Report, the most recent licensing rounds are reported to have occurred on 28 November 2013, when the FGN through the Minister of Petroleum Resources announced the opening of the second marginal oil field licensing round (the first happened in 2003 and 24 licences were awarded) with a total of 31 fields on offer – 16 of them located onshore, and the remaining 15 in the continental shelf. The format utilised was a two-week awareness road show by the DPR in different parts of the country, followed by three and half months of bidding.

In 2014, there were also grounds for concern. Political interference in the processes of allocation of these licences in Nigeria is rather too high compared with the practice in other oil-rich regions of the world such as the North Sea and the Gulf of Mexico. In such regions, the duty of the institution responsible for allocation and management of licences is simplified and clear therefore allowing for effectiveness. In the United States for example, the agency managing exploration licenses sets a standard and verifiable criteria for prospective bidders to qualify without any influence from the Energy Secretary. The Minister/Secretary is only responsible for making sure that such processes do not short-change the national government in both economic and social terms. This is not the case in Nigeria where processes are deliberately duplicated to make them complex and difficult.

Thus, it is safe to say that in Nigeria, the DPR – the institution managing exploration licences – is ineffective. This is because of the peculiar political culture in the country that ensures its processes and procedures for pre-qualifying bidders and evaluating bids are opaque and not consistently followed.

**Information sources:**

Extracts from Expert Panel Interview/Discussion with Miss Lois Machunga, June 2014.

<http://www.punchng.com/news/govt-opens-bid-round-for-31-marginal-oil-fields/>

<http://www.nortonrosefulbright.com/knowledge/publications/110619/nigeria-oil-and-gas-licensing-round-for-marginal-fields-2013>

**4.1.3 Are the institutions involved in environmental and technical regulatory practices effective?**

**Old response: No**  
**New response: No**

**UPDATE STATUS: No observable changes**

The DPR is tasked with technical regulation, including environmental issues, health and safety, and the execution of work plans. Until 1988 it was a unit within the NNPC but was never granted much autonomy. Given the capacity constraints in the DPR described elsewhere in this report, it has little chance to enforce IOCs’ compliance with technical and environmental regulations. There are also conflicts of interest given the tight links with the NNPC. For example, if the DPR penalises JV oil companies for gas flaring violations, the costs would largely be borne by the NNPC (and effectively the government); thus, the DPR does not have an incentive to impose penalties.

**4.1.4 Are the institutions involved in financial regulatory practices effective?**

**Old response: No**  
**New response: No**

**UPDATE STATUS: No observable changes**

Conflicts of interest pervade the current regulatory regime due to the NNPC’s role as both industry participant and regulator, and also in the case of NAPIMS as explained earlier. Moreover, because FGN, rather than the NNPC, bears the costs of cash calls, NAPIMS is not effectively managed or incentivised to keep costs down. Similarly, because of the weak cost structure in NNPC’s operations, inflated costs on PSCs only reduce the amount of revenue accruing to the FGN while the NNPC remains unaffected.

## 4.2 Oil contract and licence allocation

### 4.2.1 Does the contracting process require the demonstration of requisite management, technological and financial capability from investors?

**Old response: Yes/no**

**New response: Yes**

#### **UPDATE STATUS: Some changes observed**

The 2012 NNRC Report mentioned that, with the introduction of the competitive bidding process in 2005, the guidelines and bidding documents require prospective applicants to demonstrate these abilities. By 2007, with the introduction of the Public Procurement Act, the development of standard bidding documents and the need to have value for money, these requirements were further consolidated. Hence, evidence of a company's technical capacity, capability and track record – with an emphasis on experience and expertise in exploration, development and production – is one of the criteria for pre-qualification. The requirement for local content and the aspiration for increased participation by local firms subsequently undermined the whole process, and led to the awarding of blocks to unqualified companies. This position was also supported by key stakeholders in the current 2014 review.

In practice, these requirements have largely been ignored due to the continued strong influence of discretionary tendencies. Several of the local firms that won blocks in the 2005 round could not muster the financial or technical resources to retain control. The result was that some of the blocks were revoked as the awardees failed to meet the required commitments after winning them. For instance, in July 2008 FGN announced the revocation of some oil block licences as a result of an alleged breach of the guidelines for the 2007 licensing rounds by the affected companies. Three oil blocks were affected – OPLs 226, 2005 and 2006 – which were awarded to two Indian companies (Essar Exploration and Production Limited and Sterling Global Resources Limited) during the 2007 licensing round held in May 2007.

Furthermore, the effects of political influences on the contracting process continue to undermine its effectiveness. Situations whereby contracts are awarded to cronies who then seek competent partners to execute the contracts are prevalent. This issue was also raised in the allegation of unremitted US\$ 20 billion by former CBN Governor, Sanusi Lamido Sanusi. Mr Sanusi noted that the companies involved in the SAA agreements with the NPDC were not particularly more qualified than the NPDC to carry out the assigned exploration and development projects.

### 4.2.2 Is geological information made public for areas subject to licensing prior to the contracting process?

**Old response: No**

**New response: No**

**UPDATE STATUS: Some changes observed**

From the 2012 NNRC Report, we note that as part of the incentive to attract investment and high bids and to strengthen the position for negotiation of high signature bonuses, geological information – if made publicly available by the DPR – would be extremely valuable in helping companies establish the viability of areas subject to licensing. It would help companies raise financing for their bids and would enable them to submit bids of greater value with greater confidence.

In practice, however, little information is made available about the blocks. The DPR hosts the National Data Repository (NDR), which may have the capacity to provide accessible, commercially valuable data, but the status of the NDR is unclear. As a result, blocks are thought to have been undersold by the government and found subsequently to contain greater reserves than envisaged.

**Information sources:**

[http://ndr.dprnigeria.com/ndr\\_apps\\_reg.htm](http://ndr.dprnigeria.com/ndr_apps_reg.htm)

<http://www.globalwitness.org/rigged/index.html>

### 4.2.3 Are the rules and terms for contract allocation established in either law or regulation?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, most rules and terms for contract allocation are established in law and regulation and, in this respect, reference is often made to the PPT Act, the Oil and Gas Pipelines Regulations 1995, the Oil Pipelines Act, and the Deep Offshore and Inland Basin Production-Sharing Contract Act. The legislation in place defines the tone for the contract terms, while other related regulations are factored in.

In practice, contract allocation is influenced as much by policies and guidelines issued by relevant authorities that are not necessarily established in, or can deviate from, established law. For instance, the now-abolished Right to First Refusal Policy had no legal foundation, while MOUs dealing with issues such as the exemption of upstream operations from payment of Company Income Tax deviate from the Companies and Allied Matters Act.

The rules for contract allocation can therefore be strongly affected by the overall policy direction of the government. In 2005, for instance, a perceived political need to promote local participation and investment led to the Local Content Regulation, which favoured oil companies with local partners. In 2007, the Right to First Refusal Policy was meant to promote investment in infrastructure and downstream facilities and this saw the pre-qualification of Asian firms that had made prior commitments.

Again, in this 2014 Review, we find that rules and terms for contract allocation may have improved on international standard measures going by the ratings from international agencies. Although Nigeria's Resource Governance Index 2013 rank was 22nd of a total of 58 countries involved in the study, the country's 'partial' score of 66 out of 100 in the Institutional & Legal setting of the Resource Governance Index for 2013 reflects a legal setting with public access to information.

#### Information sources:

<http://www.globalwitness.org/rigged/index.html>

<http://businessnews.com.ng/2012/03/05/federal-government-will-hold-an-oil-licensing-bid-round-this-year-dpr>

<http://www.nigeriabusinessplace.com/index.php?topic=85.0;wap2>

Revenue Watch Index 2013.

[www.revenuewatch.org/rgi](http://www.revenuewatch.org/rgi)

Broken links: <http://businessnews.com.ng/2012/03/05/federal-government-will-hold-an-oil-licensing-bidround-this-year-dpr>, <http://www.nigeriabusinessplace.com/index.php?topic=85.0;wap2>

#### 4.2.4 Are the criteria for allocating contracts and licences the same for private and state-owned companies?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The criteria for allocating contracts are the same for all applicants including the state oil company, the NNPC. However, it hardly ever applies for licences because Nigeria's fiscal regime is predominantly concessionary, under which the NNPC is the concessionaire, while private multinational oil companies are the operators.

#### 4.2.5 Is the licensing and contracting process open to all interested companies?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

According to the 2012 NNRC Report, there is no evidence to suggest that there is exclusion of any interested companies in the licensing and contracting process as the publicised invitations for soliciting bids always indicate that all interested companies are free to bid. However, given the extensive evidence of collusion and corruption there is probably a 'self-selection' process that occurs, whereby firms without political patronage do not put in tenders for contracts and licences.

#### 4.2.6 Is the licensing and contracting process based on competitive bidding?

**Old response: Yes/no**

**New response: Yes**

**UPDATE STATUS: Some observable changes**

Since the move away from highly discretionary methods of awarding oil licences in 2005, licensing rounds with competitive and open bidding were introduced in 2005, with repetitions and progressive improvements in 2006 and 2007. The DPR is required in the guidelines to advertise all blocks available for bidding in national dailies and magazines, government-approved international publications, and on a dedicated DPR website. The DPR also provides the platform for various bid processes, including registration, qualification, analysis and interactive communication with bidders.

Prior to 2007, the desire for fair, transparent, and competitive processes conflicted with an aspiration to promote local participation and investment. For example, the 2005 bidding round required bidding companies to have local partners, while the 2006 mini-bidding round offered a Right of First Refusal to companies who offered to invest up to US\$ 2 billion in Nigeria's refining capacity or power generation, in addition to the development of the blocks they were bidding for. As a result, some major oil companies refused to participate in the round because there were indications that the Right of First Refusal policy derived from established government-government bilateral agreements that favoured Asian companies would be used. The rule was also introduced quite late in the 2005 bidding round, leading to conclusions that it had distorted the bidding process, giving some firms a head start. The need for an LCV in 2005 also resulted in the emergence of firms with questionable ownership, doubtful technical and financial capacities, and unclear links to highly influential government officials and associates who won blocks they ordinarily should not have won.

Information from the most recent November 2013 bid round is still insufficient to determine its competitive nature, especially given that the bid process is still stalling. However, the procedure has so far involved steps toward competitiveness – announcements, road shows and listings (not public) of qualification criteria.

There are grounds for concern in this regard, and the Global Witness report on corruption in the licensing round in Nigeria between 2005 and 2007 concluded that there needed to be a major overhaul of the way in which oil and gas licences are allocated to companies in Nigeria. The report stated that decisions needed to be made in a transparent way so as to reduce the risk of conflicts of interest on the part of government officials or donors to political parties, as well as the risk of licences being 'flipped' (commercially traded rather than developed). Global Witness stated that even if bidding conferences are open to the public, the use by government of its executive powers to create a parallel process, involving decisions based on bilateral correspondence and negotiations, would discredit and undermine any efforts at a public bidding process. A legislative committee that reviewed the 2005 bid round concluded that there was obvious manipulation of the bid process to meet specific ends, and that this manipulation created room for abuse of the process. The result was that due process and transparency, which were touted as the hallmark of this bid round, were blurred.

**Information sources:**

<http://www.vanguardngr.com/2012/03/nigeria-seeks-bidders-for-annual-oil-contracts/>

<http://www.nigeriabusinessplace.com/index.php?topic=85.0;wap2>

<http://www.globalwitness.org/rigged/index.html>

<http://www.neiti.org.ng/sites/default/files/auditors2006/NEITI-2006-2008-Physical-Report-Final-300112.pdf>

Broken links: <http://www.nigeriabusinessplace.com/index.php?topic=85.0;wap2>, <http://www.neiti.org.ng/sites/default/files/auditors2006/NEITI-2006-2008-Physical-Report-Final-300112.pdf>

**4.2.7 Is the authority in charge of contract or licence allocation independent of state or private operating companies?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the DPR processes all applications for licences so as to ensure compliance with existing guidelines before making recommendations to the Minister of Petroleum Resources. It therefore serves as the technical arm of the Ministry and is responsible for carrying out technical evaluations of the companies. After an evaluation, the DPR will send its report to the Minister of Petroleum Resources, who will in turn pass it on to the legal department of the NNPC for verification. After verification, the legal unit will revert to the Minister, who will then approve the signing. The NNPC is also the state operating company and its legal department plays a role before the final approval of contracts. This overlap diminishes the independence of the authority in charge of licence allocation from the state-owned company, even though it could be independent from private operating companies.

As is still the case at the time of writing this 2014 review, the DPR, as regulator, remains dependent on its clients due to failure to secure an independent funding mechanism for itself. The current structure of the industry (the mix of policy and regulatory functions) also hampers the capacity of the regulator to exert absolute authority over its responsibilities.

**Information sources:**

*[http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4)*

*[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)*

*<http://www.nnpcgroup.com/NNPCBusiness/UpstreamVentures.aspx>*

*<http://www.nigeriabusinessplace.com/index.php?topic=85.0;wap2>*

Broken links:

*[http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4)*

*[http://dprnigeria.org.ngdpr\\_roles.html/](http://dprnigeria.org.ngdpr_roles.html/)*

*<http://www.nigeriabusinessplace.com/index.php?topic=85.0;wap2>*

**4.2.8 Are there any measures to prevent public officials awarding contracts to companies or associated companies in which they, their relatives or proxies have an interest?**

**Old response: Yes/no**

**New response: No**

**UPDATE STATUS: Some observable changes**

There are legal frameworks put in place aimed at accomplishing this but these measures are far from effective. Section 5 of the Code of Conduct Bureau and Tribunal Act states that ‘a public officer shall not put himself in a position where his personal interests conflict with his duties and responsibilities’. Being part of any procurement process and occupying a position of decision making is considered a violation of this principle and an act of misconduct. Article 19 of the Corrupt Practices and Other Related Offences Act 2000 also provides that ‘any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable for five (5) years without option of fine.’

In practice, however, there are grave violations of these regulations and laws, primarily because of systemic corruption but also because of the limited capability to enforce the regulations and laws of institutions such as the Independent Corrupt Practices Commission, the Economic and Financial Crimes Commission and the Code of Conduct Bureau.

**Information sources:**

[http://www.theconvention.org/pdf/regulations\\_CodeOfConductBureau.pdf](http://www.theconvention.org/pdf/regulations_CodeOfConductBureau.pdf)

<http://www.assetrecovery.org/kc/resources/org.apache.wicket.Application/repo?nid=482e2749-5705-11dd-9116-b9dd47fdd61d>

Broken link: [http://www.theconvention.org/pdf/regulations\\_CodeOfConductBureau.pdf](http://www.theconvention.org/pdf/regulations_CodeOfConductBureau.pdf)

#### 4.2.9 Are contract and licensing decisions justified according to the contract and licensing criteria and made publically available?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: No observable changes**

With the introduction of the Right of First Refusal, a company received pre-emptive commitments to win licences if they could match the largest bid offered for these licences during the auction. The mini-bid in May 2006 was therefore based on criteria that gave preference to companies from China, India and other foreign countries that had pledged investments in Nigeria's infrastructure in return for being granted oil licences. However, the winners have subsequently not fulfilled the conditions of the awards and there has been no investment to date in downstream infrastructure, such as the construction of new refineries and power plants. Deadlines in the payment of signature bonuses were also not met and subsequently some blocks were revoked and litigation initiated.

The NEITI Process Audit 2006–2008, released in February 2012, revealed that commitments undertaken by successful bidders were not being followed through and there was a lack of transparency in the process for managing the implementation of the infrastructure projects, which was never publicly disclosed. There was also a total lack of public disclosure of what was proposed by the bid-winning companies, and even the names of the companies that won were only revealed in the course of either media investigations or by default rather than through systematic or deliberate efforts to inform the public. Similar submissions have been made in the most recent NEITI Audit Report for the period 2009–2011.

**Information source:**

<http://www.globalwitness.org/rigged/index.html>

#### 4.2.10 Are awarded contracts, agreements, or negotiated terms for exploration and production disclosed to the public?

**Old response: No**

**New response: No**

##### **UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, awarded contracts, agreements and negotiated terms have always been secret and laced with confidentiality provisions. It is noteworthy that, to date, no one has publicly seen the list of winners of the notorious 2005 MOUs and the controversial mini-bidding round of 2006, including the contents of the agreements and negotiated terms. Even in 2008, when the legislature initiated an investigation into the 2006 bidding round, the DPR never provided the information demanded.

The investigation was necessitated by the aspiration to unravel the management of the sector under the administration of the former President Obasanjo, who also doubled as the Minister for Petroleum Resources. This demonstrates the level to which the legislature is kept out of the upstream operations that cover the licensing process. There has been no repetition of this investigation and there is no evidence to indicate that the situation has changed.

In the current regime (i.e. for the 2013/2014 period), the DPR has not released any information regarding the most recent marginal oil block licensing process since the last of the three road shows publicising the sale took place in Abuja on 12 December 2013. Although the winning bids should have been announced on 11 April 2014, there has been no word from the agency. As such, the DPR is widely perceived as opaque due to its unwillingness to give updates on developments with the bid round.

##### **Information sources:**

Revenue Watch Index 2010, pg. 16.

[http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4)

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

<http://www.vanguardngr.com/2014/03/delay-funding-may-hamper-marginal-fields-sale/>

Broken links: [http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4), [http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

#### 4.2.11 Is there a process to appeal licensing and contracting decisions?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

Licensing decisions can be appealed in the event of third-party rights being violated, and the NEITI auditors reported that between 2006 and 2008 there were some blocks subject to court challenges in respect of the DPR's rights to offer them. These challenges happen sufficiently often that a review should be undertaken to identify accurately the issues that give rise to disputes and seek to improve respective processes. The cost of responding to litigation and dispute resolution includes the cost of sterilising blocks, freezing signature bonuses in escrow accounts, and pursuing litigation. This is because, as long as judicial review is in progress, the status quo has to be maintained and no progress on developing the block is recorded.

In practice, there have been examples of political influence or economic interest leading to changes in licensing decisions, and modifications to terms have been known to occur without due process being followed. These changes and modifications have gone without appeals as the beneficiaries are often too powerful or the other parties, usually local firms, lack sufficient resources to pursue or expose such misdemeanours. The speed and efficacy of the courts in addressing these issues can be a cause for concern.

##### Information sources:

<http://www.nigerianbestforum.com/index.php?topic=2122.0>

[http://elendureports.com/index.php?option=com\\_content&task=view&id=903&Itemid=34](http://elendureports.com/index.php?option=com_content&task=view&id=903&Itemid=34)

#### 4.2.12 Does the legislative branch have the authority to ratify oil and mining contracts?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The process is completely carried out by government agencies (i.e. the DPR) of the executive arm of government. Like all procurement activities in Nigeria, the legislature plays no role and has no authority to ratify oil and mining contracts. They are treated as business contracts and not treaties. The Presidency, through the Ministry of Petroleum Resources, gives final approval and the NNPC signs on behalf of the government to make it legally binding and operational.

**Information sources:**

[http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4)

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

Broken links: [http://www.mpr.gov.ng/index.php?option=com\\_content&view=article&id=20&Itemid=4](http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4), [http://dprnigeria.org.ngdpr\\_roles.html/](http://dprnigeria.org.ngdpr_roles.html/)

**4.2.13 Are discretionary actions carefully controlled?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the DPR processes all licence applications but the influence of the national oil company as well as the Ministry is substantial, which creates ample room for discretionary behaviour while also diminishing the independence of the statutory authority. The legislation – i.e. the PIB in all its variants – gives a lot of discretionary powers to the Minister over the eventual approval of oil and mining licences.

In addition, during this 2014 Review, we have observed that the Minister of Petroleum Resources is currently showing signs of resisting an inquiry by the National Assembly concerning some of the decisions she took on the management of public funds belonging to the NNPC.

## 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.



### Overview of the questions and ratings

#### 5.1 STANDARDS

<b>5.1.1</b> Has government established publicly available regulatory standards on environmental and socioeconomic performance for all participants in the natural resource sector?	
<b>5.1.2</b> Do these regulatory standards include requirements for an Environmental and Socioeconomic Impact Assessment (ESIA)?	
<b>5.1.3</b> Do any regulations cover: (a) Land acquisition and involuntary resettlement and compensation?	
<b>5.1.4</b> Do any regulations cover: (b) Land reclamation, rehabilitation and flaring?	
<b>5.1.5</b> Do any regulations cover: (c) Enhancing the positive impacts of resource developments on affected communities (e.g. local content, employment and investment requirements?)	
<b>5.1.6</b> Do any regulations cover: (d) Compensation mechanisms for economic and physical displacement?	
<b>5.1.7</b> Do any regulations cover: (e) Grievance mechanisms at the local and national level?	
<b>5.1.8</b> Is there a government body to oversee compliance with environmental and socioeconomic performance standards and requirements?	
<b>5.1.9</b> Does this body have the financial and technical capacity to enforce compliance with these environmental and socioeconomic standards and requirements?	

5.2 ASSESSMENT	
5.2.1 Is there a regulatory requirement for ESIA's prior to project resource extraction?	
5.2.2 Is there a regulatory requirement ensuring ESIA's are done by independent third parties?	
5.2.3 Is there a regulatory requirement ensuring that ESIA statements are made publicly available?	
5.2.4 Do the ESIA's include criteria for: (a) Examination of alternatives?	
5.2.5 Do the ESIA's include criteria for: (b) Analysis of cumulative impacts?	
5.2.6 Do the ESIA's include criteria for: (c) Analysis of impacts on vulnerable people?	
5.2.7 Do the ESIA's include criteria for: (d) Mitigation and enhancement measures?	
5.2.8 Do the ESIA's include criteria for: (e) Ongoing monitoring and management systems?	
5.2.9 Do the ESIA's include criteria for: (f) Consultation with affected communities?	
5.2.10 Do the ESIA's include criteria for: (g) Free prior and informed consent with displaced indigenous communities?	
5.2.11 Do the ESIA's include criteria for: (h) Closure planning?	
5.2.12 Does legislation cover security-related concerns, and is it enforced?	
5.3 MITIGATION AND LOCAL BENEFITS	
5.3.1 Is legislation in place to ensure that economic, social and environmental project impact assessments are monitored throughout the life of the project?	
5.3.2 Is there evidence to indicate that these impacts are monitored in practice?	
5.3.3 Are there any means for redress, or processes for complaint, in place for communities that have been affected by the extraction of natural resources?	

5.3.4 Are mechanisms in place to ensure that local communities benefit from resource extraction?	
5.3.5 Are there measures to enhance the positive impacts of resource developments on affected communities?	
5.3.6 As part of the impact assessment process, are there measures to avoid, reduce or compensate for negative impacts on local communities?	
5.3.7 Are there statistics on spills and clear processes for taking remedial action?	
5.3.8 Does government have the tools to determine the impact of extractive-related issues at a local level?	

## Summary of key findings

Local impacts are considered under three perspectives of environmental, social and economic impacts.

### Standards

- Although regulatory standards have been established for EIAs, there have been none for socioeconomic impacts. There are laws for providing a strong regulatory framework for the environment – but there is practically no effective capacity for monitoring and enforcement.

### Assessment

- The Federal Ministry of Environment and NESREA are responsible for approving EIAs but lack the technical and financial capacity to enforce compliance, and there is no regulatory requirement to ensure assessments are completed by independent third parties. Furthermore, although the regulations require EIA reports to be made public, in practice the Ministry of Environment is unable to maintain a website to enable public access.
- There is no regulation that covers the involuntary resettlement that might arise as a result of oil exploration or grievance mechanisms at the local and national level, e.g. what local communities can do if oil operators do not adhere strictly to the regulations.
- The Nigerian Oil and Gas Industry Content Development (NOGICD) Act made some provisions for increasing the participation of Nigerian companies and workers in the industry. It can be said that the government's local content policy has added more jobs and catalysed an increase in participation of indigenous companies. Up to 65% of total industry spend have been domiciled to reduce capital flight. Capital retention has been put at about \$191 billion post-local content compared to the \$380 billion capital flight pre-local content.

**Mitigation and local benefits**

- The government agencies charged with monitoring the local impacts of oil-related activity lack both the personnel and technical competence to measure these impacts. For example, NOSDRA has been incapable of mapping oil spills across the Niger Delta for many years. Recently, with support from Stakeholder Democracy Network (SDN), there has been a genuine attempt to develop a comprehensive digital oil spills map.
- The EIA Act (1992) requires the monitoring of the environmental impacts of public and private projects throughout the entire life of those projects. However, there is no evidence of performance monitoring of operations and projects against these regulations or standards.
- Again, as long as the federal government administers oil as a federal resource and not a federation resource there will be implementation challenges for companies. Hence, a regulatory body monitoring impact like the National Oil Spill Detection and Response Agency (NOSDRA) have a federal presence in Abuja rather than a federation concern in affected areas (including delegating authority for monitoring to state and local counterpart agencies).
- There are no grievance mechanisms available and accessible to communities affected by resource developments or any measures to avoid, reduce or compensate for negative impacts on local communities. Many communities seeking redress still have to do so in courts abroad.
- As the IOCs divest from marginal fields to explore offshore deposits, the robustness and compliance of these laws will be tested in relation to the indigenous companies that take over these assets from the multinational companies.

**5.1 Standards**

**5.1.1 Has government established publicly available regulatory standards on environmental and socioeconomic performance for all participants in the natural resource sector?**

**Old response: Yes/No**

**New response: No**

**UPDATE STATUS: Some observable changes**

According to the 2012 NNRC Report, regulatory standards exist to provide guidelines for the completion of EIAs, which includes all participants in the natural resource sector. The EIA approval process adopted by the Federal Ministry of Environment involves a system of public hearings during the EIA evaluation process and interested members of the public are invited to such hearings. The Federal Environmental Protection Agency (FEPA) Act (1992) gives wide-ranging powers to officers of the Ministry of Environment in the event of any violation of environmental permits and environmental laws in general. Also, the DPR set out the EGASPIN in 2002. It also has powers to seal up premises, seize offending substances, impose fines and require the clean-up of environmental damage. Violators risk fines and, in certain cases, a shutdown of the polluting/offending facility until there is compliance.

However, there are no regulatory standards covering socioeconomic performance for participants in the natural resource sector, beyond the provisions of the NOGICD Act (2010), which sets targets for participation in the industry by Nigerian companies and workers.

**Information sources:**

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

<http://www.mondaq.com/article.asp?articleid=53804>

### 5.1.2 Do these regulatory standards include requirements for an ESIA?

**Old response: Yes/No**

**New response: No**

**UPDATE STATUS: Some observable changes**

The EIA Act 1992, Section 2(1) requires an assessment of public or private projects likely to have a significant (negative) impact on the environment, while Section 2(4) requires an application in writing to the FEPA (which is now part of the Ministry of Environment) before embarking on projects for their environmental assessment in order to determine approval.

Thus, any person or entity planning a project or activity that may have an impact on the environment is statutorily required to prepare an EIA report. This must set out the potential impact of the activity on the environment and plans for preventing or mitigating it. All EIA reports must be approved by the Federal Ministry of Environment, Housing and Urban Development. The EIA Act (1992) covers a schedule of resource industry activities, which is also set out in the EGASPIN, for which project environmental assessments are mandatory. These activities include seismic operations; oil and gas field developments onshore, nearshore, offshore and deepshore; hydrocarbon processing facilities; construction of waste treatment; and/or disposal facilities. However, there are no regulatory standards or requirements for socioeconomic impact assessments.

There are grounds for concern in this regard, as oversight and enforcement capabilities are very weak.

**Information source:**

2012 NNRC BE Report.

**5.1.3 Do any regulations cover:  
(a) Land acquisition and involuntary resettlement and compensation?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

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

**5.1.4 Do any regulations cover:  
(b) Land reclamation, rehabilitation and flaring?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the Land Use Act (2004) includes some standards on land reclamation and rehabilitation, while the Associated Gas Re-Injection Act (1979) (amended in 1985) addresses the gas flaring activities of oil and gas companies in Nigeria. For instance, some parts of the Associated Gas Re-Injection Act (e.g. sections 3 (1) and 4) prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria, and stipulates the penalty for breach of permit conditions.

However, the FGN's deadline of December 2012 for oil companies to cease flaring expired with no subsequent action. Updates from the Total and Seplat oil companies suggest that they will take it upon themselves to end gas flaring in the near future. Royal Dutch Shell blames the Nigerian government for frustrating efforts by the oil companies to end gas flaring.

Once again, oversight and enforcement capabilities are very weak in regard to this issue.

**Information sources:**

<http://www.thisdaylive.com/articles/total-to-stop-offshore-gas-flaring-in-nigeria/179379/>

<http://www.sundiatapost.com/seplat-says-gas-flaring-can-end-in-nigeria-by-2020/>

<http://www.vanguardngr.com/2014/05/fg-frustrating-efforts-end-gas-flaring-shell/>

**5.1.5 Do any regulations cover:**

**(c) Enhancing the positive impacts of resource developments on affected communities (e.g. local content, employment and investment requirements?)**

**Old response: No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

Although the NOGICD Act (2010) makes provisions for enhancing the impact of resource developments on Nigerian companies and workers, it provides no specific measures for affected communities. Companies have taken it upon themselves to continue investments in societies under the umbrella of corporate social responsibility (CSR), including job opportunities, scholarships and training. Some of the recent initiatives are:

- Establishment of the Multi-Stakeholders Trust Fund by Jonathan in 2014;
- Chevron and Paradigm Initiatives in the Niger Delta (PIND) and the Niger Delta Partnership Initiative (NDPI) Foundation; and
- The use and establishment of foundations, e.g. the Oando Foundation.

The divestment of the upstream sector, whereby local Nigerian companies are now in ownership of assets, may provide the opportunity for more local investment in comparison to IOCs, which took the majority of their profits outside Nigeria. Despite this, governance is degrading and the positive impacts envisioned by local ownership may not be realised.

**Information sources:**

<http://www.vanguardngr.com/2014/01/fg-launch-new-trust-fund-niger-delta/>

<http://www.chevron.com/countries/nigeria/inthecommunity/>

Extracts from Expert Panel Member interview with Mr Gbite Adeniji, June 2014.

**5.1.6 Do any regulations cover:**

**(d) Compensation mechanisms for economic and physical displacement?**

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Some observable changes**

From the 2012 NNRC Report, we note that the Land Use Act, FEPA Act, EIA Act, EGASPIN, and Oil Pipelines Act (1973) collectively contain principles relating to compensation, but in practice there are no effective mechanisms in place to ensure compensation is agreed and provided for in a timely, fair and objective manner.

**5.1.7 Do any regulations cover:  
(e) Grievance mechanisms at the local and national level?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The NOGICD Act (2010), establishing the NCDMB, contains standards that make provision for employment of people from the community. This agency has the power to ensure resource companies to abide by the rules and regulations formulated to protect the local community in which they are operating. Part 1 of the NOGICD contains information on this. However, there is no specific provision for grievance mechanisms as such (e.g. what local communities can do if oil operators do not adhere strictly to the regulations).

Companies may have their own grievance mechanisms as described in their activity reports and procedures. However, there is little information on actual implementation. Besides national laws and company efforts, aggrieved groups are using international courts in the UK and US to seek redress.

**Information sources:**

<http://www.babalakinandco.com/resources/lawsnigeria/LAWS/90202land%20use%20act.htm>

<http://www.elri-ng.org/newsandrelease2.html>

<http://www.placng.org/lawsofnigeria/files/F10.pdf>

[http://www.nogicjqs.com/NOGICD\\_Act\\_2010.pdf](http://www.nogicjqs.com/NOGICD_Act_2010.pdf)

<http://reports.shell.com/sustainability-report/2011/ourapproach/livingbyourprinciples/humanrights.html>

<http://www.unglobalcompact.org/system/attachments/37821/original/Oando%20PLC%202012%20Communication%20on%20Progress%20%20on%20the%20Implementation%20of%20the%2010%20Principles%20of%20the%20United%20Nations%20Global%20Compact%20%282%29.pdf?1380929351>

Extracts from Expert Panel Member interview with Mr Gbite Adeniji, June 2014.

### 5.1.8 Is there a government body to oversee compliance with environmental and socioeconomic performance standards and requirements?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The Federal Ministry of Environment, Housing and Urban Development and NESREA are responsible for overseeing compliance with environment and socioeconomic performance standards and requirements. In addition, within the natural resource sector, the DPR is responsible for overseeing compliance with environmental and socioeconomic performance standards.

#### Information sources:

<http://www.nesrea.org/lawsandregulations.php#>

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

### 5.1.9 Does this body have the financial and technical capacity to enforce compliance with these environmental and socioeconomic standards and requirements?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

In terms of technical capacity, the agency is well staffed in principle as there are viable provisions under the FEPA Act to guarantee competence and reputable professionalism. However, in practice the agency is largely ineffective. Moreover, the DPR - which is responsible for enforcing compliance with environmental and socioeconomic standards in the natural resource sector - has severe financial and technical capacity constraints. For example, it often has to rely on the resources of the same companies it is supposed to regulate and on occasions its staff make ad-hoc monitoring and inspection visits.

#### Information sources:

<http://www.placng.org/lawssofnigeria/files/F10.pdf>

<http://www.nesrea.org/lawsandregulations.php#>

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

## 5.2 Assessment

### 5.2.1 Is there a regulatory requirement for ESIA's prior to project resource extraction?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

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

#### Information sources:

<http://www.elri-ng.org/newsandrelease2.html>

<http://www.placng.org/new/laws/NIGERIAN%20OIL%20AND%20GAS%20INDUSTRY%20CONTENT%20DEVELOPMENT%20ACT,%202010.pdf>

<http://www.placng.org/lawsofnigeria/files/F10.pdf>

Broken link: Note: [http://www.nogicjqs.com/NOGICD\\_Act\\_2010.pdf](http://www.nogicjqs.com/NOGICD_Act_2010.pdf) requires credentials for login.

### 5.2.2 Is there a regulatory requirement ensuring ESIA's are done by independent third parties?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

There is no regulatory requirement ensuring ESIA's are done by independent third parties in Nigeria. Under the FEPA Act (1988), ESIA's are usually left to the proponents of the project to complete through the recruitment of their own consultants. In the oil sector, there is further confusion as a result of multiple regulators. The DPR and the state environmental protection agencies have enabling instruments permitting them to conduct EIAs without limitation. The DPR's instrument is its regulation, EGAS (1991), which empowered it to conduct EIAs. However, there is no legislation mandating it directly, and the DPR and the Federal Ministry of the Environment lack the capacity to enforce ESIA regulations.

**Information sources:**

[http://www.unep.ch/etu/publications/14\)%2063%20to%2074.pdf](http://www.unep.ch/etu/publications/14)%2063%20to%2074.pdf)

<http://www.placng.org/lawsfnigeria/files/F10.pdf>

<http://www.nesrea.org/nesraact.php>

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

Extracts from Expert Panel Member interview with Mr Gbite Adeniji, June 2014.

### 5.2.3 Is there a regulatory requirement ensuring that ESIA statements are made publicly available?

**Old response: Yes**

**New response: Yes**

#### **UPDATE STATUS: No observable changes**

ESIA statements are supposed to be made publicly accessible under the FEPA Act and Part II of the Act is devoted to these statements. Section 6b states that, 'in carrying out the functions prescribed in Section 5 of this Act and in other provisions of this Act, it shall be lawful for the Agency to collect and make available, through publications and other appropriate means and in cooperation with public or private organisations, basic scientific data and other information pertaining to pollution and environmental protection matters and the degradation of natural resources.' This is also true for the DPR in the natural resource sector, as required under EGASPIN (2002).

In practice, however, the relevant agencies have insufficient capacity to publish and maintain access to such reports even on their websites.

**Information source:**

<http://www.placng.org/lawsfnigeria/files/F10.pdf>

**5.2.4 Do the ESIA's include criteria for:  
(a) Examination of alternatives?**

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: No observable changes**

Section 17(2b) of the EIA Act (1992) provides for alternative means of carrying out the project that are technically and economically feasible, and addresses the environmental effects of any such alternative means.

**5.2.5 Do the ESIA's include criteria for:  
(b) Analysis of cumulative impacts?**

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: No observable changes**

The prevailing ESIA requirement in Nigeria includes criteria for the analysis of cumulative impacts. This is well stated in the EIA Act (1992). For instance, Section 4d 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.'

**5.2.6 Do the ESIA's include criteria for:  
(c) Analysis of impacts on vulnerable people?**

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: No observable changes**

The functions of the DPR include the creation of public awareness and making provisions for environmental education on sustainable environmental management, promoting private sector compliance with environmental regulations in the oil and gas sector, and the publishing of general scientific or other data resulting from the performance of its functions. Also, some sections in EIA Act (1992) make provisions for addressing the negative impacts of oil and gas activities on vulnerable communities.

### 5.2.7 Do the ESIA's include criteria for: (d) Mitigation and enhancement measures?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The EIA Act (1992) requires any proponent planning a project or activity to submit a report of the environmental impact of the project before commencing operation. The report must include potential plans for preventing or mitigating the environmental impacts of the project, as well as clean-up options. The EIA Act (1992) and EGASPIN (2002) also include some provisions addressing the social and economic impacts on vulnerable communities.

### 5.2.8 Do the ESIA's include criteria for: (e) Ongoing monitoring and management systems?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

According to information from the 2012 NNRC Report, the regular environmental audits of projects, normally at two-to-three-year intervals, are required by the Federal Ministry of Environment, Housing and Urban Development on any project or activity, representing a means of ongoing monitoring. The DPR also carries out regular environmental audits of oil and gas installations, stations, depots and other facilities. Also, Section 17(2c) of the EIA Act (1992) states the need for, and the requirements of, any follow-up programme in respect of a project. No regular social audits are carried out.

### 5.2.9 Do the ESIA's include criteria for: (f) Consultation with affected communities?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Unfortunately, ESIA requirements do not include consultation with affected communities. Section 11a of the EIA Act merely states that when information within an EIA indicates that the environment is likely to be significantly affected by a proposed project or activity, then the potentially affected state or local government should be notified of the proposed activity or project.

**5.2.10 Do the ESIA include criteria for:  
(g) Free prior and informed consent with displaced indigenous communities?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

At present, ESIA requirements in Nigeria do not make provision for free, prior and informed consent with indigenous communities potentially displaced by project developments. The Land Use Act (2004), which vests the control and ownership of land in the custody of government, has enabled resource companies to operate without the legal consent of the people in the oil regions in the absence of provision for displaced indigenous communities.

**5.2.11 Do the ESIA include criteria for:  
(h) Closure planning?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The EIA Act (1992) requires provision for clean-up activity after the completion of a project activity. However, the Act does not explicitly make provision for restoration and rehabilitation or address the welfare of local communities affected by the closure.

**Information sources:**

<http://www.placng.org/lawsofnigeria/files/F10.pdf>

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

<http://www.nesrea.org/functions.php>

[http://www.nogicjqs.com/NOGICD\\_Act\\_2010.pdf](http://www.nogicjqs.com/NOGICD_Act_2010.pdf)

<http://www.elri-ng.org/newsandrelease2.html>

Broken link: <http://www.nigerialaw.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm>

### 5.2.12 Does legislation cover security-related concerns, and is it enforced?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

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

## 5.3 Mitigation and local benefits

### 5.3.1 Is legislation in place to ensure that economic, social and environmental project impact assessments are monitored throughout the life of the project?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

From the 2012 NNRC Report, we note that the EIA Act (1992) requires the monitoring of the environmental impact of public and private projects throughout the entire life of the project. There is no legislation relating to the monitoring of economic and social impacts.

**Information source:**

<http://www.elri-ng.org/newsandrelease2.html>

**5.3.2 Is there evidence to indicate that these impacts are monitored in practice?****Old response: No****New response: No****UPDATE STATUS: Additional information included**

From the 2012 NNRC Report, there is no evidence of performance monitoring of operators and projects against these regulations and standards. Some of the functions of the DPR are supposed to cover this, including enforced compliance with laws, guidelines, policies and standards on environmental matters and, specifically, enforced compliance through monitoring of environmental regulations and standards on any project (regardless of size) in the oil and gas sector and other sectors. The DPR lacks the capacity to monitor and enforce standards.

We note that the Public Complaint Commission and Ministry of the Niger Delta may actually monitor these impacts, but such effort is largely undocumented. Moreover, while there is weak monitoring by government, private companies implement their own monitoring as required by their home governments. That said, a lack of host government monitoring makes it difficult to estimate impacts. For instance, Shell undertakes monitoring and the company publishes it in its global sustainability reports. However, there is no other information online to independently verify their reporting.

**Information source:**

<http://www.gjournals.org/GJEMPS/GJEMPS%20PDF/2013/January/Nwoko.pdf>

Broken link: [http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

**5.3.3 Are there any means for redress, or processes for complaint, in place for communities that have been affected by the extraction of natural resources?****Old response: No****New response: No****UPDATE STATUS: Some changes observed**

In the 2012 NNRC Report, it was observed that there were no specific grievance mechanisms available and accessible to communities affected by resource developments, such as whistle-blowing provisions, an arbitration commission or a community liaison committee. However, if human rights, as they are listed in Chapter IV of the Nigerian Constitution, are violated either by a person or a corporate body, the affected person or legal entity can seek redress or file complaints through the court of law, mass media and/or interest groups.

In this 2014 review, we note that although national laws on redress and complaints have been in place, very little mechanisms exist for host communities to seek redress. Compliance by companies is mostly voluntary despite new indications of Alternative Dispute Resolution (ADR) clauses in oil contracts. Some companies have also set up their own internal mechanisms (although the information available on these is unclear). Additionally, international courts are now in use as mechanisms to seek redress by groups in the host communities. Host communities seek redress from courts abroad when local courts cannot deliver justice on peculiar issues. The local governments in affected communities are also channels through which the complaints of the citizens can be addressed.

**Information sources:**

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

Extracts from Expert Panel Member interview with Mr Gbite Adeniji, June 2014.

**5.3.4 Are mechanisms in place to ensure that local communities benefit from resource extraction?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

The NOGICD Act (2010) provides for the development of Nigerian content in the oil and gas industry, including a Nigerian content plan, supervision, coordination, monitoring, and implementation of Nigerian content and related matters. The Act requires mechanisms that facilitate local community benefits from oil exploration and extraction and states that all operators and companies operating in the Nigerian oil and gas industry must employ Nigerians. Overall, implementation of the local content has seen up to 65% of total industry spend domiciled to reduce capital flight. Capital retention has been put at about \$191 billion post-local content compared to the \$380 billion capital flight pre-local content. Some of the activities put in place by resource companies to benefit the local communities in their operating areas include business development schemes, education programmes, MoU agreements, health care and youth development initiatives.

As an example of the local content of oil companies' activities, Shell companies awarded contracts worth US\$ 1.4 billion to Nigerian companies in 2011, representing 68% of the total number of contracts. The proposed PIB (2012) also contains elements for enhancing the mechanisms through which local people in oil-producing regions can benefit from oil extraction. However, there are already existing company-derived mechanisms in place to cater for the oil region communities and many of these are in line with the responsibilities set out by the government for the resource companies.

Niger Delta Development Commission, Ministry of Niger Delta, state and companies' initiatives, local content, scholarships given to indigenes, and the derivation principle enshrined in the 1999 Constitution all have measures to ensure that local communities benefit from resource extraction.

**Information sources:**

[http://www.ncdmb.gov.ng/images/downloads/ncd\\_act.pdf](http://www.ncdmb.gov.ng/images/downloads/ncd_act.pdf)

[http://www.shell.com.ng/home/content/nga/environment\\_society/shell\\_in\\_the\\_society/](http://www.shell.com.ng/home/content/nga/environment_society/shell_in_the_society/)

[http://www-static.shell.com/static/nga/downloads/pdfs/briefing\\_notes/economic\\_contribution.pdf](http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/economic_contribution.pdf)

<http://nnpcgroup.com/PublicRelations/FAQs.aspx>

<http://ritofa.com/ritofa/images/download/KEY%20ELEMENTS%20THE%20NIGERIAN%20OIL%20AND%20GAS%20CONTENT%20DEVELOPMENT.pdf>

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

**5.3.5 Are there measures to enhance the positive impacts of resource developments on affected communities?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The proposed PIB (2012) and the NOGICD Act (2010) indicate various measures to mitigate the negative impacts of natural resource extraction on affected communities. However, there are no mechanisms in place to enhance positive impacts.

**Information sources:**

[http://www.ncdmb.gov.ng/images/downloads/ncd\\_act.pdf](http://www.ncdmb.gov.ng/images/downloads/ncd_act.pdf)

[http://www.shell.com.ng/home/content/nga/environment\\_society/shell\\_in\\_the\\_society/](http://www.shell.com.ng/home/content/nga/environment_society/shell_in_the_society/)

**5.3.6 As part of the impact assessment process, are there measures to avoid, reduce or compensate for negative impacts on local communities?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The EIA Act (1992) does not contain measures or processes for avoiding or mitigating social impacts or compensating affected local communities. However, some of the functions of the DPR and the Federal Ministry of Environment, Housing and Urban Development contain some measures to avoid, reduce or compensate for negative project impacts on local communities. For instance, the DPR encourages resource companies to engage in social responsibility programmes intended to have positive impacts on oil regions.

**Information sources:**

[http://www.dprnigeria.com/dpr\\_roles.html](http://www.dprnigeria.com/dpr_roles.html)

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

<http://www.nigeria-law.org/Nigerian%20National%20Petroleum%20Corporation%20Act.htm>

**5.3.7 Are there statistics on spills and clear processes for taking remedial action?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

In the 2012 NNRC Report, there was no specific credible source of statistics on the precise number of oil spill incidents. Most of the relevant laws – as stated earlier – contain statements on what should be done in terms of remedial action for oil spills but the clarity with respect to penalties for non-compliance by erring companies and the enforcement of such penalties remain weak at best. It was reported that there might be some statistics on oil spills but that these are likely to be widely dispersed between Shell, the DPR and the National Oil Spill Detection and Response Agency (NOSDRA). They are, however, limited to paper archives; collating them and putting them onto a map would be very valuable.

In the last two years, available statistics on spills are still scanty as each private operator in the oil and gas industry reports incidences of oil spillage individually based on their field operations while some general information is available from NOSDRA. However, the agency has recently been involved with Stakeholder Democracy Network (SDN) in developing a comprehensive web-based digital mapping initiative to map and track oil spills in the extractive regions of the country. New statistics on oil spills have begun to emerge from the effort.

**Information sources:**

<http://www.shell.com.ng/environment-society/environment-tpkg/oil-spills/data-2013.html>

<http://www.stakeholderdemocracy.org/cgblog/622/71/Dealing-with-oil-spills-in-the-Niger-Delta-Towards-technology-driven-crisis-prevention.html>

**5.3.8 Does government have the tools to determine the impact of extractive-related issues at a local level?****Old response: No****New response: No****UPDATE STATUS: No observable changes**

The government agencies charged with monitoring the local impacts of oil-related activity lack both the personnel and technological competence to measure these impacts. Also, the fact that the federal government administers oil as a federal resource and not a federation resource makes it difficult to enforce monitoring at a local level. For example, a regulatory body monitoring impact like the National Oil Spill Detection and Response Agency (NOSDRA) has a federal presence in Abuja rather than a federation concern in affected areas (including delegating authority for monitoring to state and local government counterpart agencies).

## PRECEPT 6: NATIONALLY OWNED RESOURCE COMPANIES

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



### Overview of the questions and ratings

#### 6.1 CLARITY OF ROLES

<b>6.1.1</b> Is the NORC established as a separate legal entity?	
<b>6.1.2</b> Does the governance structure of the NORC board specify: (a) the role of the board; (b) the limits of its authority; (c) what it is accountable for; and (d) to whom it is accountable, formally and in practice?	
<b>6.1.3</b> Is the NORC's role defined in a way that allows commercial and non-commercial responsibilities to be distinguished, and prioritised if necessary?	
<b>6.1.4</b> Is the NORC's role defined in a way that gives the NORC the ability and incentives to prioritise the effective development of commercial strategies and activities?	
<b>6.1.5</b> Are the operational and commercial decisions of the NORC executive management and board separated from political and other conflicting interventions?	
<b>6.1.6</b> Is the assignment of roles to the NORC free of risks of conflict of interest that impede oil-sector performance and governance?	
<b>6.1.7</b> Is the NORC free from compulsion to make political contributions?	

6.2 COMMERCIAL EFFECTIVENESS	
<b>6.2.1</b> Is the NORC competitive relative to other NORCs?	
<b>6.2.2</b> Is the NORC subject to a well-defined set of fiscal rules that provides for clear and substantial transfers of revenues to the state while enabling the company to engage in effective commercial planning?	
<b>6.2.3</b> Are subsidies and other forms of protection for the NORC clearly defined and time-bound?	
<b>6.2.4</b> Are any shares of the NORC publicly traded, or is the NORC subject to other meaningful market incentives for commercial performance?	
<b>6.2.5</b> Are NORC procurement processes based on open, transparent and competitive bidding?	
<b>6.2.6</b> Are there regulations to ensure that employment is based on merit in the NORC?	
<b>6.2.7</b> Are quasi-fiscal activities avoided by the NORC?	
6.3 TRANSPARENCY AND ACCOUNTABILITY	
<b>6.3.1</b> Do NORCs have an acceptable Revenue Watch Index score for transparency?	
<b>6.3.2</b> Are NORCs subject to the same disclosure requirements as publicly held companies?	
<b>6.3.3</b> Are NORC accounts prepared to international accounting standards, such as the International Financial Reporting Standards (IFRS)?	
<b>6.3.4</b> Are NORC accounts consolidated to cover all NORC subsidiaries?	
<b>6.3.5</b> Are NORC accounts made publicly available?	
<b>6.3.6</b> Is the NORC subject to annual audits conducted by independent internal and external auditors?	
<b>6.3.7</b> Are quasi-fiscal activities defined and separately and transparently accounted for?	
<b>6.3.8</b> Are NORC officials required to disclose information about their financial interest in any petroleum projects?	

## Summary of key findings

### Clarity of roles

- The NNPC was established as a separate legal entity in 1990 and its operating role has developed in a way that does not allow commercial and non-commercial responsibilities to be clearly distinguished. It often plays the role of de facto regulator, as well as sector participant, by maintaining a strong equity or production-sharing interest in most operations on behalf of government, which creates a conflict of interest for any other government agency trying to act as regulator of those operations.

### Commercial viability

- The NNPC is structurally insolvent: it is not supposed to retain revenues from crude sales, it loses money on refined product sales, other operating divisions generate only small amounts of revenue, and there appears to be no other formal allocation to the NNPC from the federal budget. This creates perverse incentives for the NNPC to find informal allocations or withhold what it supposedly owes the government.
- In April 2014, protests greeted the House of Representatives approval of a proposed \$1.56bn forward 'sale agreement' loan for the NNPC
- Subsidies and other forms of protection for the NORC are not clearly defined, costed or time-bound. They include favourable pricing of the domestic crude allocation, protection in the form of majority participation in JVs and controlling interest in the PSCs, and access to seemingly unlimited resources in the name of the fuel subsidy, through the unregulated import of refined products.
- Commercial decisions of the NNPC executive management and board are not separated from political and other conflicting interventions. The corporation is not really free from making compulsory political contributions and this has affected the manner in which it conducts its accounts.
- A long tradition of political appointments to the top posts in the NNPC discourages a strong management culture based on technical ability, merit and performance.

### Transparency

- The NNPC is not subject to the same disclosure requirements as publicly held companies and although its accounts cover all NNPC subsidiaries and are produced regularly, these are not prepared to international accounting standards, nor are they made publicly available or scrutinised systematically by external auditors.
- There are several quasi-fiscal activities conducted by the NNPC that lack transparency and clarity and continue to be funded even where alternatives exist.
- Subsidies on refined products are funded through the government budget but supervised by the NNPC and its subsidiaries. Furthermore, there is significant evidence of corruption and misappropriation.

## 6.1 Clarity of roles

### 6.1.1 Is the NORC established as a separate legal entity?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

The NNPC was established as a separate legal entity in 1990. Through the corporation, FGN regulates and participates in the country's petroleum industry. By law, the NNPC manages the JVs between FGN and a number of foreign multinational corporations. The corporation was given power and operational interests in exploration, refining, petrochemicals and product transportation as well as marketing. Currently, the corporation is organised under 12 subsidiary strategic business units covering a large spectrum of oil industry operations.

#### Information source:

<http://www.nnpcgroup.com/AboutNNPC/Corporateinfo.aspx>

### 6.1.2 Does the governance structure of the NORC board specify: (a) the role of the board; (b) the limits of its authority; (c) what it is accountable for; and (d) to whom it is accountable, formally and in practice?

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: No observable changes**

According to the 2012 NNRC Report, the governance structure of the NNPC board is well-specified. Presently, the NNPC has an 11-member board, while subsidiaries also have their own boards. The NNPC board constitutes one chairperson, one managing director, eight executive directors, and one secretary (legal adviser). The Minister of Petroleum Resources, by design, is the board's chairperson. More specific details about the NNPC board include:

- The role of the board of directors (BOD) is established in the NNPC Act (1977) and is primarily to set strategy and approve projects and contracts (NNPC Act, Chapter 320, Part I);
- The BOD has power and decision-making authority. The General Managing Director's office is the top management position in the corporation. However, the BOD has limited budget approval authority, which can constrain investment and implementation of projects;
- The BOD is accountable for all decisions taken on behalf of the corporation; and
- The BOD is accountable to the National Council of Ministers, headed by the President of Nigeria.

In practice, NNPC decision-making processes are often based on informal accountability structures that do not completely adhere to the official structure. It has been common for a variety of Nigerian presidents and other high-level officials to exert substantial behind-the-scenes influence on the board. Board appointments have been dominated by patronage and regional concerns rather than merit, which has affected the sense of the accountability of board members and created significant confusion about how decisions are made. As Gillies (2010) notes, 'Very few officials outside of NNPC know how NNPC works, a scenario which expands the scope for misunderstandings and impedes oversight.'

#### Information sources:

Nigeria National Petroleum Corporation Act, No 33 of 1977, Chapter 320, Law of the Federal Republic of Nigeria 1990.

<http://www.nigeria-law.org/Nigerian%20National%20Petroleum%20Corporation%20Act.htm>

Oil Sector Reform in Africa: The Case of Nigeria, Alexandra Gillies, December 2010, Department of Politics and International Studies, University of Cambridge.

NNPC and Nigeria's oil patronage ecosystem, Mark C. Thurber, Ifeyinwa M. Emelife, and Patrick Heller, Working Paper #95. September 2010, Program On Energy And Sustainable Development, Stanford University.

[http://iis-db.stanford.edu/pubs/22995/WP\\_95,\\_Thurber,\\_Emelife,\\_Heller,\\_NNPC,\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95,_Thurber,_Emelife,_Heller,_NNPC,_16_September_2010.pdf)

### 6.1.3 Is the NORC's role defined in a way that allows commercial and non-commercial responsibilities to be distinguished, and prioritised if necessary?

**Old response: No**

**New response: No**

#### UPDATE STATUS: Additional information included

According to the 2012 NNRC Report, the NNPC's role is defined and prioritised in the NNPC Act (1977) - but this is somewhat outdated. Under this Act, the commercial activities relating to the petroleum sector were to be carried out by the Corporation while the enforcement of regulatory measures relating to the general control of the petroleum sector was to be managed by a separate department known as the Petroleum Inspectorate. In 1988, the NNPC was reorganised and the functions of the Petroleum Inspectorate transferred out of the NNPC, creating the DPR, under the direct responsibility of the Ministry of Petroleum Resources.

In practice, the NNPC's principal role is still as a sector manager and quasi-regulator, using the approval authority of its subsidiary NAPIMS to assert control over IOCs. Notably, while the DPR is the formal regulatory body, the NNPC often plays the role of de facto regulator through its interactions with IOCs. The NNPC is also charged with managing various elements of the Nigerian downstream, including in the propping up of fuel subsidies, at enormous costs to the Corporation's bottom line. These activities have played a dominant role in the development of the NNPC's strategies and the conduct of its activities, and have impeded its ability to develop skills and effective commercial approaches, both in the upstream and the downstream.

As Thurber, Imelife and Heller (2010) note, 'NNPC is structurally insolvent. Crude sales are supposed to pass straight through to the Federation Account; NNPC loses money on refined product sales; other operating divisions cannot begin to generate sufficient revenue to fund the company; and there appears to be no other formal allocation to NNPC from the FGN budget. Any funding seemingly must come from informal allocations (or from NNPC withholding what it supposedly owes the government).'

In 2014, the approval of a US\$ 1.56 billion loan for the NNPC by the House of Representatives, which met large-scale protests, showed the corporation lacks commercial strategies. The NNPC is highly indebted due to the corruption prevalent in the corporation.

**Information sources:**

<http://www.punchng.com/business/business-economy/protests-as-reps-approve-1-56bn-loan-for-nnpc/>

<http://www.vanguardngr.com/2013/01/nnpc-borrows-from-10-banks-to-clear-3-5bn-foreign-debts/>

Nigeria National Petroleum Corporation Act, No 33 of 1977, Chapter 320, Law of the Federal Republic of Nigeria 1990.

<http://www.nigeria-law.org/Nigerian%20National%20Petroleum%20Corporation%20Act.htm>

NNPC and Nigeria's oil patronage ecosystem, Mark C. Thurber, Ifeyinwa M. Emelife, and Patrick Heller, Working Paper #95. September 2010, Program On Energy And Sustainable Development, Stanford University.

[http://iis-db.stanford.edu/pubs/22995/WP\\_95,\\_Thurber\\_Emelif\\_Heller,\\_NNPC,\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95,_Thurber_Emelif_Heller,_NNPC,_16_September_2010.pdf)

**6.1.4 Is the NORC's role defined in a way that gives the NORC the ability and incentives to prioritise the effective development of commercial strategies and activities?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

As noted in response to Question 6.1.3 above, the role of the NNPC is defined and prioritised in the NNPC Act (1977), but this is somewhat outdated and there are some issues as discussed above.

The NNPC's role is ill-defined for commercial strategies and activities are also subject to exploitation by the presidency. That said, the proposed unbundling of the NNPC may allow for its commercialisation.

**Information sources:**

<http://www.punchng.com/business/business-economy/protests-as-reps-approve-1-56bn-loan-for-nnpc/>

<http://www.vanguardngr.com/2013/01/nnpc-borrows-from-10-banks-to-clear-3-5bn-foreign-debts/>

Nigeria National Petroleum Corporation Act, No 33 of 1977, Chapter 320, Law of the Federal Republic of Nigeria 1990.

<http://www.nigeria-law.org/Nigerian%20National%20Petroleum%20Corporation%20Act.htm>

NNPC and Nigeria's oil patronage ecosystem, Mark C. Thurber, Ifeyinwa M. Emelife, and Patrick Heller, Working Paper #95. September 2010, Program On Energy And Sustainable Development, Stanford University.

[http://iis-db.stanford.edu/pubs/22995/WP\\_95,\\_Thurber,\\_Emelife,\\_Heller,\\_NNPC,\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95,_Thurber,_Emelife,_Heller,_NNPC,_16_September_2010.pdf)

### 6.1.5 Are the operational and commercial decisions of the NORC executive management and board separated from political and other conflicting interventions?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

In principle, the operational and commercial decisions of the NNPC executive board are separated from political and other conflicting interventions, with decisions on the operational and commercial activities of the corporation being taken by the BOD, which is answerable to the National Council of Ministers headed by the President.

However, in practice the Presidency and other executive agencies have always wielded a lot of direct influence over NNPC appointments. Despite major reform efforts under the 1999 to 2007 regime of Olusegun Obasanjo, including restoring the Ministry of Petroleum Resources and its regulatory branch (i.e. the DPR), much of this progress was undone as he made himself Minister of Petroleum Resources and Chairman of the Board of the NNPC, removing any pretence of independence. This provides the government with a lot of potential influence over operational and commercial decisions, which it has been unable to restrain itself from using. For example, the NNPC's crude oil allocation is sold through its marketing division COMD to term buyers, who are allocated lifting licences on an annual or bi-annual basis. The 2006 NEITI Physical Audit report found that, 'The choice of term buyers is taken at higher levels than COMD, implying NNPC's group managing director and the presidency. Decision making is particularly opaque at these levels.'

In addition, all yearly budgets for JV cash calls and the majority of contracts under the PSCs must be approved by the NNPC BOD, the Chairman of which is the Minister of Petroleum Resources. Large tenders are passed for approval to the Federal Executive Council, which is headed by the President. A recent audit has found several large debts owing to the NNPC from various branches of government for activities completely unrelated to the oil sector, which suggests that the NNPC has frequently been directed to engage in commercial activities outside its remit at the behest of the Executive.

There is further evidence of perverse decision-making and operations within the NNPC. Of particular importance is the inability to maintain the refineries, which forces the government to import fuel at higher cost and creates multiple opportunities for rent-seeking and leakage. Presently, Nigeria has four nationally owned refineries located in Kaduna, Port Harcourt and Warri, none of which operate at capacity, resulting in an increase in petroleum imports. Although several turn-around maintenance contracts have been signed, no significant progress has been observed in refinery performance.

**Information sources:**

NNPC and Nigeria's oil patronage ecosystem, Mark C. Thurber, Ifeyinwa M. Emelife, and Patrick Heller, Working Paper #95. September 2010, Program On Energy And Sustainable Development, Stanford University, [http://iis-db.stanford.edu/pubs/22995/WP\\_95\\_Thurber\\_Emelif\\_Heller\\_NNPC\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95_Thurber_Emelif_Heller_NNPC_16_September_2010.pdf)

Nigerian Extractive Industries Transparency Initiative: Physical Audit. (Available at: [www.neiti.org](http://www.neiti.org)), 20 December 2006.

<http://www.reuters.com/article/2012/07/16/us-nigeria-nnpc-debts-idUSBRE86F0DF20120716>

The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions, G. Ugo Nwokeji, Rice University – James A. Baker III Institute for Public Policy, March 2007, [http://www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/docs/NOCs/Papers/NOC\\_NNPC\\_Ugo.pdf](http://www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/docs/NOCs/Papers/NOC_NNPC_Ugo.pdf)

See Nigeria national dailies on Subsidy probe; for example, The Nation, 1 November 2012. Available at: <http://www.thenationonlineng.net/2011/index.php/columnist/wednesday/tony-marinho/32796-jonathan%3A-refineries-repaired-in-three-months-not-three-years-or-resign!-%C2%A0%C2%A0.html>

House of Representatives reports of the Ad-hoc committee to verify and determine the actual subsidy requirements and monitor the implementation of the subsidy regime in Nigeria' Resolution No (HR.1/2010). Available at: <http://resourcedat.com/wp-content/uploads/2012/04/FINAL-SUBSIDY-REPORT.-01.pdf>

<http://news-eye.info/how-successive-nigerian-leaders-use-nnpc-as-cash-cow-chatham-house-chief/>

<http://www.vanguardngr.com/2014/03/jonathan-approves-appointment-5-new-group-executive-directors-nnpc/>

<http://www.vanguardngr.com/2014/03/jonathan-stopped-nnpc-buying-new-aircraft/>

Extracts from Expert Panel Member interview with Mr Gbite Adeniji, June 2014.

### 6.1.6 Is the assignment of roles to the NORC free of risks of conflict of interest that impede oil-sector performance and governance?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Generally speaking, the 12 subsidiaries of the NNPC have defined commercial roles but overlapping regulatory responsibilities, and self-regulatory roles are a common source of conflicts of interest. For example, while the NNPC plays the role of de facto regulator through its interactions with IOCs, the DPR is the formal regulatory body. Also, while the NNPC regulates local content it can, in theory, also supply it. Indeed, it is also responsible for cost regulation in the JVs while simultaneously serving as the majority partner in the ventures.

Beyond hindering the performance of the NNPC itself, these conflicts of interest have reduced the effectiveness of other government institutions. The constitutional twin role granted to the NNPC – regulator of commercial activities and key player in the supply of oil and gas – limits the regulatory functions of the DPR. In terms of influence, the DPR is constrained by very limited resources, which hinder its effective performance. Indeed, the NEITI Audit Report for 1999 to 2004 highlighted these resource limitations, especially the resulting deficiencies in information technology at the DPR and its effects on data collection. Regulation generally in Nigeria remains constrained by limited enforcement capacities and this requires the bolstering of staffing and budgets.

#### Information sources:

Thurber et al (2010). NNPC and Nigeria's Oil Patronage Ecosystem. Program on Energy and Sustainable Development, Working Paper No. 9, [http://iis-db.stanford.edu/pubs/22995/WP\\_95\\_Thurber\\_Emelife\\_Heller\\_NNPC\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95_Thurber_Emelife_Heller_NNPC_16_September_2010.pdf)

World Bank (2008), A Citizen's Guide to National Oil Companies, Part B, Data Directory. [http://www.beg.utexas.edu/energyecon/nocs/WB\\_CEE\\_NOC\\_Guide\\_B\\_Data\\_Directory\\_Final.pdf](http://www.beg.utexas.edu/energyecon/nocs/WB_CEE_NOC_Guide_B_Data_Directory_Final.pdf)

### 6.1.7 Is the NORC free from compulsion to make political contributions?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The NNPC Act (1990) does not in any way compel or expect the NNPC to make any political contribution either within or outside the country. However, there are allegations of misappropriation of NNPC funds for political activities like the funding of election activities, including candidates, campaigns, and voter bribes.

Since the discovery of oil, there has been a series of allegations of misappropriation in the oil and gas sector. In more recent times, the NEITI audit reports have confirmed, with shocking revelations, the magnitude of the inconsistencies in the management of oil resources. Debates, commentaries and several reports following former CBN Governor Sanusi Lamido Sanusi's allegation of an unremitted US\$ 20 billion by the NNPC to the Federation Account have also been linked to a long-term commitment on the part of the NNPC to political contributions. All these point to indications that the NNPC faces political interference and is not averse to making political contributions to the administration in power as needed.

**Information sources:**

Nigeria National Petroleum Corporation Act, No. 33 of 1977, Chapter 320, Law of the Federal Republic of Nigeria 1990.

Available at: <http://www.nigeria-law.org/Nigerian%20National%20Petroleum%20Corporation%20Act.htm>

Economics Confidential (Factual, Authoritative and accessible), Nigeria: Irresponsible Oil Minister vs. Corrupt and Solvent NNPC.

Available at: <http://economicconfidential.net/new/features/675-nigeria-irresponsible-oil-minister-vs-corrupt-and-solvent-nnpc>

<http://www.vanguardngr.com/2014/03/20-billion-sanusi-opposition-cabal/>

<http://news-eye.info/how-successive-nigerian-leaders-use-nnpc-as-cash-cow-chatham-house-chief/>

## **6.2 Commercial effectiveness**

### **6.2.1 Is the NORC competitive relative to other NORCs?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

A Stanford University-led comparative study of 15 NORCs worldwide ranked the NNPC's performance as 'low,' meaning it is characterised as a company that 'has shown very limited ability to fulfil all but the very simplest hydrocarbon tasks before it.' A study of the company commissioned as part of a broader Rice University project concluded succinctly that the NNPC has 'failed to fulfil its mission.' At the core of this broader failure has been an inability to play its central commercial role effectively. The NNPC's inefficiency is regularly exhibited in the company's failure to meet cash calls, the difficulties encountered in developing projects efficiently, the losses and inefficiencies associated with the company's role in trading and refining, and the slow development of internal capabilities, particularly in the upstream sector.

**Information sources:**

World Bank (2008), 'A Citizen's Guide to National Oil Companies', Part B, Data Directory. Available at: [http://www.beg.utexas.edu/energyecon/nocs/WB\\_CEE\\_NOC\\_Guide\\_B\\_Data\\_Directory\\_Final.pdf](http://www.beg.utexas.edu/energyecon/nocs/WB_CEE_NOC_Guide_B_Data_Directory_Final.pdf)

'Appendix A: our assessments of NOC Performance,' David G. Victor, David R. Hults, and Mark C. Thurber, in *Oil and Governance: State-owned Enterprises and the World Energy Supply*, Cambridge University Press, 2012.

NNPC and Nigeria's oil patronage ecosystem, Mark C. Thurber, Ifeyinwa M. Emelife, and Patrick Heller, Working Paper #95. September 2010, Program On Energy And Sustainable Development, Stanford University,

[http://iis-db.stanford.edu/pubs/22995/WP\\_95,\\_Thurber\\_Emelif\\_Heller,\\_NNPC,\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95,_Thurber_Emelif_Heller,_NNPC,_16_September_2010.pdf)

Nigerian Extractive Industries Transparency Initiative: Physical Audit (Available at: [www.neiti.org](http://www.neiti.org)), 20 December 2006.

<http://www.reuters.com/article/2012/07/16/us-nigeria-nnpc-debts-idUSBRE86F0DF20120716>

The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions, G. Ugo Nwokeji, Rice University - James A. Baker III Institute for Public Policy, March 2007, [http://www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/docs/NOCs/Papers/NOC\\_NNPC\\_Ugo.pdf](http://www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/docs/NOCs/Papers/NOC_NNPC_Ugo.pdf)

<http://www.revenuewatch.org/countries/africa/nigeria/overview>

**6.2.2 Is the NORC subject to a well-defined set of fiscal rules that provides for clear and substantial transfers of revenues to the state while enabling the company to engage in effective commercial planning?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

As indicated in the 2012 NNRC Report, in principle the NNPC is supposed to be subject to the same fiscal regime as the private companies participating in the JVs. This means that, for the barrels they lift for their own account, they are supposed to pay the same as IOCs.

However, the NNPC does not pay any royalties, rents, or taxes to the government arising from its participation in the JVs, unlike the companies do. The NNPC remits cash to government mainly through sales of its equity share of the crude oil and gas produced. These sales represent massive revenue streams (estimated to represent 95% of all export revenues in 2010). In principle, the government approves an annual budget for the NNPC that should enable the company to develop and execute an effective commercial strategy.

In practice, all elements of this relationship – from the sales of NNPC crude, to the transfers to the state, to the provision of expenses by the state to the NNPC – are opaque. This results in unaccountable and unpredictable revenue flows from the company to the state. It has also severely impedes the development of a successful commercial strategy or the efficient conducting of JV operations.

**Information sources:**

NNPC and Nigeria’s oil patronage ecosystem, Mark C. Thurber, Ifeyinwa M. Emelife, and Patrick Heller, Working Paper #95. September 2010, Program On Energy And Sustainable Development, Stanford University,

[http://iis-db.stanford.edu/pubs/22995/WP\\_95,\\_Thurber\\_Emelif\\_Heller,\\_NNPC,\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95,_Thurber_Emelif_Heller,_NNPC,_16_September_2010.pdf)

The Governance of Oil Sales: Early Lessons on Good Practice, Alexandra Gillies and John van Schaik, Revenue Watch Institute, April 2012,

<http://www.revenuwatch.org/sites/default/files/OilSales-Governance.pdf>

**6.2.3 Are subsidies and other forms of protection for the NORC clearly defined and time-bound?**

**Old response: No**  
**New response: No**

**UPDATE STATUS: Additional information included**

The 2012 NNRC Benchmarking Report findings showed that subsidies in the form of favourable pricing of domestic crude allocation and protection in the form of majority participation in JVs and controlling interest in the PSCs, as well as an over-reliance on the NNPC for organising fuel imports (increasingly through ‘swap’ arrangements), are neither clearly defined or time-bound. Moreover, these situations look likely to continue in the immediate future, or at least until the NNPC can be restructured through the framework proposed in the draft PIB.

Further findings in this 2014 review suggest that subsidies and other forms of protection for the NNPC are neither clearly defined nor time-bound, but that they may end soon. For instance, a meeting held by the forum of commissioners of finance of the 36 states of the federation has voted that subsidies should be stopped.

**Information source:**

<http://www.pmnewsnigeria.com/2014/03/14/nigerian-states-want-oil-subsidy-regime-to-end/>

#### 6.2.4 Are any shares of the NORC publicly traded, or is the NORC subject to other meaningful market incentives for commercial performance?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

The NNPC is a 100% state-owned corporation. Hence, the company is not listed and does not have any non-governmental shareholders. The NNPC has also not been able to issue its own debt, an activity that has had beneficial impacts on commercial incentives in other countries. A stated goal for the NNPC restructuring is to explore access to the international capital market. The PIB is expected to restructure the NNPC so as to allow it to be listed on the stock exchange market after a transition period.

#### **Information sources:**

World Bank (2008), A Citizen's Guide to National Oil Companies, Part B, Data Directory. Available at: [http://www.beg.utexas.edu/energyecon/nocs/WB\\_CEE\\_NOC\\_Guide\\_B\\_Data\\_Directory\\_Final.pdf](http://www.beg.utexas.edu/energyecon/nocs/WB_CEE_NOC_Guide_B_Data_Directory_Final.pdf)

<http://www.dailytrust.info/business/22071-us-ambassador-calls-on-oil-companies-to-list-on-nse>

#### 6.2.5 Are NORC procurement processes based on open, transparent and competitive bidding?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Some changes observed**

In the years leading up to 2012, the Nigerian government made several efforts to ensure that the procurement processes of the NNPC are open, transparent and competitive. For example, the Public Procurement Act (2007) helped established the Bureau for Public Procurement and the NOGICD Act (2010) and the NCDMB to manage procurement processes and to develop local capacity for the oil and gas sector.

Similarly, the NNPC launched a US\$ 350 million Local Content Fund for oil and gas companies in Nigeria as well as inauguration of a Steering Committee for the newly established Nigerian Petroleum Exchange (NIPEX) to conduct the NNPC's procurement activities electronically. This newly adopted strategy marked the corporation's efforts to stamp out corruption and institutionalise transparency in its procurement processes. This electronic bidding and procurement strategy also aimed at ensuring competitive pricing, reducing process costs, and improving collaboration between suppliers, buyers and the NNPC.

Despite such mechanisms, some opaque procurement practices continue, including questionable procurement deals between the NNPC and SAIPEM, which are detailed in a nine-page petition written to President Goodluck Jonathan on 18 May 2011 by the Managing Director of FSC Oil and Gas Limited, Chief (Engr.) Festus S. Celestine, which was copied to a newspaper in Abuja.

Since 2012, recent reports compiled by a NGO, the Public and Private Development Centre, have ranked transparency across 15 public institutions in Nigeria according to their responsiveness to requests for procurement information. The NNPC, the Federal Ministry of Education and the Federal Ministry of Health were ranked as the least transparent as they did not provide any response whatsoever to requests for procurement information, and neither did they provide other viable avenues for procurement information to be sought.

**Information sources:**

*<http://dailyindependentnig.com/2013/10/procurement-ppdc-sues-nnpc-gmd-over-transparency-of-contracts/>*

*<http://procurementmonitor.org/index.php?page=News&id=81>*

*<http://www.thisdaylive.com/articles/house-to-probe-nnpc-oil-deals/146629/>*

City Flavour International. Available at: *<http://www.cityflavourmagazine.com/?p=4628>*

The Nigeria Business.com; Energy and Environment.

Available at: *<http://www.thenigeriabusiness.com/energy25.html>*

**6.2.6 Are there regulations to ensure that employment is based on merit in the NORC?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

Thurber et al. (2010) provided a fitting response to the question posed above: ‘Top jobs in NNPC are dispensed to politically-favoured individuals (...) the implicit rotation of NNPC Board Members, often on a regional basis in line with the regional structure of Nigeria’s patronage network. The GMD of NNPC changes with each presidential transition, and sometimes more frequently, therefore making it difficult to effect sustained positive change within the organisation. Employment at the NNPC staff level is also facilitated by connections, although overall employment roles within the company appear to be less padded than they once were.’ Overall, NNPC employment processes have been politicised, with employment based on connections with politicians and their cronies.

There is no regulation concerning employment in the corporation. There is wide belief that the recruitment process is not devoid of bias and favouritism. Becoming an employee in the corporation is based on political affiliation and professional connections. However, the GMD denied these claims.

**Information sources:**

<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/388/NNPC-Commits-to-FOI-Act--As-Yakubu-Implodes-New-Employees-to-Imbibe-Transparency-Accountability.aspx>

Mark et al (2010). NNPC and Nigeria's Oil Patronage Ecosystem. Program on Energy and Sustainable Development, Working Paper No. 9, [http://iis-db.stanford.edu/pubs/22995/WP\\_95\\_Thurber\\_Emelife\\_Heller,\\_NNPC,\\_16\\_September\\_2010.pdf](http://iis-db.stanford.edu/pubs/22995/WP_95_Thurber_Emelife_Heller,_NNPC,_16_September_2010.pdf)

**6.2.7 Are quasi-fiscal activities avoided by the NORC?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

There are several quasi-fiscal activities conducted by the NNPC, including the provision of petrol to local consumers at subsidised rates, as well as employment opportunities at the NNPC and its subsidiaries, which go beyond what would be done if the companies were run on a purely commercial basis. Even where alternatives exist, the NNPC does not avoid quasi-fiscal activities. For example, although the repair of Nigerian refineries would provide an alternative by reducing the need for the subsidy, the activity is not changed because the activity provides an avenue for personal financial gain among influential politicians and businessmen.

**Information source:**

House of Representatives reports of the Ad-hoc committee to verify and determine the actual subsidy requirements and monitor the implementation of the subsidy regime in Nigeria' Resolution No (HR.1/2010).

Available at: <http://resourcedat.com/wp-content/uploads/2012/04/FINAL-SUBSIDY-REPORT.-01.pdf>

## 6.3 Transparency and accountability

### 6.3.1 Do NORCs have an acceptable Revenue Watch Index score for transparency?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

In 2010, the Revenue Watch Index score for Nigeria under the category ‘State-Owned Companies’ was 52.3, against an average across all countries of 54.3. In the 2012 Revenue Watch Index, to be released later in 2014, Nigeria’s score for State-Owned Company Disclosure practices is 26. Areas of particular concern highlighted in these scores include the fact that the NNPC publishes little information about the activities of its subsidiaries, its operations, reserves, or quasi-fiscal activities, is not audited to international accounting standards, and does not publish its audited reports.

By 2013, the Revenue Watch Index score for Nigeria under the category ‘state-owned companies’ had fallen to 47 from the 52.3 it scored in 2012. Non-availability of information on NNPC finances, internal controls, or quasi-fiscal obligations were the issues of concern addressed in the score.

**Information sources:**

Revenue Watch Index (2010), Transparency: Government and the Oil, Gas and Mining Industries. Available at: [http://www.revenuewatch.org/rwindex2010/pdf/RevenueWatchIndex\\_2010.pdf](http://www.revenuewatch.org/rwindex2010/pdf/RevenueWatchIndex_2010.pdf)

Revenue Watch Index (2010), Sub-Saharan Africa and the oil, gas and mining industries.

Available at: [http://www.revenuewatch.org/rwindex2010/pdf/pc\\_index\\_report\\_sub-saharan\\_fs\\_rev2.pdf](http://www.revenuewatch.org/rwindex2010/pdf/pc_index_report_sub-saharan_fs_rev2.pdf)

<http://www.revenuewatch.org/countries/africa/nigeria/overview>

### 6.3.2 Are NORCs subject to the same disclosure requirements as publicly held companies?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The NNPC’s financial disclosure requirements have been the cause of a standing argument among experts. According to the NNPC Act, it is not obligated to issue financial reports. However, the Fiscal Responsibility Act (2007) and the FOI Act (2011) argue the opposite. In any case, the fact that this matter is subject to dispute is itself a ground for concern.

Nothing has changed in this regard in the last two years. There still exist information disclosure deficits about the operations and activities of the NNPC. The NNPC Act, which specifies the information the NNPC can make available, needs to be overhauled for the deficits to be offset.

**Information source:**

ThisDay Newspaper in Nigeria, 10 April 2012.

Available at: <http://www.thisdaylive.com/articles/dfid-transparency-deficits-may-hamper-oil-reforms/113358/>

**6.3.3 Are NORC accounts prepared to international accounting standards, such as the IFRS?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The Nigerian government is yet to fully implement the International Public Sector Accounting Standard. For example, the accounting system used by the NNPC COMD for equity crude is still largely non-automated, with consequent reconciliation and fund sweeping interface difficulties. Similarly, COMD lacks a system to manage and follow up on unpaid debts for crude sold (NEITI, 2011).

Section 7 subsection (1) of the NNPC Act states that, 'The Corporation shall keep proper accounts and proper records in relation thereto in a form which shall conform to the best commercial standards' but there are many irregularities in the accounting system of the NNPC. The unremitted US\$ 20 billion from the NNPC accounts to the Federation Account, as claimed by ex-CBN governor, is an instance depicting the dangers of not implementing international accounting standards.

**Information sources:**

Omolehinwa (2012) "Accounting for People's Money", An Inaugural Lecture Delivered at the University of Lagos, Nigeria.

Available at: [http://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=OCIEBEBywBA&url=http%3A%2F%2Fwww.unilag.edu.ng%2Fopendocnew.php%3Fdocname%3D18198%26doctype%3Ddoc%26doctitle%3DACCOUNTING-FOR-PEOPLE%3FS-MONEY&ei=lyi6T8z6JsX28gOho8DDCG&usq=AFQjCNG\\_D4K6MoqItPWcUoH8k0o28hw6xQ](http://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=OCIEBEBywBA&url=http%3A%2F%2Fwww.unilag.edu.ng%2Fopendocnew.php%3Fdocname%3D18198%26doctype%3Ddoc%26doctitle%3DACCOUNTING-FOR-PEOPLE%3FS-MONEY&ei=lyi6T8z6JsX28gOho8DDCG&usq=AFQjCNG_D4K6MoqItPWcUoH8k0o28hw6xQ)

Nigeria Extractive Industries Transparency Initiative (2011) 'Executive Summary of Recommendations and Proposed Actions' Presented to the National Stakeholder Working Group by Hart Resources Ltd in association with S.S. Afemikhe & Co. Consulting Ltd. Available at: <http://www.neiti.org.ng/sites/default/files/auditors2006/Executive-Summary-Report-Final-300112.pdf>

<http://www.dailytimes.com.ng/article/jonathan-admits-irregularity-nnpc-accounting-system>

<http://www.punchng.com/news/nnpc-cannot-account-for-20bn-sanusi-insists/>

### 6.3.4 Are NORC accounts consolidated to cover all NORC subsidiaries?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

The NNPC and its subsidiaries keep separate accounts, while a consolidated account exists that covers all the accounts of the subsidiaries. The separate accounts are in contravention to the law establishing the NNPC. The separate accounts are mostly reconciled by the NNPC at the end of each financial year and presented to the Federation's Accountant-General for auditing, although there are usually discrepancies to be reconciled.

**Information sources:**

Business Day Newspaper (2011), Accountability, probity and transparency in Nigeria's petroleum sector (4).

Available at: <http://www.businessdayonline.com/NG/index.php/analysis/columnists/35542-accountability-probity-and-transparency-in-nigerias-petroleum-sector-4>

<http://sunnewsonline.com/new/?p=21038>

<http://www.latestnigeriannews.com/news/396531/refs-frustrate-nnpcs-effort-to-cover-finances-of-16-subsidiaries.html>

### 6.3.5 Are NORC accounts made publicly available?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The NNPC accounts are not made publicly available. There are purported cases of misappropriations and an established lack of transparency revealed by recent KPMG forensic reports on the NNPC accounts. Nevertheless, transparency within the NNPC has improved, especially after the launch of NEITI, although much more remains to be done.

**Information sources:**

World Bank (2008), A Citizen's Guide to National Oil Companies, Part B, Data Directory. Available at: [http://www.beg.utexas.edu/energyecon/nocs/WB\\_CEE\\_NOC\\_Guide\\_B\\_Data\\_Directory\\_Final.pdf](http://www.beg.utexas.edu/energyecon/nocs/WB_CEE_NOC_Guide_B_Data_Directory_Final.pdf)

Federal Ministry of Finance (2010), Energy and Natural Resources: Current State Assessment Report on the Process and Forensic Review of the Nigeria National Petroleum Corporation. Available at: [http://www.premiumtimesng.com/docs\\_download/Consolidated%20Detailed%20Findings-v1.pdf](http://www.premiumtimesng.com/docs_download/Consolidated%20Detailed%20Findings-v1.pdf)

### 6.3.6 Is the NORC subject to annual audits conducted by independent internal and external auditors?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Some changes observed**

NNPC accounts are prepared annually and submitted to the President for approval. In most cases, the accounts are not properly scrutinised by external auditors, which creates room for misappropriation and reflects a lack of accountability. The KPMG report provides details of discrepancies and misappropriations in the NNPC accounts and makes recommendations to help prevent future occurrences.

The auditors are appointed by the corporation and this could make the auditing exercise biased. For instance, if proper audits had been done in the past, the missing US\$ 20 billion oil money might not have arisen as steps would have been taken to ensure proper accountability. Section 85(3) of the Constitution does not empower the Auditor-General of the Federation to audit or appoint auditors for government statutory corporations, commissions, authorities and agencies, including all persons and bodies established by the Act of the National Assembly. Such limitation for the Auditor-General in the prevailing circumstance prompted the President to appoint forensic auditors to probe the NNPC's accounts, which had not been done in previous years.

#### **Information sources:**

Federal Ministry of Finance (2010), Energy and Natural Resources: Current State Assessment Report on the Process and Forensic Review of the Nigeria National Petroleum Corporation. Available at: [http://www.premiumtimesng.com/docs\\_download/Consolidated%20Detailed%20Findings-v1.pdf](http://www.premiumtimesng.com/docs_download/Consolidated%20Detailed%20Findings-v1.pdf)

<http://www.thisdaylive.com/articles/fg-okays-forensic-audit-of-nnpc-asks-sanusi-to-respond-to-allegations/173612/>

<http://hotnaijanews.com/2014/05/09/fg-appoints-ricewaterhousecooperspwc-as-forensic-auditors-of-nnpc-account/>

**6.3.7 Are quasi-fiscal activities defined and separately and transparently accounted for?****Old response: No****New response: No****UPDATE STATUS: No observable changes**

Quasi-fiscal activities are not clearly defined and there is little or no transparency around these activities. For example, funds that are set aside for the provision of subsidies on petrol are misused or misappropriated for personal gain, being used in some cases to fund political cronies and members of the ruling party. A recent report by the House of Representative on subsidies (referenced below) elucidates these issues. Although subsidies on petrol are being funded from the government budget, they are supervised by the NNPC and its subsidiaries. The cited report from the House of Representatives suggests that in many cases the fund allocations are overblown, and the actual allocation exceeds expenditure on the subsidy, with a large proportion of such funds lost to corruption and misappropriation.

**Information sources:**

House of Representatives reports of the ad-hoc committee to verify and determine the actual subsidy requirements and monitor the implementation of the subsidy regime in Nigeria' Resolution No (HR.1/2010). Available at: <http://resourcedat.com/wp-content/uploads/2012/04/FINAL-SUBSIDY-REPORT.-01.pdf>

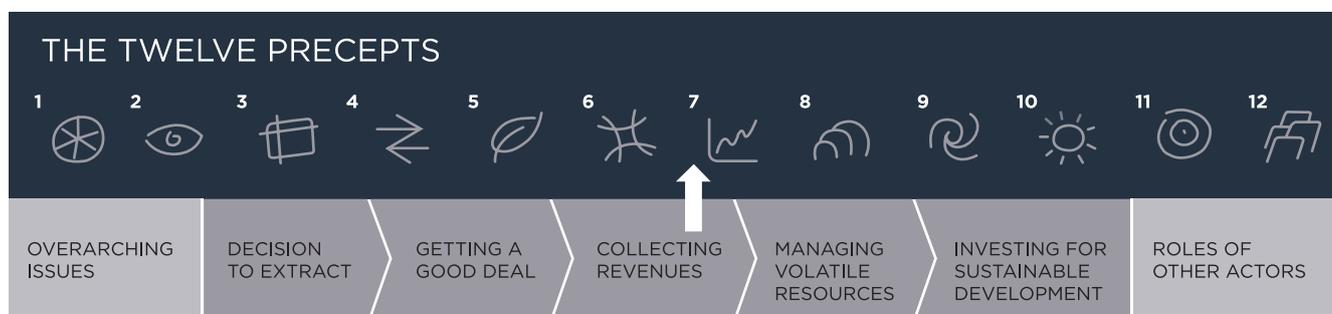
<http://www.revenuewatch.org/countries/africa/nigeria/overview>

**6.3.8 Are NORC officials required to disclose information about their financial interest in any petroleum projects?****Old response: Yes/No****New response: Yes/No****UPDATE STATUS: Some observable changes**

The Code of Conduct enshrined in the 1999 Constitution requires all public office holders and elected officials to declare their assets, but the law is hardly enforced in practice.

## PRECEPT 7: INVESTING FOR GROWTH

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



### Overview of the questions and ratings

#### 7.1 CURRENT AND FUTURE NEEDS

7.1.1 Is the government investing a reasonable proportion of revenues?



#### 7.2 DEVELOPMENT AND REDISTRIBUTION

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



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



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



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



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



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



7.2.7 Are cash transfers to citizens used as redistribution mechanisms?



## Summary of key findings

### Current and future needs

- The share of recurrent expenditure in government budgets has remained high in recent years, despite the need for a large proportion of resource revenues to be channelled into public investment projects to generate growth for future generations.
- Capital for investment remained very low at about 32.5% of the national budget in 2013 even though there was a decrease in recurrent expenditure from 74.4% of the national budget in 2011 to 67.5% in 2013.
- In 2012, payrolls and overheads was about 82% of Federal government revenue. By 2014, the figure had climbed to 112% of federal government revenue. Capital expenditures have however declined meaning that the government is not yet investing a reasonable proportion of revenues for growth.

### Development and redistribution

- Nigeria has national development strategies but these are not up to date, not subject to public scrutiny, and not under systematic implementation. There is conflict between the country's macroeconomic expenditure model (MTEF) and the strategy for national development planning (NDPs)
- There have been steps to move away from conventional line-budgeting to programme budgeting with the introduction of Medium-Term Sector Strategies (MTSSs), but these rarely identify capital and recurrent costs in any accurate manner and were not updated for the period 2012 to 2014.
- Although expenditure and saving plans are reviewed and approved by the legislature, in practice it has pushed for more spending with higher aggregate expenditure appropriations and eroded savings.
- There are more incidences of expenditure switching as a result of rising insecurity.

## 7.1 Current and future needs

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

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

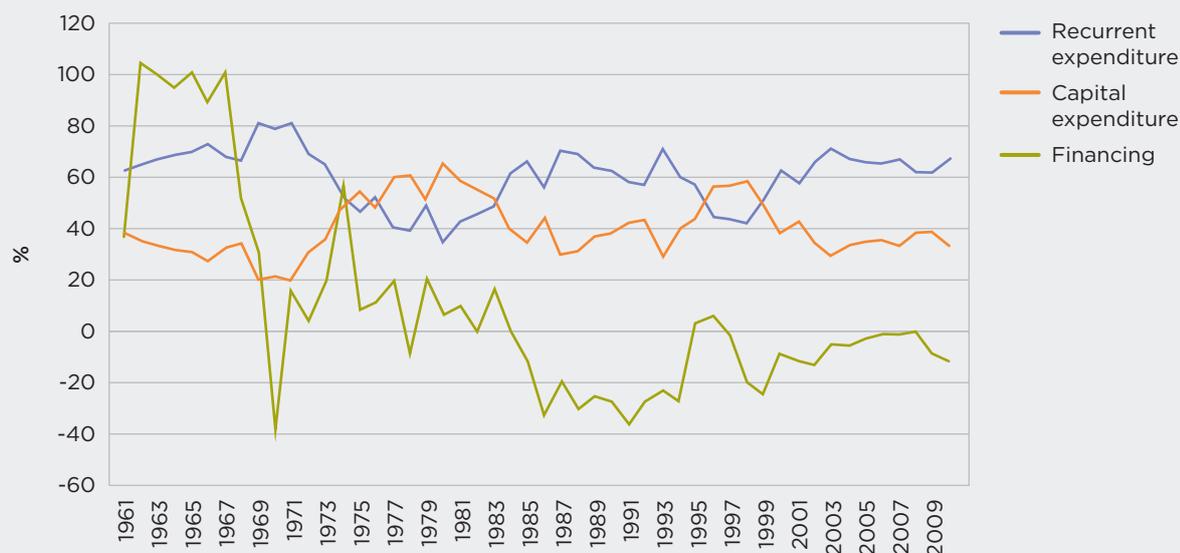
According to the 2012 NNRC Report, records of government capital expenditure and net financial accumulations show that governments in Nigeria, at least from the mid-1980s onwards, have failed to invest a substantial proportion of revenues.

The government has at least managed to reduce its deficit in recent times, but capital expenditure remains low.

As is highlighted under Precept 1, the government of Nigeria is generally failing to transform its subsoil wealth into productive assets. Precept 7 takes a closer look to ask how governments in Nigeria have used the revenues from resource extraction. FGN alone has obtained on average 73% of its revenues from oil since 1970. Given that such a large proportion of government revenues come from the oil industry, the country should have invested a large proportion in domestic assets over the long term. Two important channels by which this investment could occur is through government capital expenditure or increase in government net assets (i.e. a net increase in government lending or decrease in government debt).

Figure 7.1 shows the total recurrent capital expenditures and the value of financing as a proportion of total expenditure for all levels of government (Federal, State and Local<sup>1</sup>) from 1961 to 2011. Although the accuracy of the data is questionable, the figure can at least provide an indication of how revenues have been used over time.

**Figure 7.1: Federal, state and local government finances as a proportion of total expenditure (1961-2010)**



Source: CBN and authors' calculations.

Given the need to save a large proportion of government revenues, capital expenditure, net financial asset accumulation or both should be reasonably high. The data from the CBN shows that oil revenues started flowing in significant amounts from 1970. Throughout the 1970s, capital expenditure rose from 20% over total expenditure in 1969 to a high of 65% in 1980. However, since then, except for a small increase in the late 1990s, capital expenditure has fallen. In the last decade, capital expenditure has averaged only 35% of total expenditure across the three levels of government. Defining recurrent expenditure on health, education and other social services as part of investment in human capital increases this proportion to an average of 41%.

<sup>1</sup> Local government data start from 1993.

Another use of resource revenue is to reduce government debt, or save in the form of foreign or domestic financial asset accumulation. This measure is shown as net financial accumulation in Figure 7.1. Ironically, savings of this kind were very large before the start of oil revenues in 1970 (although the decline appears to have started a few years before this). Governments during the 1970s were able to maintain a surplus (i.e. lending out revenues to domestic and overseas borrowers), but performance then dropped in the mid-1980s. The last decade has seen the deficit across all levels of government reduced, in comparison to the previous decades. However, it has not yet become a surplus. In other words, revenues have not been used to save in this form in recent times.

As at 2014, capital for investment remains very low even though there was a slight decrease in recurrent expenditure from 74.4% of the national budget in 2011 to 67.5% in 2013. Capital expenditure has also centred on an average of 35% of total expenditure across the three levels of government. As a percentage of the national budget, there was a slight increase in capital expenditure over the period from 25.6% in 2011 to 32.5% in 2013.

Unfortunately, the ECA, which should serve as an investment buffer, has also been significantly depleted in recent times, from US\$ 8.65 billion at the end of 2012 to only US\$ 3.5 billion in March 2014. Although the government passed into law the Nigerian Sovereign Investment Authority (NSIA) Act 2011 to manage the Sovereign Wealth Fund (SWF), a transfer from the ECA, certain controversies continue to linger around the legality of the fund. The ECA still exists despite the SWF being set up as a takeover fund. Also, funding for the SWF is still a subject of much debate among the tiers of government, with relatively low seed capital of US\$ 1 billion and a new addition of US\$ 550 million for investments from the government in February 2014.

**Information sources:**

[http://www.budgetoffice.gov.ng/bof\\_2013-update/CME\\_Budget\\_Speech1.pdf](http://www.budgetoffice.gov.ng/bof_2013-update/CME_Budget_Speech1.pdf)

<http://esqlaw.net/magazine/sovereign-wealth-fund-in-nigeria-an-overview-of-the-enabling-provisions/>

## 7.2 Development and redistribution

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

**Old response: No**

**New response: No**

**UPDATE STATUS: Some changes observed**

The Vision 20:2020 is the latest strategic document for driving the country's overall development objectives. Although it may be somewhat deficient in its design and articulation, it is nonetheless comprehensive enough for the identification of trends and the setting of achievable targets. The National Planning Commission is responsible for the NDP document, which should evolve from the Vision document as consistent four-year rolling plans. A plan was developed for the period 2010–2013. However, the process of developing the NDPs has so far been grounded as a result of policy inconsistencies and conflicts of interest within the executive.

As a result of this, the Transformation Agenda, a political policy framework of the current federal government administration, is rather perceived as substitute for the NDPs. This should not be the case.

The National Planning Commission does not seem to have the coordinating grip on the country's economy required to determine the policy direction for the federation. It is in continuous friction with other economic bodies like the Ministry of Finance over which development strategy should be adopted as a matter of priority. Such an arrangement is an expression of Nigeria's unique socio-political environment, one in which national policy is still subject to politics.

Most of the current administration's discussions around development have referred to the Transformation Agenda, which is a political policy tool, rather than the Vision 20:2020, which is a more grounded development strategy from which policy and plans should be drafted. Therefore, a number of overlaps and conflicts arise between the Transformation Agenda and existing strategy despite them being intended to be complementary.

**Information source:**

Extracts from Expert Panel Interview/Discussion with Prof. Ekpo, June 2014.

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

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the Nigerian government made some steps toward moving away from the conventional line-budgeting system to a programme budgeting system and prepared the MTSS for the years 2006 to 2011. The aim of the MTSS was to improve the connection between policy-making, planning and medium-term budgeting. However, the MTSS did not necessarily reflect the development strategy and the annual budget did not necessarily reflect the MTSS.

At the national level, between 2011 and 2014 it appears that implementation of the MTSS for budget preparation seems to have been abandoned. Only in one instance at the sub-national level, and specifically in Lagos state, was the MTSS updated sector-wide for the 2013 to 2015 period. In other states like Kwara, Kano, Jigawa and Katsina, the MTSS has only been developed for one specific sector – Education. This may not be unconnected with the explanation to Question 7.2.1 above, a situation in which planning has been brought into conflict with the fiscal framework. This means that the wider outlook of planning (the NDPs) is constrained within the three-year Medium-Term Expenditure Framework (MTEF), backed up by the Fiscal Responsibility Act.

On another note, the incidences of high-level insecurity within the country have necessitated significant expenditure switching, which may not be consistent with public investment objectives. For instance, budget allocation for security expenditure was as high as 19% and 20% of total federal budget in 2013 and 2014 respectively. In comparison, the health sector received 5.6% and 5.7% while the education sector received 8.6% and 10.6% for the same period.

**Information sources:**

<http://www.premiumtimesng.com/opinion/146330-far-can-nigeria-go-without-plan-based-mtef-annual-budgets-sen-olubunmi-adetunmbi.html>

<http://www.lagosstate.gov.ng/MEPBBC/TRANSPORTATION%202013%20-%202015%20MTSS.pdf>

<http://www.lagosstate.gov.ng/MEPBBC/Tourism%20&%20Intergovernmental%20Relations%202013%20-%202015%20MTSS.pdf>

ESSPIN (2014). Education Sector Support Programme in Nigeria, 22nd Quarterly Report, January–March 2014. <http://www.esspin.org/reports/download/358-file-ESSPIN-22nd-Quarterly-Report-Jan-Mar-2014.pdf>

Extracts from Expert Panel Interview/Discussion with Prof. Ekpo, June 2014.

**7.2.3 Are expenditure and savings plans reviewed and approved by the legislature?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The National Assembly reviews government annual expenditure and savings plans statutorily, a function that is mandated by the Constitution. However, this does not mean the legislature performs this function in tandem with the overall development objectives of the country. The quality of review is not so much guaranteed to be in the interest of social and economic development but has become routinised to increases and cuts in oil benchmark price and sector allocations. In some cases, amendments and supplementary budgets are allowed but these must follow the same process of approval by the legislature. In practice, the legislature has pushed for more spending with higher aggregate expenditure appropriations, and thus this approach has eroded savings.

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

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

The 2012 NNRC Report noted that there are legislative arrangements for resource revenue sharing between central, state and local government in Nigeria. RMAFC is allocated constitutional power through Section 162 (2) of the 1999 Constitution to determine and review the revenue allocation formula between central and sub-national government. According to Section 32(b), Part I of Schedule III of the 1999 Constitution, the RMAFC will ‘review, from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities: provided that any revenue formula which has been accepted by an Act of the National Assembly shall remain in force for a period of not less than five (5) years from the date of commencement of the Act’.

In this 2014 NNRC Report, we note that there is an ongoing debate between FGN and the RMAFC on the revenue-sharing formula between the central and sub-national governments. While FGN wants the breakdown to be 56% (federal), 24% (states) and 20% (local governments), the RMAFC is demanding a revenue deal of 47% (federal), 33% (states) and 20% (local governments). Under the current formula, 52.68% from the Federation Account goes to the federal level, 26.72% to the states and 20.6% to local governments.

Also, the Power Devolution Committee of the ongoing National Conference unanimously agreed on a new revenue formula. They proposed that FGN gets 42.5%, the states get 35% and the local governments get 22.5%. Their proposal is based on the need to reduce power at the centre and allocate more resources to the sub-national governments.

**Information source:**

*<http://www.thisdaylive.com/articles/devolution-committee-recommends-new-revenue-sharing-formulae/177893/>*

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

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

An interactive link to the monthly reports of the Federal Account Allocation Committee (FAAC) is available for download on the website of the Federal Ministry of Finance. At the time of this report in 2014, the monthly reports available for download cover the period from January 2007 to September 2013. The download links for other months in 2013 are not available while no information has been published for the 2014 period.

However, it appears that the information for 2014 may be available upon request as some online media sources have published figures from 2014. Economic Confidential, elendu reports and Premium Times have all published figures from 2014 at some point. One report, from Premium Times, shows that NGN 629.12 billion was shared by the three tiers of government in February 2014 as the revenue allocation for January 2014. In another report from Economic Confidential magazine, over NGN 1.1 trillion was shared by the tiers of government in June 2014 as the allocation for May 2014. The analysis revealed that states and local councils received a combined percentage contribution of 35.5%, a figure below their statutory quota of 47.32%. The explanation for the shortfall seems to be that some agencies of government like FIRS and Customs Service have also began receiving the cost of their revenue collection from source, further adding to the weight of FGN's received revenues.

In terms of the overall availability of information, the Federal Ministry of Information also sometimes releases a summarised report of the FAAC on its website. What this means is that the coordination of revenue allocation information among the three tiers of government is not yet done in a coherent manner that clears up any doubts about their public availability and authenticity.

**Information sources:**

<https://www.premiumpages.com/oilgas-reports/faac-reports/159583-faac-report-revenue-allocation-states-lga-january-2014-shared-february-2014.html#sthash.8NOjYdSK.dpbs>

<http://economicconfidential.com/2014/07/states-councils-get-35-5-of-federation-account-in-june/>

<http://economicconfidential.net/new/financial/facts-a-figures>

<http://www.fmf.gov.ng/component/content/article/3-trendingnews/70-the-honourable-minister-of-state-finance-chaired-the-faac-meeting-for-the-month-of-april-2012.html>

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

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The vast majority of sub-national governments do not publish this information. Lagos and Bayelsa states have published some in recent years, but are exceptions to the rule.

**7.2.7 Are cash transfers to citizens used as redistribution mechanisms?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The 2012 NNRC Report stated that the Nigerian government, through the support of donors and other institutions, has launched two pilot conditional cash transfer (CCT) schemes. One is the Care of the People (COPE) programme, which aims to reduce inter-generational poverty transfer and the vulnerability of the very poor. The programme targets vulnerable children and guarantees households basic cash support, but payments are conditional on the enrolment, attendance and retention of children in basic education and health programmes. COPE started in 2007 as a pilot and, for its expansion and sustainability, states have been given the responsibility to co-finance it. However, only one-third of the states had committed to co-funding COPE as at September 2011, and coverage is estimated at less than 0.001% of the poor.

There are also no unconditional cash transfer mechanisms to citizens, but the fuel subsidy is considered by many as an unconditional cash transfer; by reducing the price of fuel paid by citizens, it does represent an indirect way to redistribute wealth to citizens.

As previously reviewed, we note in this 2014 NNRC Review that the COPE programme is still running. The setback is that its graduation period of one year as well as lack of uniformity in programme delivery makes it difficult to examine any noticeable improvement in the targeted population. However, research carried out with beneficiaries showed that COPE income transfers have been relatively important to poor households.

Furthermore, progressive deregulation of the petroleum industry is one of the pillars of the FGN Transformation Agenda. In January 2012, the President announced the partial removal of the subsidy on petrol. This was meant to relieve the government of the unsustainable subsidy burden, allow for competitiveness and private investment in the downstream sector, level disparity between the rich (based on the conclusion that the rich benefit more from subsidy payments) and check the leakages and corruption that have nearly paralysed the petroleum economy.

Following the deregulation, FGN immediately announced the introduction of the Subsidy Reinvestment and Empowerment Programme (SURE-P), which is meant to mitigate the negative impact of the removal of subsidy on petroleum products particularly for the poor and vulnerable. It is also meant to accelerate economic transformation through investment in critical infrastructure projects in order to achieve the Vision 20:2020. SURE-P aims to lay a foundation for the successful development of a national safety net programme that is better targeted at the poor and most vulnerable on a continuous basis. To achieve this objective, it has two major areas of intervention; the Social Safety Nets Programme (i.e. maternal and child healthcare, public works, vocational training and community service schemes) and infrastructural development interventions, particularly roads, bridges and railways. Other areas include employment generation, a social security scheme and mass transportation. While progress has been tracked for some indicators in the Social Safety Nets Programme, little has been achieved in terms of infrastructure development. The general perception is that the programme is a duplication of the functions of statutory bodies.

In May 2013, a CCT scheme was built into the SURE-P Maternal and Child Health (MCH) element. The SURE-P MCH is particularly aimed at reducing maternal and child mortality, in line with Millennium Development Goals (MDGs) 4 and 5. It uses cash incentives to encourage pregnant women to patronise antenatal clinics, modern child delivery services, postnatal services and family planning services at primary health care facilities. The intervention primarily targets pregnant women in rural areas with the aim of increasing utilisation of MCH services at the facilities by providing cash incentives for fulfilling some conditions, which include antenatal care via at least four visits to hospital, delivery by skilled birth attendants and an immediate postnatal care visit. Beneficiaries are given up to NGN 5,000 with an additional opportunity for the women and their infant to receive immunisation upon delivery.

Also, FGN has launched the MDG CCT through its Conditional Grants Scheme to States. The programme was designed to assist the poorest among the people of each participating state by giving selected households NGN 5,000 every month and a payment of NGN 100,000 at the end of the year to start something that will enable them earn a living. The FGN, through Office of the Senior Special Assistant to the President on MDGs, has progressively scaled-up the implementation of the CCT Scheme under the Conditional Grants Scheme to States from three states including the Federal Capital Territory in 2009 to 30 states in 2014. The flexibility in the implementation of the CCT Scheme paved the way for state governments to modify conditionality to suit their desire to meet the MDGs. States now place education, nutrition, antenatal care visits for pregnant women or other health criteria as conditions to access the funds.

However, a recent review of SURE-P by the Centre for Social Justice (CSJ) submitted that, so far, the programme has only marginally contributed to the economy in terms of being a cash redistributive mechanism. It is more of a political handout to government cronies. For example, there is no credible list of the over 119,000 beneficiaries of the Community Service Scheme (CSS). The CSS, which claimed to have paid a monthly stipend of NGN 10,000 as a form of social safety net, is expected to provide stop-gap employment opportunities for unskilled Nigerians across the federation. At the end of 2012, NGN 14.3 billion of NGN 27 billion budgeted for the CSS project had been spent. In 2013, another NGN 9 billion was budgeted for the project.

### **Information sources:**

President's Speech: Conditional Cash Transfer Programme for the Poor. Available at: [http://www.nigeriafirst.org/printer\\_7916.shtml](http://www.nigeriafirst.org/printer_7916.shtml)

<http://www.odi.org.uk/resources/docs/7324.pdf>

<http://www.sure-p.gov.ng/main/index.php/about-sure-p/sure-p-secretariat/history-and-mandate>

[www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7578.pdf](http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7578.pdf)

CSJ (2014). Analysing Sure-P in Action. Centre for Social Justice.

<http://surepmch.org/cct.php>

<http://integrityreporters.com/news/mdgs-state-lift-56000-rural-poor-nigerians-out-of-poverty/>

## PRECEPT 8: STABILISING EXPENDITURE

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



### Overview of the questions and ratings

#### 8.1 EXPENDITURE VOLATILITY

**8.1.1** Is government total expenditure (particularly consumption expenditure) stable, despite volatility in oil revenues? ●

**8.1.2** Are there measures in place to stabilise domestic expenditures and investment to take account of revenue volatility? ●

**8.1.3** Does a savings fund exist for use during high-resource, revenue-generating periods? ●

**8.1.4** Does the organisation responsible for the fund publish information on its assets and transactions? ●

**8.1.5** Is the fund subject to parliamentary approval? ●

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

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

#### 8.2 OTHER MACROECONOMIC CONSIDERATIONS

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

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

<p><b>8.2.3</b> Is the government taking measures to manage the inflationary pressures of resource revenue influx and to limit an over-expansionary fiscal policy?</p>	
<p><b>8.2.4</b> Is the government taking measures to avoid volatility in FDI in the extractive sector?</p>	
<p><b>8.2.5</b> Is the government taking measures to avoid budget volatility at the national level?</p>	
<p><b>8.2.6</b> Have measures been taken by the government to avoid budget volatility at the sub-national/state level?</p>	

## Summary of key findings

### Expenditure volatility

- Nigeria implemented an expenditure-smoothing policy in 2004 with the introduction of the Oil Price Fiscal Rule (OPFR) to reduce the volatility of public expenditure and increase savings from windfall gains through temporary high oil prices. This was successful for a few years, enabling significant savings to be accumulated in the ECA for a short while.
- Total expenditure across the three tiers of government is relatively smooth from year to year but still shows considerable volatility over longer periods of time. Consumption (recurrent) expenditure has been smoother than capital expenditure, although this has risen alarmingly at the federal level since 2006, despite the imposition of the OPFR in 2004.
- The ECA was established to act as a stabilisation fund and it accumulated as much as US\$ 22 billion in 2008 before it was raided and severely depleted by all three tiers of government. It closed at \$9 billion in 2012 and according to expert estimates will decline to about \$5 billion by the end of 2014.
- The National Sovereign Wealth Fund was established as a rule-based fund to replace the ECA and to prevent the high incidences of discretionary spending. The fund has now been in existence for more than three years but there is insufficient flow of information on how the sub-funds are managed.
- Additionally, the continued existence of the (ECA) also means that the SWF still struggles for legitimacy among the three tiers of government.

### Other macroeconomic considerations

- The government takes effective measures to protect exporters and avoid exchange rate appreciation from resource revenue influxes. Its stated aim has also been to manage inflationary pressures and limit an over-expansionary fiscal policy, but this has been a relative failure. The benchmark oil price used for budgeting purposes continues to increase and public expenditure has also continued to escalate.

## 8.1 Expenditure volatility

### 8.1.1 Is government total expenditure (particularly consumption expenditure) stable, despite volatility in oil revenues?

**Old response: Yes/No**

**New response: Yes/No**

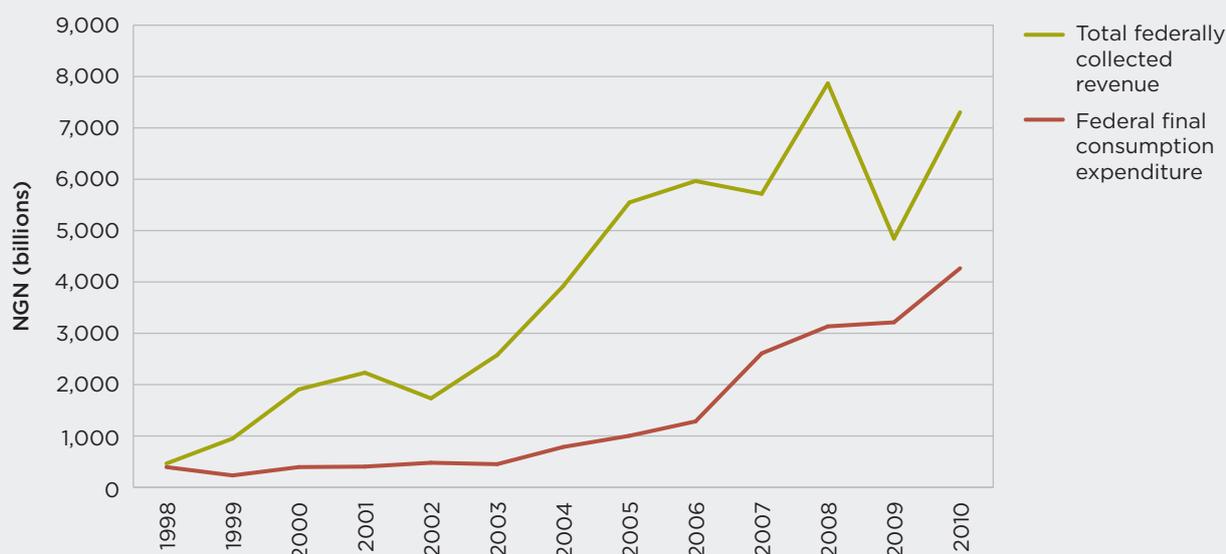
**UPDATE STATUS: Some changes observed**

As noted in the 2012 NNRC Report, the total expenditure of government to date (2014) has seen major improvements owing particularly to the rising proceeds from oil sales. Figure 8.1 below compares available data on total federal consumption expenditure with total federally collected revenues from 1998 to 2010. While there is some smoothing from year to year, over a longer-term basis expenditure more closely follows revenues. The same also applies to recurrent and capital expenditure, as shown in Figure 8.2.

#### Information source:

[http://www.oecd-ilibrary.org/sites/gov\\_glance-2011en/03/10/index.html?itemId=/content/chapter/gov\\_glance-2011-16-en](http://www.oecd-ilibrary.org/sites/gov_glance-2011en/03/10/index.html?itemId=/content/chapter/gov_glance-2011-16-en)

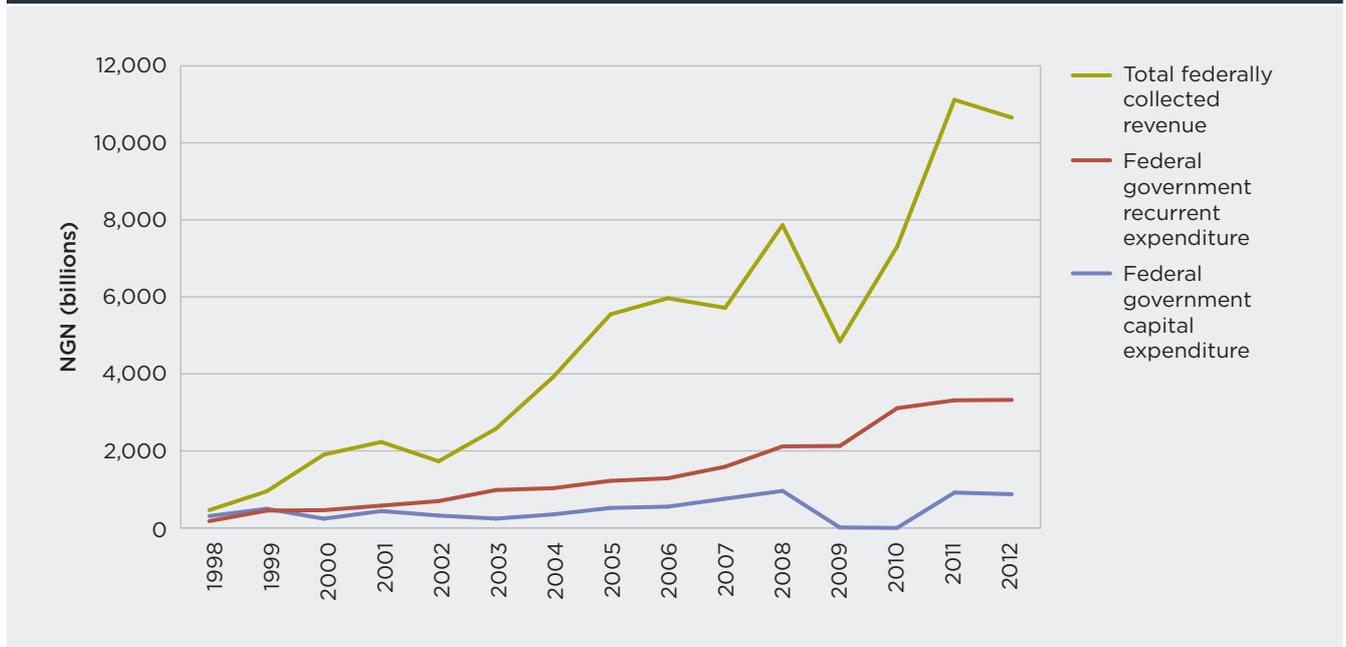
**Figure 8.1: Federal revenue and expenditure (1998-2010)**



**Source:** CBN and National Bureau of Statistics. Consumption expenditure figures at current purchaser's price.

Of the other two types of expenditure, more effort needs to be placed on stabilising recurrent expenditure. This is because the trend shows that, although it is relatively stable, it is continuously rising with revenue. Figure 8.2 shows trends in government recurrent and capital expenditure with federal revenue. Here, more fluctuations are observed in the capital expenditure pattern with revenue. On the contrary, the recurrent expenditure pattern is more stable and increases with increase in revenue.

**Figure 8.2: Government expenditure vs revenue (1998-2012)**



Source: CBN Statistical Bulletin, provisional data for 2011 and 2012 figures and author conversions.

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

**Old response: Yes**  
**New response: Yes**

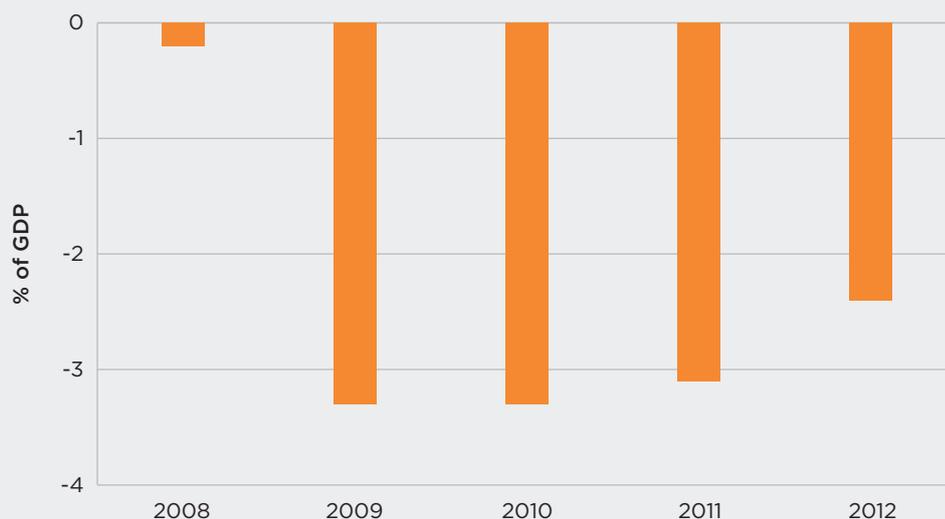
**UPDATE STATUS: Additional information included**

As noted in the 2012 NNRC Report, Nigeria has been constantly exposed to great volatility in revenue since the country is an oil-dependent economy, with an increasing ratio of oil revenue to total revenue (65.9%, 73.9% and 80% in 2009, 2010 and 2011 respectively). Fluctuations in revenue create uncertainty in the fiscal policy sphere.

In recognition of the volatility of oil prices, the government has taken steps to improve stability in domestic expenditures. Two of these measures are the 2004 enactment of the expenditure-smoothing policy and the adoption of the OPFR policy, establishing a benchmark for the oil price that is far lower than the international market price. These efforts are aimed at both lowering the effects of revenue volatility on public expenditure and leading to savings of at least part of current oil receipts.

However, the OPFR struggles in terms of implementation and effectiveness and, despite its enactment, government often runs a deficit. Figure 8.3 shows fiscal deficit as a percentage of GDP. There are also issues of illegality and political non-acceptability in relation to the different accounts created to manage the excess funds from oil windfall periods (i.e. the ECA and the SWF discussed in relation to Question 8.1.3).

**Figure 8.3: Federal fiscal deficit (2008-2012)**



Source: CBN 2012 Annual Report.

For the OPFR to be more effective, it is important that it is complemented with a non-oil deficit policy; otherwise, saving money on the one hand and borrowing to sustain incompatible overall deficits makes the OPFR totally ineffective.

**Information sources:**

<http://siteresources.worldbank.org/INTDEBTDEPT/Resources/46898-1207588563500/4864698-1207588597197/AFRI427460Ch10.pdf>

<http://www.cenbank.org/OUT/2011/PUBLICATIONS/STATISTICS/2010/PartB/PartB.html>

<http://www.cob.ualr.edu/emelder/bsf1.pdf>

<http://nigeria.prognoz.com/en/DataAnalysis/>

<http://statistics.cbn.gov.ng/cbn-onlinestats/QueryResultWizard.aspx>

[http://www.cenbank.org/Out/2013/RSD/2012%20Annual%20Report\\_Chapter%205\\_Fiscal%20Policy%20and%20Government%20Finance.pdf](http://www.cenbank.org/Out/2013/RSD/2012%20Annual%20Report_Chapter%205_Fiscal%20Policy%20and%20Government%20Finance.pdf)

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

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: Additional information included**

Nigeria’s savings during periods of high revenue generation from oil had prior to 2011 been managed by a pseudo-fund created in 2004 and known as the ECA. The ECA was established to help stabilise the budget and to weather the storms of revenue volatility, especially during periods of economic crisis. The rationale was for the ECA to act as a stabilisation fund, thus closing budget deficits that are a product of oil price volatility. Unfortunately, the ECA had no real legal backing since it was formed under a political arrangement. Later, the ECA - which started with about US\$ 5 billion and grew to US\$ 30 billion - began to experience ad-hoc withdrawals to fund pro-cyclical fiscal expansion (see Figure 8.4). This led to consistent significant depletion that continues today (e.g. from US\$ 8.65 billion at the end of 2012 to US\$ 3.5 billion in March 2014).

**Figure 8.4: Balance on the ECA (2004–2011)**



**Source:** Federal Ministry of Finance, CBN.

In order to correct this anomaly, the SWF was established in 2011 as a rule-based fund to replace the ECA. The SWF is designed as a savings fund to help stabilise government revenue from exposure to international oil price volatility and other external risks associated with the oil resource sector. It serves as a deficit cushion, especially during periods of economic crisis, and as a potential funding source for domestic infrastructure investments.

The SWF was set up with initial seed capital of US\$ 1 billion and was allocated an additional US\$ 550 million to be managed on behalf of the government of the federation in 2014. As at April 2014, the fund had accrued an income of NGN 505.694 million over the course of 15 months of operations. The Fund is designed to create savings, utilise funds for infrastructure development, and protect oil revenue against price volatility. Thus, the SWF is divided into three funds to cater for each of these functions. These are: the Stabilisation Fund, which is allocated 20% of funds, the Future Generations Fund and the Nigeria Infrastructure Fund, which both receive 40% of the funds.

The fund's governing body, the NSIA, commenced core investing activities in October 2013. However, there is little information available on progress made. The only update is a 15 month income report of NGN 505 million and SWF sub-fund levels for all three accounts. The governance situation also remains unclear, since the ECA still exists and is still being used to fund budget shortfalls or other political expenditures of the government.

The challenges highlighted in the 2012 BE Report persist, especially those created by Nigeria's political arrangement – a system of federal revenue disbursements that makes centralised saving more difficult.

**Information sources:**

<http://www.thisdaylive.com/articles/swf-posts-n505-6m-income-in-15-months/175046/>

[http://nsia.com.ng/wp-content/uploads/2014/05/NSIA-PRESS-PROGRESS-UPDATE\\_-HIGH-POINTS\\_FEB26.pdf](http://nsia.com.ng/wp-content/uploads/2014/05/NSIA-PRESS-PROGRESS-UPDATE_-HIGH-POINTS_FEB26.pdf)

<http://nsia.com.ng/nsia-abridged-financials/>

[http://www.budgetoffice.gov.ng/bof\\_2013-update/CME\\_Budget\\_Speech1.pdf](http://www.budgetoffice.gov.ng/bof_2013-update/CME_Budget_Speech1.pdf)

<http://www.thisdaylive.com/articles/fg-injects-550m-into-sovereign-wealth-fund/171068/>

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

**Old response: N/A**

**New response: Yes**

**UPDATE STATUS: Some changes observed**

At the time of the 2012 NNRC Report, the SWF was not yet fully established. Today, in 2014, there are certain processes in place, although these have suffered delays and for example there is little information on the handing within the Fund.

Quite commendably, there is an update on general fund levels and profit margin. However, the details of the Fund are still scanty at best and only available through press briefings. There is also an annual report available but it is not accessible on the agency's website. So far, the only published information is the audit report by PricewaterhouseCoopers summarised in a news article (showing an income of NGN 505.694 million over the course of the 15 months of operations), the NSIA report outlining NGN 525million net profit, the initial endowment of US\$ 1 billion stated in the 2011 NSIA Act, and a press briefing reporting the allocation of US\$ 550 million to be managed on behalf of FGN in 2014. At present there is no information regarding current level of funds and allocation to each of the three component funds of the SWF or accounts/reports on administration. However, despite the current lack of detailed information, the policy governing each of the three funds constituting the SWF requires that fund accounts and fund reports be produced frequently in both naira and US dollar currencies, indicating an intention to publish fund information.

Also, the NSIA has published guidelines that provide insights into how funds are to be administered. The Future Generations Fund is structured for long-term investments to preserve and grow the value of its assets. Its policy limits investments that cannot be redeemed within a year to a maximum 50% of the Fund by market value. Policy governing the Infrastructure Fund states the Fund will commit at most 25% of the Fund's total assets to any one project or manager and not more than 50% of its total assets to any one infrastructure sector in Nigeria. Given that the purpose of the Stabilisation Fund is to act as a buffer against short-term macroeconomic instability, its policy allows for investments that ensure easy liquidity and are therefore short term. The Fund is not to invest more than 50% of the portfolio in any one fund or manager and investment in any particular fund shall be less than or equal to 2.5% of a particular fund's assets.

### **Information sources:**

<http://nsia.com.ng/nsia-abridged-financials/>

[http://nsia.com.ng/wp-content/uploads/2014/05/NSIA-PRESS-PROGRESS-UPDATE\\_-HIGH-POINTS\\_FEB26.pdf](http://nsia.com.ng/wp-content/uploads/2014/05/NSIA-PRESS-PROGRESS-UPDATE_-HIGH-POINTS_FEB26.pdf)

<http://nsia.com.ng/>

[http://nsia.com.ng/wp-content/uploads/2013/02/NSIA\\_ACT.pdf](http://nsia.com.ng/wp-content/uploads/2013/02/NSIA_ACT.pdf)

<http://nsia.com.ng/wp-content/uploads/2013/08/Investment-Policy-Statement-for-Stabilisation-Fund.pdf>

<http://nsia.com.ng/wp-content/uploads/2014/01/Investment-Policy-Statement-for-NIF.pdf>

<http://nsia.com.ng/wp-content/uploads/2013/08/Investment-Policy-Statement-for-FF.pdf>

### 8.1.5 Is the fund subject to parliamentary approval?

**Old response: Yes**

**New response: Yes**

#### **UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the SWF was established by the NSIA Act (2011), approved by the Senate, and signed into law by the President of Nigeria. The Act clearly states the functions and the powers of NSIA. The initial fund to be managed by NSIA is equivalent to US\$ 1 billion, and this is contributed to by various levels of government and approved by the Parliament. However, the Act made NSIA an independent body capable of holding, acquiring and disposing of assets and suing in its corporate name. The Act states that it will not be subject to the direction and control of any person or authority in Nigeria.

In addition to parliamentary approval for its establishment, the NSIA is set up to be coordinated by a board and management team and supervised by a governing council. The governing council is constituted by statutory public office holders of the federation and about 12 non-statutory members, who are subject to approval by the Parliament.

#### **Information source:**

Embu, E., (2013). Jonathan Inaugurates Governing Council, Board of NSIA. Daily Times Nigeria. 19 September 2013. <http://www.dailytimes.com.ng/article/jonathan-inaugurates-governing-council-board-nsia>

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

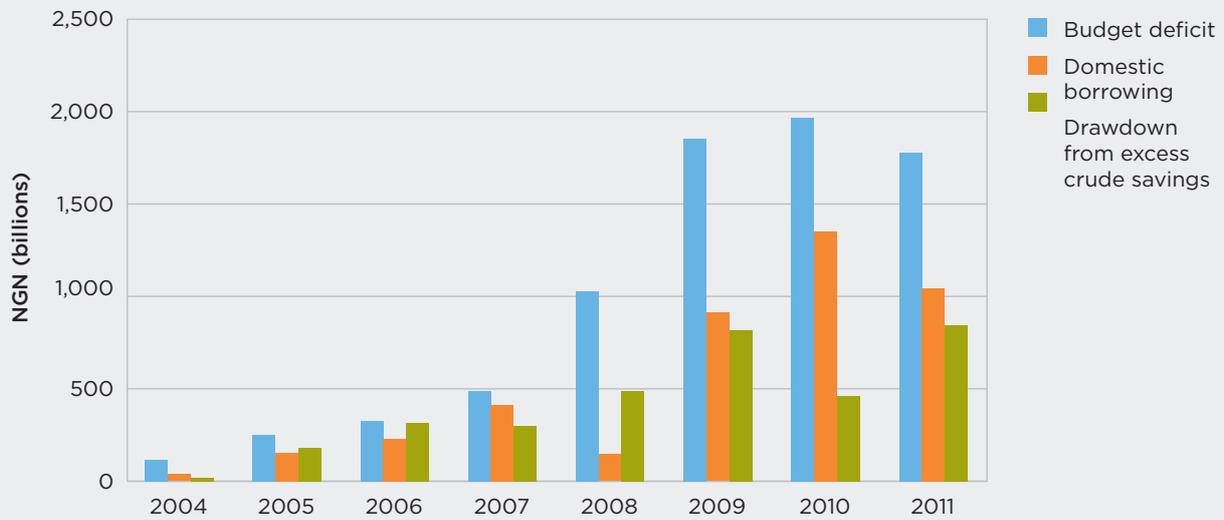
**Old response: Yes**

**New response: Yes**

#### **UPDATE STATUS: No observable changes**

The ECA is subject to frequent and random withdrawals and this has greatly depleted its funds. The fund went from US\$ 8.65 billion at the end of 2012 to US\$ 3.5 billion by March 2014 (see Figure 8.5). NSIA's role is to ensure that the SWF is targeted at three different but essential needs: the Future Generation Fund, the Nigeria Infrastructure Fund and the Stabilisation Fund. A minimum of 20% of the initial allocation goes to each flagship fund to ensure they diversify the portfolio of appropriate investments for growth, the development of critical infrastructure in Nigeria, and ensuring funds are available for stabilisation against revenue volatility. Nevertheless, there is no information available to analyse the extent of the appropriateness and effectiveness of the rules as no account report has been produced.

**Figure 8.5: Budget deficit (at benchmark price) and financing (2004-2011)**



Source: Federal Ministry of Finance, Debt Management Office.

**Information source:**

[http://www.budgetoffice.gov.ng/bof\\_2013-update/CME\\_Budget\\_Speech1.pdf](http://www.budgetoffice.gov.ng/bof_2013-update/CME_Budget_Speech1.pdf)

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

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The National Bureau of Statistics, the CBN and the Ministry of Finance all publish some records and other information that can aid and facilitate decision making in regard to the stabilisation of revenue from volatility. The National Bureau of Statistics in April 2014 released the rebased Nigerian GDP figures, which provide keener insight into the economy for better decision-making control and reporting. Also, the Budget Office of the Federation maintains budget expenditure records and disseminates information to support control and reporting requirements. Data are produced on quarterly reports, mid-year review, a year-end report and an audit report and sometimes published online for transparency. However, the information conveyed is inadequate; the data are often scarce, not readily accessible and not updated frequently enough.

In terms of the performance of records to global standards, Nigeria scored 16 out of 100 in the 2012 OBI report, two points below its 2010 OBI ranking (the index is based on the publication and completeness of seven key budget documents). The score places Nigeria in the bottom category of 'scant or no information' regarding budget information and access.

Furthermore, although the executive budget proposal, in-year review and other reports are published, the OBI report reflects the fact that these give only scant information and contain major information gaps, including a lack of information on certain fiscal activities that can have a major impact on a government's ability to meet its fiscal and policy goals, as well as a lack of information on outputs and outcomes. Hopefully, recent initiatives such as the budget jam conducted by the Ministry of Finance will begin to put more pressure on transparency indicators that will improve Nigeria's ranking on the OBI. At the same time, emphasis should also be placed on providing more accurate, qualitative and comprehensive reports.

#### Information sources:

[www.cenbank.org](http://www.cenbank.org)

<http://www.budgetoffice.gov.ng/publications.html>

<http://internationalbudget.org/wp-content/uploads/OBI2012-Report-English.pdf>

[www.nigerianstat.gov.ng](http://www.nigerianstat.gov.ng)

[www.fmf.gov.ng](http://www.fmf.gov.ng)

<http://www.budgetoffice.gov.ng/2012-budget-proposal.html>

## 8.2 Other macroeconomic considerations

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

**Old response: Yes**

**New response: Yes**

#### UPDATE STATUS: Additional information included

Some of the mechanisms used by the Nigerian government to stabilise expenditure over time include:

- Domestic borrowing, such as FGN Bonds, Nigerian Treasury Bills, Treasury Bonds and Promissory Notes. These are classified as Nigeria's domestic debt. The total stock was NGN 7.2 trillion at the end of 2013 and as at 31 March 2014 total stock was NGN 7.9 trillion.

- Foreign borrowings, classified as Nigeria's external debt, include borrowing from the World Bank Group, International Monetary Fund (IMF), African Development Bank (AfDB), Exim Bank of China, Eurobonds, and French Development Agency. The total stock as at 31 March 2014 was US\$ 9.1 billion.
- Foreign aid, including activities such as grants, financial assistance and forfeiture of borrowed funds, such as the US\$ 18 billion debt relief of the Paris Club to Nigeria.

**Information source:**

<http://www.dmo.gov.ng/index.php>

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

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: No observable changes**

According to the 2012 NNRC Report, the real exchange rate in Nigeria has been principally influenced by external shocks resulting from the vagaries of the world price of agricultural commodities and the oil price. To avoid real exchange rate appreciation, the Nigerian government uses expansionary monetary and fiscal policies. For instance, the CBN allows the market to determine the value of the naira relative to other foreign currencies, intervening intermittently to redirect and stabilise it. In terms of sterilisation of foreign earnings, the stabilisation component of the SWF is the mechanism intended for this purpose. Cash reserves are also one of the tools utilised in stabilising exchange rate appreciation.

Nigeria's NEEDS document (2005) noted that Nigeria's tariff and trade policies have been characterised by uncertainty and counter policies. Consequently, FGN has established a market-determined nominal exchange rate using the inter-bank foreign exchange market, the autonomous foreign exchange market, and the Dutch auction system at different times to avoid over-valuation of the naira exchange rate and to boost exports.

**Information sources:**

[http://www.eurojournals.com/EJEFAS\\_37\\_05.pdf](http://www.eurojournals.com/EJEFAS_37_05.pdf)

<http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1207588563500/4864698-207588597197/AFRI427460Ch10.pdf>

<http://www.nigerianbestforum.com/blog/?p=86279>

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

**Old response: Yes/No**

**New response: No**

#### **UPDATE STATUS: Some observable changes**

Despite the existence of the oil price-based fiscal rule, the oil benchmark price has been politicised and is fixed through negotiation between the National Assembly and the Executive. It is therefore subject to considerable political manoeuvrings with limited concern for inflation or fiscal sustainability. For example, with rising oil prices, the benchmark price has increased continuously – which creates inflationary pressure.

All in all, the policies put in place are clearly a step forward but are still not fully adhered to. Many oil-rich countries, including Nigeria, have attempted to use oil funds and/or fiscal rules to de-link public expenditure from volatile oil revenue and to accumulate large foreign exchange reserves and oil fund assets to lower vulnerability to financial crises and over-expansionary fiscal policy. The building up of foreign exchange reserves or separate savings accounts like the ECA and now SWF by the Nigerian government is intended to reduce inflationary pressures in the economy. However, the country's performance in maintaining the ECA – which has also been depleted in recent years and is still subject to unplanned, ad-hoc withdrawals – shows that medium-term planning, fiscal restraint and macroeconomic stabilisation policies still have some way to go before they can be considered robust.

#### **Information sources:**

<http://siteresources.worldbank.org/INTDEBTDEPTResources/468980-1207588563500/4864698-207588597197/AFRI427460Ch10.pdf>

[http://www.jsd-africa.com/Jsda/Summer\\_2006/PDF/ARC\\_RethinkingMonetaryFiscalPolicies.pf](http://www.jsd-africa.com/Jsda/Summer_2006/PDF/ARC_RethinkingMonetaryFiscalPolicies.pf)

<http://www.punchng.com/business/business-economy/fg-withdraws-1bn-from-excess-crudeaccount/>

### 8.2.4 Is the government taking measures to avoid volatility in FDI in the extractive sector?

**Old response: No**

**New response: No**

#### **UPDATED STATUS: Additional information included**

Various measures are being taken by the Nigerian government to stabilise FDI in the extractive sector but few have been effective. Nigeria's Doing Business 2014 rank dropped significantly by nine points to 147th (from 138th) out of 189 economies surveyed by the IFC. The last decade or so has been marked by a very poor and uncertain investment environment, initially due to the political and security instability in the oil-producing region of the Niger Delta and then subsequently by uncertainty over the introduction of new regulatory and fiscal terms under the PIB, which was first proposed in 2008.

Up to 2014, the oil sector has witnessed increasing divestment from the sector by major IOCs such as Shell, which divested five assets, with Conoco Phillips, Total and Exxon Mobil also divesting assets. It is estimated that the corresponding monetary value of these divestments will be in the region of at least US\$ 5 billion, and the total number of blocks divested since 2010 is likely to exceed 22 by 2014. However, a better outlook in regard to divestments can be assessed in terms of net investments rather than FDI. FGN and the NNPC view the divestment of IOCs as a welcome opportunity to increase indigenous presence in the industry. As ownership of assets transfer to local companies, the local content targets of the government become more realisable.

**Information sources:**

<http://www.napims.com/business.html>

<http://www.corporate-nigeria.com/assets/pdf/2010/cn-2010-fdi.pdf>

<http://www.nipc.gov.ng/opportunities.html>

<http://www.nipc.gov.ng/faqpage.html#What are the Incentives in the Oil and Gas Sector>

<http://www.doingbusiness.org/-/media/fpdkm/doing%20business/documents/profiles/country/nga.pdf>

<http://theeconomistng.blogspot.com/2013/05/divestment-iocs-assets-to-go-to-local.html>

<http://www.nigeriadevelopmentandfinanceforum.org/PolicyDialogue/Dialogue.aspx?Edition=141>

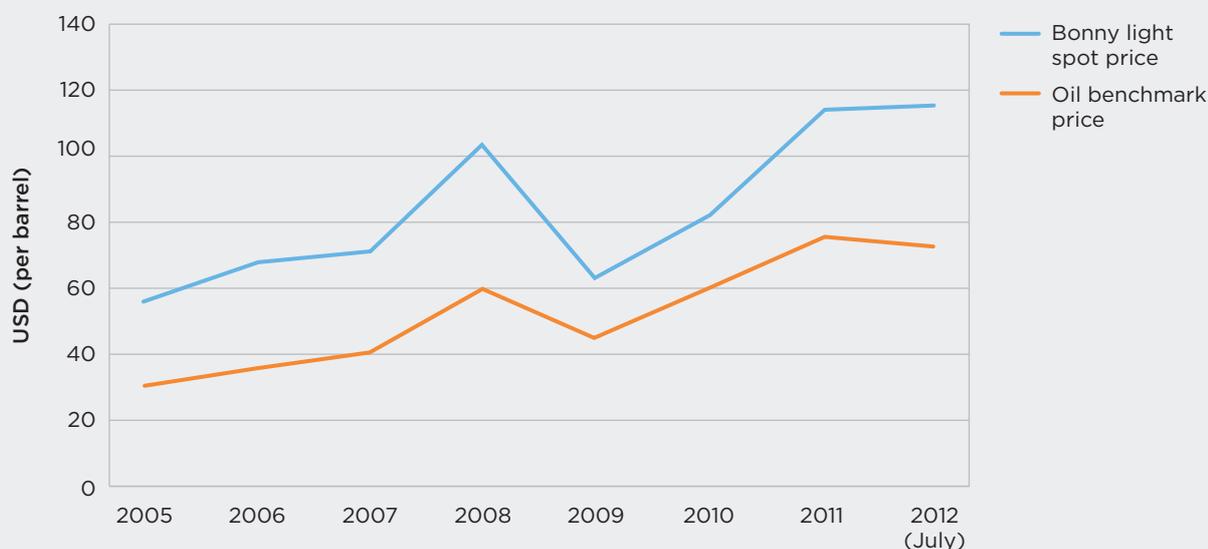
### 8.2.5 Is the government taking measures to avoid budget volatility at the national level?

**Old response: Yes/No**

**New response: No**

**UPDATED STATUS: Additional information included**

According to the 2012 NNRC Report, Nigeria's main challenge in relation to avoiding budget volatility is de-linking the budget from the international oil price market. Since the establishment of the OPFR up until 2007, budget volatility reduced significantly. The budget remained quite stable from 2005 to 2007, increasing dramatically in 2008 and fell again in 2009. As shown in Figure 8.6, the oil benchmark price used to prepare the budget was maintained at a relatively low level at US\$ 30, US\$ 35 and US\$ 40 in 2005, 2006 and 2007 respectively. However, political pressure and very high international oil prices resulted in an almost 50% increase of the benchmark price to US\$ 59 in 2008, reversing part of the stability gained in the initial years of its introduction. It was then forced to decrease in 2009 due to the fall in the international oil price, and then increased again in 2010. The OPFR has therefore not fully succeeded in de-linking the budget from oil market volatility.

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

Source: [•].

Up to 2014, the government has pursued certain neoliberal economic policies such as privatisation and deregulation in key sectors of the economy (including the power sector) in order to reduce aggregate government spend, especially on recurrent expenditure like salaries and wages.

#### Information sources:

<http://www.budgetoffice.gov.ng/aboutus.html>

<http://www.rmafc.gov.ng/mob.htm>

<http://www.rmafc.gov.ng/allocation.htm>

<http://www.budgetoffice.gov.ng/expenditure.html>

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

**Old response: No**

**New response: Yes**

#### UPDATE STATUS: Some changes observed

The latest developments around the SWF represent a measure that seems in place to avoid budget volatility at the state level. At the inauguration of the board and the governing council of the SWF, all the 36 states of the federation were issued share certificates for their stake in the SWF. This means that any stabilisation against budget volatility brought about by the SWF at the national level will also be in effect for the sub-national level as well.

## PRECEPT 9: EFFICIENCY AND EQUITY OF PUBLIC SPENDING

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



Overview of the questions and ratings	
9.1 QUALITY OF PUBLIC SPENDING	
9.1.1 Is the budget realistic and implemented as intended?	●
9.1.2 Is the budget prepared with due regard to government policy?	●
9.1.3 Is the budget implemented in an orderly and predictable manner?	●
9.1.4 Are in-year adjustments frequent and transparent?	●
9.1.5 Are public financial management systems effectively implemented?	●
9.1.6 Are government investment projects selected on the basis of relevant sector strategies and recurrent cost implications?	●
9.1.7 Are decisions to undertake investment projects based on an analysis of the social, economic and environmental costs and benefits in the short to long term?	●
9.1.8 Does the fiscal framework take into account the short-term absorptive capacity of the economy?	●
9.1.9 Is the proportion of government revenues invested by the federal government in: (a) physical infrastructure; (b) human infrastructure (e.g. health care, education, administrative services, etc.); and (c) environmental infrastructure (e.g. reserves, protection zones, ecosystem services, etc.) appropriate?	●

<b>9.1.10</b> Is the return on major government investment projects in the last five years appropriate?	
<b>9.1.11</b> Are ex-post evaluations of major investment projects routinely undertaken?	
<b>9.1.12</b> Are there publicly available estimated overhead costs appropriate for: i) the federal government; ii) the legislature; and iii) state-level government?	
<b>9.2 INTEGRITY OF PUBLIC SPENDING</b>	
<b>9.2.1</b> Are fiscal risks comprehensively addressed in the budget?	
<b>9.2.2</b> Is the National Assembly review an effective form of scrutiny? Does it follow the same pattern each year, e.g. raise the benchmark price and increase overall price?	
<b>9.2.3</b> Is fiscal and budget information accessible to the public?	
<b>9.2.4</b> Are in-year budget execution reports routinely made available to the public through appropriate means within one month of their completion?	
<b>9.2.5</b> Are financial statements made available to the public through appropriate means within six months of completed audit?	
<b>9.2.6</b> Are all reports on central government consolidated operations made available to the public through appropriate means within six months of completed audit?	
<b>9.2.7</b> Is information publicised through appropriate means at least annually, or available upon request, for primary service units with national coverage in at least two sectors (such as elementary schools or primary health care facilities)?	
<b>9.2.8</b> Is public procurement subject to a process of open and competitive tendering?	
<b>9.2.9</b> Is the awarding of all contracts with values above approximately US\$ 100,000 equivalent published at least quarterly through appropriate means?	
<b>9.2.10</b> Is government spending subject to independent audit?	
<b>9.2.11</b> Are there any mechanisms and laws that empower citizens to scrutinise how money is being spent and hold someone to account?	

## Summary of key findings

### Quality of public spending

- The budget is not realistic or implemented as intended, as is evidenced by the low execution rate of capital expenditure, which is often below 50% of the amount allocated.
- Two of the government's flagship programs namely Subsidy Reinvestment and Empowerment Programme (SURE-P) and the Amnesty program help to illustrate some of the challenges when it comes to the quality and equity of government expenditure. While these two projects may be said to be based on analysis of the social, economic and environmental costs and benefits of extraction, they have not been implemented effectively. Civil society evaluation of the SURE-P project has been that it is ineffective as a cash transfer mechanism and despite its huge capital expenditure budget, it has become a political disbursement to government cronies. The Amnesty programme for militants of the Niger Delta region has also failed to deliver effective impact in terms of job creation for its skill training and capacity building beneficiaries.
- From all available documents on public expenditure (MTSS, MTEF and annual budget), there is really no strong statement regarding efforts to integrate the recurrent cost obligations of the government with the intended investment expenditure. Nigeria scores very low on the quality of investment appraisal, selection and evaluation in Public Investment Monitoring Index (PIMI) indicators published by the IMF, with 1.14, which is significantly below the median of 1.65. Cost-benefit analyses of public expenditure are usually not done.
- The fiscal framework considers macroeconomic absorption constraints with the OPFR but not administration and execution constraints, as is evidenced by the low implementation of the capital budget.
- There are no routine ex-post evaluations of major investment projects.

### Integrity of public spending

- The MTEF usually articulates fiscal risks but not in a comprehensive manner. For example, the 2012-15 MTEF does not take account of contingent liabilities and the quasi-fiscal activities of government.
- Although the legislature is charged with reviewing and scrutinising the budget, this has always involved increasing appropriation.
- Budget information is made available to the public but not in an accessible, usable manner.
- A lot of information is simply missing, including the revenue profile and framework, a report setting out actual and budgeted revenue and expenditure and detailed analysis of the performance of the budget for the 18 months up to June of the preceding financial year, and measures on cost control and fiscal targets. These are all requirements under the Fiscal Responsibility Act.

**Integrity of public spending (continued)**

- In-year reports are not made routinely available to the public and there are no year-end statements or external audit reports on consolidated operations within six months of a completed audit. There is also no regular information for primary service units (e.g. primary schools and primary health care facilities).
- While a large part of government spending is subject to independent audit, parts of auditing are generally lacking in the regime, e.g. corrective action is not followed, the Treasury is hardly compensated when funds are not properly accounted for, and those responsible for the violations hardly accept responsibility.
- In some agencies like the NNPC, independent audits are either very difficult to execute or not done regularly. Recent allegation by the CBN of unremitted US\$ 20 billion by the NNPC further underlines the fact that independent audits are rarely done in some government institutions.
- There are no mechanisms or laws that empower citizens to scrutinise how money is being spent so as to be able to hold someone to account. The Budget Office involves civil society representatives in its activities but they are not allowed to write independent reports. The Budget Office prepares budget implementation reports but not regularly, nor in a timely fashion.

**9.1 Quality of public spending****9.1.1 Is the budget realistic and implemented as intended?****Old response: No****New response: No****UPDATE STATUS: Additional information included**

According to the Federal Ministry of Finance, a total of NGN 4.697 trillion was appropriated for expenditure in 2012 and of this sum NGN 4.131 trillion (or 88%) was utilised for personnel costs, overheads, debt service, statutory transfers and capital expenditure. Out of this amount, only 71.6% of the NGN 1.017 trillion released for implementation of the capital budget was utilised as at the end of the year. This translates to a capital spending of NGN 728.0 billion or 17.6% of total appropriation for the year.

The implementation of the 2013 budget has not shown any better performance. As reported in the MTEF and Fiscal Strategy Paper, as at the third quarter of the year NGN 850 billion of NGN 1.621 trillion (52.4% of total capital expenditure) or 17% of total appropriation has been released for capital spending.

The repeated failure of the FAAC in ensuring timely disbursement of state allocations has meant that most states are handicapped in terms of meeting their financial obligations in the absence of dependable Internally Generated Revenue. This has contributed to governmental failure to realise policy targets and a wide variance between targets and actual performance. There is also continued spread of available budget resources over too many capital projects that have largely remained uncompleted over the years.

**Information sources:**

MTEF 2014–2016

Adetunmbi, O. (2013). How far can Nigeria go without plan-based MTEF and annual budgets? Premium Times. 9 October 2013. <http://www.premiumtimesng.com/opinion/146330-far-can-nigeria-go-without-plan-based-mtef-annual-budgets-sen-olubunmi-adetunmbi.html>

**9.1.2 Is the budget prepared with due regard to government policy?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

Section 18 of the Fiscal Responsibility Act states that the MTEF is the basis for the preparation of the annual budget. The MTEF is made up of a Macroeconomic Framework, a Fiscal Strategy Paper, a Revenue and Expenditure Framework, a Consolidated Debt Statement and a Statement of the Nature and Fiscal Significance of Contingent Liabilities. Unlike previous MTEFs, the 2014–2016 MTEF is silent on targets on growth, inflation, interest rates, accretion to ECA and external reserves. Where the MTEF stated any macroeconomic estimate, it failed to analyse or provide the basis for the estimate. It was also deficient in the analysis of the macroeconomic environment for the three preceding financial years. Furthermore, it was not anchored on any government agencies' MTSSs.

The MTEF is intended to be guided by the MTSSs. In practice, the 2014 budget was not programmed to tally with the high-level policy documents of the government. The projections in the Vision 20:2020, the MDGs and other high-level policies are hardly reflected in the budget. For instance, the rates of growth and sectoral financial outlays in Vision 20:2020 do not match budget projections. In addition, the MTEF for the federal budget usually comes with a statement of the priorities of FGn for the medium term, but the preparation of 2013 budget does not reflect these priorities. The Seven Point Agenda, the MDGs, the Vision 20:2020 and, recently, the Transformation Agenda have all been loaded with a lot of generic priorities that have not been matched with commensurate funding and commitment by the government.

**Information sources:**

MTEF 2013–2015

Onyekpere, E. (2013). Analysing the 2014–2016 MTEF. The Punch. 30 September 2013.

<http://www.punchng.com/opinion/analysing-the-2014-2016-mtef/> (accessed 21 May 2014).

### 9.1.3 Is the budget implemented in an orderly and predictable manner?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

Section 25 of the Fiscal Responsibility Act provides that:

‘(1) The Federal Government shall cause to be drawn up in each financial year, an Annual cash Plan which shall be prepared by the office of the Accountant-General of the Federation, and

(2.) The Annual Cash Plan shall be prepared in advance of the financial year setting out projected monthly cash flows and shall be revised periodically to reflect actual cash flows.’

Unfortunately, there is little or no adherence to the provision of this Act in the implementation of the 2014 budget. The 2014 budget process was marred from the beginning by shoddy preparation, the late submission of the budget to the National Assembly, late passage of the Appropriation Act by the Assembly, and poor implementation. This is similar to the practice in the previous year. From delayed passage by the legislature to eventual poor implementation by the Executive, many factors are increasingly making the national budget an irrelevant document to the average Nigerian on the street.

#### **Information sources:**

Fiscal Responsibility Act, 2007. Section 11.

Eze, C. (2014). Budget 2014 - What hope for Nigerians. *The Business Eye*. <http://businessseyengr.com/?p=4633> (accessed 21 May 2014).

Vanguard Newspaper, 8 January 2013.

### 9.1.4 Are in-year adjustments frequent and transparent?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Some observable changes**

For the past four years, all the annual budgets have had additional adjustments, especially toward the third or fourth quarter. These supplementary appropriations have always gone through the stipulated legal and legislative process. However, the preparation and publication of these in-year supplementary appropriations are not always transparent.

According to the 2012 OBI, Nigeria is ranked 80th of 98 countries surveyed, scoring 16 out of 95 points on measures of performance, accessibility and transparency of budget information. The low score suggests that supplementary budgets are approved after funds are expended and the budgets provide insufficient information to the public regarding the amounts. Moreover, there have been proposals by the Executive and approval of virements by the legislature in a manner not contemplated by the Fiscal Responsibility Act (2007). For instance, as reported in the 2012 NNRC BE Report, in the 2009 financial year the President asked that monies in the education and health budget of the Federal Capital Territory be vired to highways and roads, i.e. Abuja Airport and Zuba Highway. This is out of sync with Section 27(2) of the Fiscal Responsibility Act, which states that the, 'Minister may in exceptional circumstances and in the overall public interest recommend for the approval of the National Assembly virements from subheads under heads of accounts without exceeding the amount appropriated to such head of account'. This clearly shows that virements are only permitted from amounts within heads of expenditure or from subheads under heads of account. A proposal for virement from education and health to roads is not within the contemplation of the law. This practice was also replicated in the implementation of the 2011 budget.

**Information sources:**

Fiscal Responsibility Act 2007, Section 27 (2).

Ameh, J. (2013). Reps ask Jonathan for more explanations on budget. The Punch, 2 July 2013. <http://www.punchng.com/news/rep-ask-jonathan-for-more-explanations-on-budget/>

**9.1.5 Are public financial management systems effectively implemented?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

At the federal government level there seems to be a number of public finance management systems in place, for instance laws (the Fiscal Responsibility Act, Public Procurement Act), policies (EITI, the Monetisation Programme, Pension Reforms, and revised Financial Regulations) and programmes for budgeting from initiation, approval, implementation and audit. There are also assessments available such as the Public Expenditure and Financial Accountability (PEFA) assessments (2007). These are not available at the state level. However, even the processes initiated at the federal level and the systems introduced are not being used effectively. The situation has been made even gloomier by recent allegations of missing funds from the oil sector, aviation sector and in pension funds. As is referred to throughout this report, the NNPC was accused of not remitting up to US\$ 20 billion to the Federation Account. Likewise, the former Minister of Aviation was accused of purchasing two bulletproof cars at an extraordinary cost of NGN 255 million. In all these instances, PEFA systems failed to trigger.

**Information sources:**

The Punch (2014). Bulletproof car scandal: At last, EFCC quizzes Stella Oduah. The Punch newspapers. 3 April 2014. <http://www.punchng.com/news/bulletproof-car-scandal-at-last-efcc-quizzes-stella-oduah/>

The Punch (2014). Ezekwesili blasts Diezani over N10bn jet scandal. The Punch newspapers. 30 April 2014.

### 9.1.6 Are government investment projects selected on the basis of relevant sector strategies and recurrent cost implications?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

The Fiscal Responsibility Law (2007) provides for MDAs to draw up MTSSs for their respective sectors and functions. An MTSS is a process for linking MDAs' policies, budget and monitoring and evaluation, and a tool for improving development outputs and outcomes. Its objectives include: the introduction of an activity costing mechanism whereby all items on the budget are costed according to prevailing market prices; enabling MDAs to plan and implement their budgets on a medium-term basis; and improving departmental coordination by reducing duplication and resource wastages. Perhaps one of the most important benefits of an MTSS is that it links policy objectives, budgets and performance analysis; it is a seamless link to performance measurement in the public sector. Additional support for this can be found in Section 18 of the Public Procurement Act (2007), which mandates all agencies of the government to ensure that their procurement expenditures are integrated into the annual budget. These responsibilities have remained largely under-executed. For instance, a situational analysis of key projects by the CSJ (2013) reveals policy (i.e. MTSS) inconsistency in terms of project budgeting and implementation. With the consecutive failures of MTSSs, it is time for a rethink on the effectiveness of the MTSS and budget processes.

**Information sources:**

CSJ (2013). Review of 2013 Capital Budget Proposals of Key Ministries against Nigeria's Development Agenda. Centre for Social Justice, 2013.

<http://library.procurmentmonitor.org/files/Review%20of%202013%20Capital%20Budget%20of%20key%20Ministries.pdf> (accessed 17 May 2014).

Public Procurement Act, 2007.

Fiscal Responsibility Act, 2007.

**9.1.7 Are decisions to undertake investment projects based on an analysis of the social, economic and environmental costs and benefits in the short to long term?**

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

In matters related to the environment, the law prescribes the need for EIAs for projects that may have an adverse impact on the environment. It appears that social issues are hardly considered in investment projects.

In terms of economic costs, it is expected that the prioritisation and costing undertaken at the strategy sessions for the preparation of the MTSS provide the opportunity to weigh all projects and rank them according to how they can most effectively deliver on the government’s policies and priorities.

Two of the government’s flagship programs namely Subsidy Reinvestment and Empowerment Programme (SURE-P) and the Amnesty program help to illustrate some of the challenges when it comes to the quality and equity of government expenditure. While these two projects may be said to be based on analysis of the social, economic and environmental costs and benefits of extraction, they have not been implemented effectively. Civil society evaluation of the SURE-P project has been that it is ineffective as a cash transfer mechanism and despite its huge capital expenditure budget, it has become a political disbursement to government cronies. The Amnesty programme for militants of the Niger Delta region has also failed to deliver effective impact in terms of job creation for its skill training and capacity building beneficiaries.

Although there is no law mandating the government to conduct a cost-benefit analysis of all its investment projects, Section 44(1) of the Fiscal Responsibility Act declares as follows: ‘Any Government in the Federation or its agencies and corporations desirous of borrowing shall, specify the purpose for which the borrowing is intended and present a cost-benefit analysis detailing the economic and social benefits of the purpose to which the intended borrowing is to be applied.’ However, even requests by the Executive sent to the National Assembly for the approval of borrowing proposals are not accompanied by any cost-benefit analysis. There is no practical evidence in government contract documentation showing that proper cost-benefit analyses of projects have been carried out.

**9.1.8 Does the fiscal framework take into account the short-term absorptive capacity of the economy?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

In theory, the fiscal framework takes account of absorptive capacity. There are two components to this:

- Macroeconomic absorption constraints: As mentioned in Precept 8 and later in Precept 10, the fiscal framework is designed to avoid inflationary pressures and exchange rate volatility but, in reality, it has only partially achieved this.

- Administration and execution constraints: The fiscal framework usually allows for far more expenditure than the government can absorb, which is proven by the low level of implementation of the capital budget, i.e. even when funds are available to be spent, there is not enough capacity to spend them fully.

**9.1.9 Is the proportion of government revenues invested by the federal government in: (a) physical infrastructure; (b) human infrastructure (e.g. healthcare, education, administrative services, etc.); and (c) environmental infrastructure (e.g. reserves, protection zones, ecosystem services, etc.) appropriate?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

According to the 2012 NNRC Report, the following categorisation has been adopted and calculated:

- **Physical infrastructure:** includes capital expenditures for Agriculture, Water Resources, Power, Transportation, Works, Lands and Housing, Mines and Steel Development, Niger Delta Development, Federal Capital Development Authority and Aviation.
- **Human infrastructure:** includes the total expenditure on: education; health; Universal Basic Education Programme (an FGN intervention programme that aims at achieving the MDG on Universal Basic Education, with its allocation based on statutory transfers), Labour and Productivity, and Youth Development. For administration services, the following are included: Office of the Secretary to the Government of the Federation, Office of the Head of Service, and the Federal Civil Service Commission.
- **Environmental infrastructure:** includes total expenditure on the environment, which includes expenditures on erosion control, protection zones, ecosystem services, etc.

**Table 9.1: Physical, human and environmental infrastructure (2010–2012)**

	Physical infrastructure (%)	Human infrastructure (%)	Environmental infrastructure (%)
2010	21	13.2	0.7
2011	12.3	16	0.6
2012	11	18.14	0.4
2013	12.5	19.7	0.5
2014	8	21	0.46

Source: 2010 to 2013 Appropriation Acts, the 2014 Estimate and the Year-End Budget Implementation Reports.

**Information sources:**

MTEF 2012–2015, pg. 5

2010 Fourth Quarter and Consolidated Budget Implementation Report from Budget Office of the Federation, pg. 24.

**9.1.10 Is the return on major government investment projects in the last five years appropriate?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

The return on government investment remains a difficult variable to assess due to lack of appropriate information.

**9.1.11 Are ex-post evaluations of major investment projects routinely undertaken?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

Despite reaping huge benefits from petroleum exports over the last three decades, Nigeria has failed to develop an adequate project monitoring and evaluation mechanism. Evidence of this can be seen in the plethora of abandoned projects, from roads and manufacturing to social development initiatives that pockmark the country's landscape. A number of reports have indicated that factors responsible for this situation include poor project appraisal, inadequate supervision and management, lack of accountability, rent-seeking activities and corruption.

**Information source:**

BusinessDay (2013). Why government projects fail. Business Day Editorial, 5 August 2013.

**9.1.12 Are there publicly available estimated overhead costs appropriate for: i) the federal government; ii) the legislature; and iii) state-level government?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

It is difficult to ascertain objectively if the allocations for overhead and personnel costs to the various arms of government are appropriate.

Detailed information on the overhead costs of the legislature has not been available since 2011, when their budget was categorised as a statutory transfer. The overhead appears as a lump sum of NGN 150 billion in the budget. Thus, there is no detailed information on what part of the NGN 150 billion allocated to the legislature since 2011 up to the current year 2014 will be spent on overheads. Similarly, broken-down information on the overhead costs of the judiciary is also not available since it is a statutory transfer. In 2012, the overhead cost to the judiciary was put at NGN 75 billion. This dropped to NGN 67 billion in 2013 but was quoted as NGN 68 billion in the current 2014 budget. The Executive usually prepares a breakdown of its overhead expenditure. For the year 2013, the overhead cost for the Executive was NGN 208 billion. In the 2014 budget, FGN reported Personnel and Overheads as costing NGN 2.45 trillion, a little over 52% of the total budget value.

The situation is the same for sub-national governments. There is little or no information on the overhead costs of the states. In the 2014 Budget for Lagos State the overhead estimate is NGN 146 billion, while personnel costs are estimated at NGN 87 billion of the total NGN 489 billion budget.

**Information sources:**

<http://www.informationng.com/2013/08/high-cost-of-governance-dont-make-national-assembly-the-scape-goat-look-at-other-areas-reps.html>

<http://dailyindependentnig.com/2013/10/education-economic-affairs-top-lagos-n489-69b-2014-budget/>

<http://www.lagosstate.gov.ng/images/pageimages/downloadfiles/docs/Y2014%20BUDGET%20ANALYSIS.pdf>

<http://yourbudgit.com/webroot/files/uploads/downloads/2014/07/%20Lagos%20State%20Y2014%20Budget%20Omnibus.pdf>

<http://www.yourbudgit.com/infographics/view/51>

## 9.2 Integrity of public spending

### 9.2.1 Are fiscal risks comprehensively addressed in the budget?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

The MTEF is the macroeconomic framework that provides revenue and expenditure estimates, as well as providing insight into government's future policy direction. However the 2013–2015 MTEF failed to comprehensively address manifest fiscal risk concerns, and is quiet on targets in relation to inflation, interest rates, accretion to the ECA and external reserves. Furthermore, where it did offer a macroeconomic estimate, it did not provide the basis for this estimate. Furthermore, the MTEF has no information on the contingent liabilities and quasi-fiscal activities of the government, or on the appropriate measures to be taken to ensure that they do not crystallise or how to deal with their outcomes if they crystallise.

The 2012 Debt Sustainability Analysis indicates that Nigeria has a low debt level threshold, putting Nigeria's total debt at NGN 7.11 trillion, which represents 17.8% of GDP. However, Nigeria's domestic debt has been growing rapidly, with the domestic debt stock accounting for 84.50% of the total debt stock against the National Debt Management Framework (2013–2017) prepared by the Debt Management Office, which states that the acceptable optimal ratio of domestic debt to external debt by FGN should be 60:40 as opposed to the current distribution of about 84:16 (Q3 2013).

Sections 21 to 23 of the Fiscal Responsibility Act stipulate that the autonomous government agencies listed in its schedule are expected to prepare estimates of revenue and expenditure to be submitted to the Minister of Finance and the National Assembly. They are also required to submit their audited accounts to the Auditor-General of the Federation. It is not ascertainable if the government consolidates these into an overall fiscal risk report, but what is clear is that they are definitely not reflected in the budget. The agencies do not report on a quarterly basis. They do, however, incur debts and liabilities while ultimately falling back on FGN to repay them, with examples of this process being the debts relating to the Power Holding Company of Nigeria and NITEL.

#### **Information sources:**

Eze Onyekpere, 2013–2015 MTEF: A Review; Punch Newspaper, 8 October 2012.

MTEF 2013–2015.

Debt Management Office, National Debt Management Framework 2013–2017.

Fiscal responsibility Act, 2007.

### 9.2.2 Is the National Assembly review an effective form of scrutiny? Does it follow the same pattern each year, e.g. raise the benchmark price and increase overall price?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Additional information included**

Section 81 of the 1999 Constitution expressly prohibits the spending of public resources through appropriation. The cardinal principle here is that there should be no expenditure without the approval of the legislature. The legislature has systematically increased the Appropriation Bill in Nigeria. For example, in the 2013 appropriation, it went from NGN 4.92 trillion at Benchmark oil price of US\$ 75/barrel proposed by the Executive to NGN 4.987 trillion at the benchmark oil price to US\$ 79/barrel.

The House of Representatives in the first instance rejected President Goodluck Jonathan's proposal for the amendment of the 2013 Act on the grounds that Section 81 (1), (2) and (4) of the 1999 Constitution did not envisage an amendment to an Appropriation Act, except through supplementary appropriation, and that the five-clause bill introduced by the President was completely silent on which sections of the 2013 Appropriation Act it sought to amend or repeal. The President eventually complied with the directive of the legislative house

Section 14 of the Fiscal Responsibility Act provides that the National Assembly is to approve the MTEF by resolution and that the MTEF anchors the budget. For the past three years, the MTEF has been approved either after budget presentation or so shortly before the budget that the approved MTEF could not have guided budget preparation in the Executive.

#### **Information sources:**

ThisDay Newspaper, 27 June 2013; Vanguard Newspaper, 26 June 2013.

Fiscal Responsibility Act, 2007.

2013 Appropriation Bill, 2013 Appropriation Act and 2013 Supplementary Appropriation Act.

### 9.2.3 Is fiscal and budget information accessible to the public?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Additional information included**

In the 2012 Open Budget Survey, which measures the accessibility and transparency of budget information, Nigeria scored 16 out of 95. While Nigerian budget documentation is available on the website of the Budget Office of the Federation (<http://www.budgetoffice.gov.ng/>), only 28.4% of Nigerians have access to the internet. The Ministry of Finance and the Budget Office do not usually provide printed copies of the budget information to the public.

Theoretically, anyone with access to the appropriation committees of both legislative houses can get printed budgetary information, but bureaucratic bottleneck makes that frustratingly difficult. Beyond their accessibility, budget documents are also bulky and not reader friendly. However, civil society organisations such as BudgIT are innovatively bringing budget information into the public space by presenting them in simple tweets, interactive formats and infographic displays.

Section 19 of the Fiscal Responsibility Act mandates that the following classes of information are made public: the revenue profile and framework; a report setting out actual and budgeted revenue and expenditure and detailed analysis of the performance of the budget for the 18 months up to June of the preceding financial year; measures on cost control; and a fiscal target appendix. The Federal Ministry of Finance also fails to present either to the public or the legislature the evaluation of the results of programmes financed with budgetary resources.

#### Information sources:

Internet World Stats: <http://internetworldstats.com/stats1.htm>

<http://www.yourbudgit.com/page/about>

Open Budget Survey: <http://survey.internationalbudget.org/#rankings>

Fiscal Responsibility Act, 2007.

#### 9.2.4 Are in-year budget execution reports routinely made available to the public through appropriate means within one month of their completion?

**Old response: No**

**New response: No**

#### UPDATE STATUS: Additional information included

From the 2012 NNRC Report, we note that the Budget Office of the Federation is obliged to deliver quarterly reports on budget implementation, one month after the end of every quarter (Section 30 of the Fiscal Responsibility Act). The Budget Office is to deliver the reports through the mass and electronic media and a website. However, in practice the reports are not timely; for instance, the first and second quarter reports of 2011 did not become public until September of that year and the third quarter report for 2011 was released in March 2012. The Fiscal Responsibility Commission has written reminders to the Federal Ministry of Finance and the Budget Office of the Federation regarding the compilation of these reports many months after they have become due. The reports are usually uploaded to the website of the Budget Office of the Federation, only being printed many months thereafter but still not being available for distribution or purchase at the Budget Office of the Federation, the Federal Ministry of Finance or any other official place. There is no dissemination through the mass media. The reports are usually written in understandable language but are not comprehensive enough to give a full picture of capital budget implementation.

In this 2014 review, we note that the last quarter report of the 2013 Budget Implementation Report has not yet been released at the time of this compilation. Notwithstanding this, the Bureau for Public Procurement routinely publishes approved contracts and their details (including on cost and location) are available on the website. There is information up to October 2013.

**Information sources:**

[http://www.bpp.gov.ng/index.php?option=com\\_joomdoc&view=documents&path=Certificates+of+No+Objection+Jan-October+2013.pdf](http://www.bpp.gov.ng/index.php?option=com_joomdoc&view=documents&path=Certificates+of+No+Objection+Jan-October+2013.pdf)

[www.budgetoffice.gov.ng](http://www.budgetoffice.gov.ng)

### 9.2.5 Are year-end statements made available to the public through appropriate means within six months of completed audit?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Financial statements are not available to the public. The statements are not published in hard copy or made available via the website of the Accountant-General.

**Information source:**

Office of the Accountant-General of the Federation website, [www.oagf.gov.ng](http://www.oagf.gov.ng)

### 9.2.6 Are all external reports on central government consolidated operations made available to the public through appropriate means within six months of completed audit?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Audit reports are usually late and they are sent to the PAC. They are not made available to the public and previous requests for copies at the Auditor-General's Office have not yielded an answer. The reports are also not available on the website of the Auditor-General. The last report on the website is from 2007 and it appears to be corrupted and cannot be downloaded. Although the print media sometimes write about these reports, the information available indicates that they get the reports through the PAC. There are no summarised versions of these reports available, although they are usually bulky.

**Information source:**

Office of the Accountant-General of the Federation website, [www.oagf.gov.ng](http://www.oagf.gov.ng)

**9.2.7 Is information publicised through appropriate means at least annually, or available upon request, for primary service units with national coverage in at least two sectors (such as elementary schools or primary health care facilities)?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

There is no such information unless it is culled from the budget and details are not available on request despite the provisions of the FOI Act (2011). The enactment of this Act has progressively encouraged all Nigerians to take steps towards access to official information with exceptions in matters of national security and trade secrets. Civil society organisations like Socio-Economic Rights and Accountability Project (SERAP) have been able to use the FOI to request public information. Political parties have also used the opportunity of the Act to form the basis of legal action against public officials and agencies.

**Information source:**

FOI Act (2011).

[http://r2knigeria.org/index.php?option=com\\_content&view=article&id=218:monitoring-foi-request-in-nigeria&Itemid=326](http://r2knigeria.org/index.php?option=com_content&view=article&id=218:monitoring-foi-request-in-nigeria&Itemid=326)

**9.2.8 Is public procurement 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) prescribes open and competitive tendering as the preferred mode of procurement, although it recognises that there may be need in some cases for special and restricted methods of procurement. The special methods of procurement include two-stage tendering, requests for quotations, direct procurement and emergency procurement. However, the general rule is that beyond the modifications in the law and the guiding rules, open competitive bidding procedures still govern these special methods. The BPP has prescribed guides and regulations governing tendering (including the Procurement Procedures Manual, Standard Request for Proposals for the Selection of Consultants, Revised Thresholds for Service Wide Application, and Code of Conduct for Public Officers).

However, there have been notable cases of deviations from the norm where open and competitive bidding has produced sub-optimal results and the process has been compromised by corruption and collusion. These include the Abuja Airport runway and the Airport Road projects. There is a process for submission and timely resolution of public procurement complaints and the complaints mechanism is working. However, in processes where high-level officials are involved, offenders rarely get punished for violations of the law. Since the inception of the law in 2007, there has been only one reported case of conviction for violating the law despite a plethora of publicly reported abuses.

In short, the legislature appears to act outside the purview of the Public Procurement Act and does not follow the rules laid down in the Act. The refusal of the President to establish the National Council on Public Procurement, which by law should lay down procurement policy, is another weakness of current practice. The continued intrusion of the Federal Executive Council in the approval process of high-level public procurements is also unfounded in law because the Federal Executive Council is not stated as an approving authority in the Public Procurement Act. Thus, while some procurements comply with the rules, others do not, thereby justifying the 'yes' and 'no' answer above.

**Information sources:**

*[http://www.bpp.gov.ng/index.php?option=com\\_joomdoc&view=documents&path=Federal%20Tenders%20Journal&Itemid=661](http://www.bpp.gov.ng/index.php?option=com_joomdoc&view=documents&path=Federal%20Tenders%20Journal&Itemid=661)*

Public Procurement Act (2007).

**9.2.9 Is the awarding of all contracts with values above approximately US\$ 100,000 equivalent published at least quarterly through appropriate means?**

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: No observable changes**

The BPP publishes the list of contracts that are approved by the Federal Executive Council, including the contractor, the contract sum and the project. However, they are usually of high thresholds: NGN 100 million and above for goods and services and NGN 1 billion and above for works. These are all above US\$ 100,000 at the exchange rate of NGN 155 to US\$ 1. The BPP also publishes the list of contracts awarded by MDAs that are of lower value but this is not done on a quarterly basis; they are usually published after the end of the financial year.

**Information sources:**

*[http://www.bpp.gov.ng/index.php?option=com\\_joomdoc&view=documents&path=Certificates+of+No+Objection+Jan-October+2013.pdf](http://www.bpp.gov.ng/index.php?option=com_joomdoc&view=documents&path=Certificates+of+No+Objection+Jan-October+2013.pdf)*

BPP website *[www.bpp.gov.ng](http://www.bpp.gov.ng)*

### 9.2.10 Is government spending subject to independent audit?

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

A large part of government spending is subject to independent audit while another part of the spending falls outside the purview of the independent audit function.

Section 85 (2) of the 1999 Constitution envisages that government spending should be subject to independent audit by the office of the Auditor-General for the Federation. But this does not tell the whole story. Section 85 (3) bars the Auditor-General from auditing the accounts of statutory corporations, commissions, authorities and agencies established by an act of Parliament; he can only provide a list of qualified auditors, guidelines on fees and comment on their accounts. The management of these agencies appoint their own auditors, which compromises the independence of the audit function. Essentially, not all government spending is subject to independent audit so there is a problem of scope. Under Section 85 (2), there is a notional independent audit while Section 85 (3) fails this test.

Moreover, the building blocks of an independent audit function rest on a number of variables that have not been effectively secured in law and practice. These include the appointment procedure, qualifications, staffing, funding and remuneration, effectiveness and follow-up on audit recommendations. In accordance with Section 85 (5) of the 1999 Constitution, the Auditor-General shall, within 90 days of receipt of the Accountant-General's financial statement, submit his report to each house of the National Assembly (i.e. the Senate and the House of Representatives). Then each house is to ensure the report is considered by a Committee of the House of the National Assembly responsible for public accounts.

In regard to the accounts that the Constitution permits the Auditor-General of the Federation to audit, he prepares a report and sends it to the PAC, which prepares another report. Then, this report needs to be approved in plenary by the House of Representatives and the Senate before it becomes the report of the whole House or Senate respectively. However, the sanctions mechanism embedded in the current audit function is weak and has led to repeated financial offences in MDAs.

Parts of the purpose of auditing are generally lacking in the Nigerian audit regime: corrective action appears not to follow individual cases of mismanagement, the Treasury is hardly compensated, and those responsible for the violations hardly accept responsibility. This has led to situations of impunity for violations of the law. Thus, Nigerian society gets no guarantees of non-repetition or compensation and nor are the offenders punished. Essentially, audit report recommendations never get implemented, although the Audit Bill currently being prepared by the office of the Auditor-General of the Federation seeks to remedy these defects.

In this 2014 NNRC Review, we note that recent allegation by the CBN of unremitted US\$ 20 billion by the NNPC further underlines the fact that independent audits are rarely done in government institutions. In response to public scrutiny of such allegations the government only makes pronouncements commissioning independent enquiries, as was the case for the missing funds (when a forensic audit was commissioned in February 2014). However, in true practice, there is no system in place to constantly monitor and provide independent audits of government spending.

**Information source:**

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

### 9.2.11 Are there any mechanisms and laws that empower citizens to scrutinise how money is being spent and hold someone to account?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

Although there are opportunities, which, if fully tested, would result in the holding of government to account, these provisions and opportunities have not been fully explored by citizens' groups. For example, there are mechanisms that empower citizens to scrutinise public expenditure and the Budget Office of the Federation in its budget monitoring activities involves civil society representatives, although they are not allowed to write independent reports. The expenditure on MDGs is monitored by a combined team of consultants and civil society, a situation that resulted from pressure by the donors and foreign partners who facilitated the 2006 Debt Relief Deal. Civil society organisations and representatives of professional groups also monitor bid opening processes. However, all these monitoring mechanisms are perfunctory.

Section 30 of the Fiscal Responsibility Act mandates the Budget Office of the Federation to report on budget implementation on a quarterly basis and make the results available to all; however, these reports normally come late (e.g. the first and second quarter reports for 2011 did not come until September of that year and the third quarter report was released in March 2012). The Budget Office of the Federation's reports are not compiled in such a way as to make them actionable and to allow citizens to hold government to account. Other agencies such as the National Economic Intelligence Committee and the National Assembly also monitor budget implementation but their reports are not in the public domain.

However, by the combined provisions of Section 51 of the Fiscal Responsibility Act, which liberalises standing to sue in fiscal matters ('A person shall have legal capacity to enforce the provisions of this Act by obtaining prerogative orders or other remedies at the Federal High Court without having to show any special particular interest') and the new FOI Act, citizens can ask for information that will enable them to hold government to account. That said, it is still to be seen how things change in practice.

In reality, MDAs are reluctant to give out information that will facilitate government being held to account. A simple request for the details of all statutory transfers in the 2012 budget estimates sent by the CSJ to the Minister of Finance met a brick wall despite the fact that it was brought under the FOI Act (2011). The matter is now the subject of a suit at the Federal High Court – but the opportunity to meaningfully engage the National Assembly on the propriety or otherwise of the detailed expenditures in the statutory transfer has been lost.

**Information source:**

Fiscal Responsibility Act (2007).

## PRECEPT 10: PRIVATE SECTOR INVESTMENT (BEYOND THE PETROLEUM SECTOR)

Government should facilitate private sector investments at the national and local levels for the purposes of diversification, as well as for exploiting the opportunities for domestic value-added.



Overview of the questions and ratings	
<b>10.1 ENCOURAGING PRIVATE SECTOR INVESTMENT</b>	
10.1.1 Has the 'Doing Business' indicator for the country improved in recent years?	●
10.1.2 Do government policies and plans exist to improve the country's business environment?	●
10.1.3 Is Nigeria free of the following symptoms of 'Dutch Disease': (a) real exchange rate appreciation? (b) slow manufacturing growth and de-industrialisation?	●
10.1.4 Have policies or plans been implemented to deal with Dutch Disease symptoms and support non-resource sectors?	●
<b>10.2 DOMESTIC VALUE-ADDED</b>	
10.2.1 Does the government strategy strike a balance between encouraging downstream processing and upstream supply in the resource sector?	●
10.2.2 Is there evidence that policies to encourage upstream or downstream investment are working?	●
10.2.3 Is the government successfully improving the capacity of domestic suppliers to supply quality goods and services?	●
10.2.4 Does government require resource companies to promote knowledge transfer and/or source a proportion of their skilled labour domestically?	●

<b>10.2.5</b> Does government require resource companies to source some of their goods and services from domestic suppliers?	
<b>10.2.6</b> Does government require resource companies to source some of their goods and services from either local or regional suppliers?	
<b>10.2.7</b> If government local content requirements exist, are local content targets based on an analysis of supply capacity and projected demand?	
<b>10.2.8</b> Are government measures in place to support the strategic and capacity development of domestic suppliers to the resource sector?	
<b>10.2.9</b> Are clear measures in place to subject beneficiaries of local content funds to transparency and accountability, including scrutiny of financial flows?	
<b>10.3 ECONOMIC DIVERSIFICATION</b>	
<b>10.3.1</b> Have trade policies and tariffs been adopted by government to specifically promote economic diversification and domestic value-added?	
<b>10.3.2</b> Is there evidence that policies to encourage economic diversification are working?	
<b>10.3.3</b> Are government incentives for encouraging domestic value-added, time-limited and success-linked?	
<b>10.3.4</b> Is the economy becoming less resource-dependent in terms of: (a) Non-petroleum trade sector growth (qualitative/broad assessment)?	
<b>10.3.5</b> Is the economy becoming less resource-dependent in terms of: (b) Natural resource industry exports as a percentage of exports?	
<b>10.3.6</b> Is the economy becoming less resource-dependent in terms of: (c) Natural resource industry revenues as a percentage of total government revenues?	
<b>10.3.7</b> Is the economy becoming less resource-dependent in terms of: (d) Natural resource industry revenue as a percentage of GDP?	
<b>10.3.8</b> Are improvements in these variables due to government action?	

## Summary of key findings

### Encouraging private sector investment

- The business environment in Nigeria is still ranked badly on relevant international indicators (see, for example, the World Bank Doing Business index and Forbes' Suitability for Investment report). Nigeria's Doing Business 2014 rank dropped significantly by nine points to 147th (from 138th) out of 189 economies surveyed by the IFC. Even though there was a slight (insignificant at 0.29%) increase in overall score, Nigeria recorded weak scores on the individual aspects of business surveyed.
- However, there are positive indications in outcomes of some plans to improve the Nigerian business environment at the national level including: a power road map, infrastructure programmes, business registration reforms, the Local Content Act and the establishment of the Bank of Agriculture.
- Successful privatisation of public assets under the ongoing electric power sector reforms have been suggested to drive overall change in the economy. However, there are still gaps to be filled in the sector including those of domestic gas development before the benefits of reform can become widespread.

### Domestic value-added

- Although the overall development of downstream processing strategy has not been effective, with public refineries still either completely comatose or at extremely low capacity utilisation, there are new signs of hope with one private refinery expected.
- Despite the failure of 18 licences initially issued to private companies for the establishment of refineries in 2002, Dangote Group has now secured credit facility to build a \$9 billion refinery, fertiliser and petrochemical complex.
- In the upstream sector, a total of 11 Nigerian independents have been able to move their equity production component from around 90,000 barrels of oil per day in 2000 to about 135,000 barrels of oil in 2011, and the indigenous private sector is considered strong compared with other African hydrocarbon state economies.
- The recent divestments of international oil companies from oil assets in the direction of local content performance is seen as a positive event for increasing the participation of indigenous players in the upstream sector of the industry. Total divestments are expected to hit about \$11.5 billion by the end of the year (2014).
- Nigerian content targets were set as 45% by 2006 and 70% by 2010 but it is unclear whether this was based on an analysis of supply capacity and project demand. There are few details available on the Nigerian Content Development Fund (NCDF) and no clear measures for assessing performance or beneficiaries.
- Up to 65% of total industry spend have been domiciled to reduce capital flight. Capital retention has been put at about \$191 billion post-local content compared to the \$380 billion capital flight pre-local content.
- Despite the quantity of local content performance, there are genuine doubts about the quality of domestic value added.

### Economic diversification

- The Gross Domestic Product (GDP) rebasing exercise of 2014 put the country's economy at \$510 billion making it the largest in Africa. The exercise also identified new sectors like hospitality, motion picture and other entertainment sectors that had emerged over the decade.
- It has been discussed in terms of increasing the evidence of diversification within the country, especially with the reclassification of contribution of the oil sector to only 14% of GDP.
- Non-oil exports have increased impressively in recent years, so the economy is becoming less resource-dependent in terms of non-petroleum trade sector growth and natural resource industry exports as a percentage of exports.
- However, the new figures also show how heavily the government still relies on oil revenue rather than taxes from non-oil economic sectors for its expenditure. Petroleum exports still account for over 90% of the total value of exports.

## 10.1 Encouraging private sector investment

### 10.1.1 Has the 'Doing Business' indicator for the country improved in recent years?

**Old response: No**

**New response: No**

#### UPDATE STATUS: Additional information included

The business environment in Nigeria is ranked badly on relevant international indicators. Nigeria's Doing Business 2014 rank dropped significantly by nine points to 147th (from 138th) out of 189 economies surveyed by the IFC. Even though there was a slight (insignificant at 0.29%) increase in overall score, Nigeria recorded weak scores on the individual aspects of business surveyed. On most of the ranking topics within the study, including starting a business, getting electricity, registering property and enforcing contracts, Nigeria continued to rank poorly, above the 100 mark as in the previous year. The business environment in Nigeria is still ranked below-par on relevant international indicators for a number of reasons, including the rising state of insecurity and policy instability.

#### Information source:

IFC, 2014. Doing Business 2014 Report. International Finance Corporation, World Bank Group.  
<http://www.doingbusiness.org/data/exploreeconomies/nigeria/>

### 10.1.2 Do government policies and plans exist to improve the country's business environment?

**Old response: Yes**

**New response: Yes**

#### **UPDATE STATUS: Additional information included**

In the 2012 NNRC Report, we note that according to a report by the National Technical Working Group on the Manufacturing sector for *Vision 20:2020*, 'high fuel costs, security costs, business registration costs, interest rates, exchange rates and multiple taxes from the various levels of government have resulted in increased unit price of manufactures and low capacity utilisation rates.'

However, FGN has taken certain steps to correct the situation. The main policies to improve the situation at the national level include:

- Power:** The Power Roadmap 2010 addressed issues such as the removal of obstacles to private sector participation in the electricity sector, divestiture of the Power Holding Company of Nigeria's successor companies, the setting of targets for energy production and the exploration of alternative sources to oil for energy generation. The power sector reform was considered the most important policy action to be directed at improving the country's overall business environment. Thus, an ongoing privatisation drive, which began in 2012, recorded major events in 2013 with the transfer of public distribution assets to private entities. For a long time the power sector had contributed to the stunted growth of industries and small businesses across the entire industry landscape. Thus, the recent privatisation round in the electricity sector, which concluded in December 2013, opened up opportunities for investors to participate in establishing a competitive electricity market for the Nigerian economy. Successor companies to the Power Holding Company of Nigeria have started taking up roles in distribution, generation and bulk trading to asset management companies, and are performing progressively better. Between March 2013 and March 2014, virtually every aspect of the electricity value chain, as well as segments and agencies, made good progress and recorded remarkable achievements. Such improvements, if sustained, will have significant implications for improving the country's overall business environment. There are still gaps to be filled in the sector especially those of domestic gas development before the benefits of reform can become widespread.
- Infrastructure:** The Vision 20:2020 and SURE programmes represent attempts to address Nigeria's infrastructural deficiencies. In 2013, almost NGN 80 billion of the NGN 180 billion SURE-P funds were allocated for public infrastructure expenditure. From the NGN 268 billion SURE-P funds for 2014, over NGN 180 billion will be spent on various infrastructure.
- Business registration:** As noted in the 2012 NNRC Report, Nigeria Investment Opportunities Report (Serengeti Advisers and CPPA 2011) records the reforms in service delivery of registration of companies at the Corporate Affairs Commission, which has made it possible for entrepreneurs to have a legal business entity up and running in 31 working days. In August 2014, FGN announced that it had slashed business registration costs for SMEs by 60%. This is important as SMEs account for 80% of the total businesses registered with the Corporate Affairs Commission and also account for at least 50% of the country's GDP.

- **Promotion of local content:** The NOGICD Act (2010) (i.e. the Local Content Act 2010) serves as the blueprint for ensuring the investment of revenue from the oil industry into other sectors of the economy. Significant improvements have been recorded in local content variables, including capital retention, percentage of domiciled industry spend (i.e. proportion of contract sums spent on Nigerian made goods) and new direct job opportunities. However, additional quality improvements need to take place within the equipment and component manufacturing areas.
- **Ease of access to finance:** The establishment of the Bank of Agriculture provides favourable interest rates to farmers and other actors in the agricultural sector, thereby providing finance opportunities at reduced rates. Efforts to revamp the Bank of Industry also aim to provide better access to finance for the manufacturing industry.

#### Information sources:

Local Content Act (2010).

National Technical Working Group on the Manufacturing sector for Vision 20:2020.

Power Roadmap 2010.

This Day Live. 2014. One Year of Sustainable Reforms in Nigeria's Power Sector. This Day, 15 May 2014.

<http://www.punchng.com/news/fg-slashes-business-registration-cost-for-smes-by-60/>

<http://www.yourbudgit.com/infographics/view/56>

Nigeria Oil and Gas Intelligence Reports 2014.

### 10.1.3 Is Nigeria free of the following symptoms of 'Dutch Disease': (a) Real exchange rate appreciation? (b) Slow manufacturing growth and de-industrialisation?

**Old response: No**

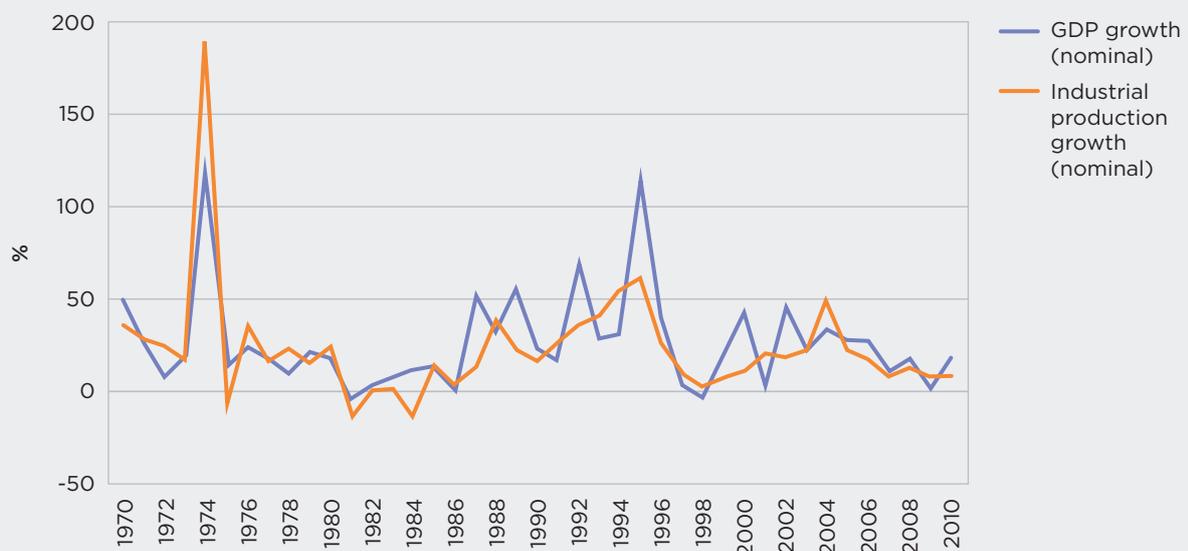
**New response: No**

#### UPDATE STATUS: Additional information included

The experience of Nigeria typifies the symptoms of Dutch Disease, with the country's real exchange rate having steadily appreciated in the last decade accompanied by a decrease in the growth of the manufacturing sector. The effects of exchange rate fluctuations in developing countries like Nigeria have received considerable attention and generated much debate. The debate focuses on the degree of fluctuations the exchange rate has generated in terms of internal and external shocks in the Nigerian economy. The goal of having a stable exchange rate with trading partners has not yet been reached in spite of the fact that the country has embarked on devaluation to promote exports and stabilise the rate of exchange. Despite various efforts by the government to maintain a stable exchange rate, the naira has continued to depreciate from NGN 0.61 to the dollar in 1981 to over NGN 160 to the dollar today.

According to the recent GDP rebasing exercise the structure of the Nigerian economy remains largely mono-product, with the oil and gas sector contributing about 74% of FGN revenue and about 96% of total export revenue. Despite this huge dependence on the oil and gas sector, the sector is also significantly delinked from the macro-economy, employing only about 20,000 people directly. In comparative terms, the oil and gas sector contributes only 14% of Nigeria’s US\$ 510 billion GDP, while agriculture contributes about 22% and the services sector just over half of the country’s aggregate economic activity. The significance of this type of anomaly can actually be properly conceived through the lens of the comatose manufacturing sector, which contributes only about 6% of GDP.

**Figure 10.1: Dutch Disease in Nigeria: Evidence of deteriorating manufacturing output (1970-2010)**



**Source:** CBN Statistical Bulletin, Table C 1.1.

**Note:** Industrial production includes mining, construction and manufacturing. See also Udeaja and Udoh (2011).

**Information sources:**

Arinze, D. (2010). Nigeria and Her Oil.

Chete, L. N., Adeoti, J. O., Adeyinka, F. M., and O. Ogundele (2014). Industrial development and growth in Nigeria. WIDER Working Paper 2014/019. [http://www.wider.unu.edu/publications/working-papers/2014/en\\_GB/wp2014-019/\\_files/91120057801966617/default/wp2014-019.pdf](http://www.wider.unu.edu/publications/working-papers/2014/en_GB/wp2014-019/_files/91120057801966617/default/wp2014-019.pdf) (accessed 20 May 2014).

Enekwe, C. I., Ordu, M. M., & C. Nwoha (2013). Effect of Exchange Rate Fluctuations on Manufacturing Sector in Nigeria. *European Journal of Business and Management*, Vol. 5, No. 22, 2013. <http://www.iiste.org/Journals/index.php/EJBM/article/download/7454/7776> (accessed 20 May 2014).

NBS. 2014 Nigeria GDP rebasing presentation.

CBN Statistical Bulletin.

Udejaja, E.A. and Udoh, E. (2011) [http://www.eurojournals.com/EJSS\\_20\\_2\\_05.pdf](http://www.eurojournals.com/EJSS_20_2_05.pdf)

#### 10.1.4 Have policies or plans been implemented to deal with Dutch Disease symptoms and support non-resource sectors?

**Old response: Partially**

**New response: No**

##### UPDATE STATUS: Additional information included

As noted in the 2012 NNRC Report, while several government policies and plans have been designed to address the symptoms of Dutch Disease and support non-resource sectors in Nigeria, these have met with mixed results. Policies include fiscal sterilisation (e.g. establishing the SWF), monetary sterilisation (e.g. sale of Nigerian treasuries bills and saving certificates), and economic diversification

- **SWF:** Passed into law in 2011, and managed under a newly created Nigeria Sovereign Investment Authority, the fund is divided into three components: the Nigeria Infrastructure Fund, the Future Generations Fund, and the Stabilisation Fund. Each component will represent at least 20% of the total fund. As at the time of this 2014 NNRC Report, the suit instituted by state governors against FGN on the legality of the fund is still pending at the Supreme Court.
- **External reserves:** Nigeria maintains external reserves in foreign currencies and assets as a form of safety net for the economy. According to the CBN, net foreign assets fell by US\$ 0.98 billion or 2.23% to about US\$ 42.85 billion as at 31 December 2013.
- **National Savings Certificates:** National Savings Certificates were launched in 2005 to enhance liquidity management and ensure monetary stability. As a registered security, they are listed and traded on the stock market so as to give the required flexibility.
- **Public sector deposits:** The CBN initiated the Public Sector Deposits scheme in 2004 to address the excess liquidity in the Nigerian banking system and to motivate banks to mobilise deposits from other sources outside the public sector. The policy has been implemented in phases, with the new policy putting the Cash Reserve Ratio at 75% from 50%, with an intention to make it 100% in the future.

## 10.2 Domestic value-added

### 10.2.1 Does the government strategy strike a balance between encouraging downstream processing and upstream supply in the resource sector?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

Buoyed by the NOGICD Act, which came into force on 22 April 2010, a growing number of indigenous companies are now playing active roles in the oil and gas industry. However, industry analysts say financing and technical expertise are major challenges still facing local players in the industry. The Act, which directly affects operating companies, contractors, sub-contractors and service providers, seeks to increase indigenous participation in the oil and gas industry by prescribing minimum thresholds for the use of local services and materials and to promote the employment of Nigerian staff in the industry. The idea of the enactment of the Local Content Act was a step in the right direction, as it is intended to reduce capital flight, provide more jobs for Nigerians and generally promote the oil and gas business in Nigeria and by Nigerians.

After four years, there have been modest achievements and an improvement in the overall Nigerian value-addition to the oil and gas industry. Moreover, certain Nigerian engineering and oil service companies have benefitted, with instances of increase in the volume of in-country fabrication. More indigenous companies now participate in the licensing rounds and have also taken ownership of assets in the ongoing divestment within the sector. However, although much of this progress can be attributed to the government's local content policy, there is still no evidence for a balance between downstream processing and upstream supply in the industry as the gas sector remains comatose.

#### **Information source:**

Business Day. Nigeria's 4-yr-old oil industry local content gains traction amid challenges. Business Day, by Femi Asu, 23 April 2014.

<http://businessdayonline.com/2014/04/nigerias-4-yr-old-oil-industry-local-content-gains-traction-amid-challenges/#.U38NMrHoDIU>

### 10.2.2 Is there evidence that policies to encourage upstream or downstream investment are working?

**Old response: Partially**

**New response: Yes**

#### **UPDATE STATUS: Additional information included**

At the time of the 2012 NNRC Report, the evidence was mixed and the report stated that some time would be needed to fully determine the extent of improvements or otherwise resulting from government policies. However, the recent improvements in the participation of indigenous companies in upstream activity are a positive indicator of policies encouraging investment in the sector. Conoil Producing, Seplat, Pan Ocean Oil, Moni Pulo, Allied Energy, Dubri oil and others are among the 11 elite Nigerian operators that have found some footing in the upstream sector. China National OffShore Oil Company, Petrobras and others are among the foreign companies that have also taken keen interest and invested in the upstream sector.

Although the overall development of downstream processing strategy has not been effective, with public refineries still either completely comatose or at extremely low capacity utilisation, there are new signs of hope with one private refinery expected. Public refineries remained grounded at near zero capacity utilisation over the past decade, despite the rapidly increasing demand for downstream products such as petrol, kerosene and diesel. For example, petrol consumption increased from about 24 million litres per day in 2005 to 39.66 million litres in 2013 even as the capacity utilisation of government's four refineries continued to decline.

Events in the current period, from 2012 to 2014, suggest that a new private refinery may be in the pipeline with indications that another episode of privatisation may soon be witnessed within the sector. Despite the failure of 18 licences initially issued to private companies for the establishment of refineries in 2002, Dangote group of companies has now acquired sufficient credit facility to build a new refinery complex for petroleum, petrochemicals and fertilisers. The project is reported to be the biggest single investment ever made in Africa, at US\$ 9 billion.

In the upstream sector, recent divestments of international oil companies from oil assets in the direction of local content performance is seen as a positive event for increasing the participation of indigenous players in the upstream sector of the industry. Total divestments are expected to hit about \$11.5 billion by the end of the year (2014). Also as part of local content, up to 65% of total industry spend have been domiciled to reduce capital flight. Capital retention has been put at about \$191 billion post-local content compared to the \$380 billion capital flight pre-local content. However, despite the quantity of local content performance, there are genuine doubts about the quality of domestic value added.

### 10.2.3 Is the government successfully improving the capacity of domestic suppliers to supply quality goods and services?

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: No observable changes**

As reported in the 2012 NNRC BE Report, the government appears to have put certain measures in place to increase domestic participation in the oil and gas sector and build the capacity of domestic suppliers to supply quality goods and services comparable to international standards. These include: the NOGICD Act (2010), a law which establishes the parameters for local content; the NCDMB, which ensures the compliance of resource companies with the Act; and the NCDF, which provides funding to increase the capacity of domestic suppliers.

There are, however, noteworthy gaps in the implementation of some of these measures and policies, ambiguous use of language as well as non-passage of some relevant laws (particularly the PIB) and no clear linkages to important sources of capacity building such as education. On the whole, more progress can be made by linkages in capacity building through education and employment policies, as well as better implementation and greater transparency in the use of the NCDF.

#### Information sources:

<http://www.ncdmb.gov.ng/index.php/news-update/100-alison-madueke-defends-award-of-60-of-oil-contracts-to-local-firms>

Local Content Act, 2010.

### 10.2.4 Does government require resource companies to promote knowledge transfer and/or source a proportion of their skilled labour domestically?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

Employment policies support the use of domestic labour to ensure transfer of skills and knowledge in the oil and gas sector. The NOGICD Act (2010) requires the submission of employment and training plans by industry stakeholders (both IOCs and domestic suppliers). NAPIMS assesses the eligibility of contracts in meeting local content requirements. It is pertinent to note that some IOCs already had local content aspects in place, including employment and scholarship strategies.

Ways in which government requires resource companies to promote knowledge transfer and/or source a proportion of their skilled labour domestically include:

- **‘Nigerianisation’ of positions held by expatriates.** The Local Content Act (2010) addresses the requirement of skills transfer by mandating operators (both IOCs and domestic suppliers who use expatriates) to attach a Nigerian understudy to any position held by an expatriate for a maximum of four years before the position becomes ‘Nigerianised’. Each operator is mandated to submit a detailed succession plan covering any position not held by Nigerians as part of their bid documents (Akano 2012). NAPIMS has the mandate to ensure that local content targets are met.
- **Maintaining a reasonable number of personnel from areas in which it has significant operations.** The Local Content Act 2010 holds that junior and intermediate levels are to be held by Nigerian staff and operators are allowed to maintain a 5% quota for expatriate staff to protect their own investments.
- **Research and development.** All operators and promoters are required to submit to the NCDMB a three- to five-year plan for research and development to be undertaken in the country. This plan should include expected expenditures for activities and must be updated every six months (Section 38 of NOGICD Act 2010).

Despite the progress in this regard, there are grounds for concern. Ambiguities exist in the Local Content Act (2010), with such terms as ‘*First Consideration*’ and ‘*Reasonable Number*’ for employment and training in Section 28 (1) and 28 (2) respectively lacking clear definitions. According to Nwaokoro (2011), there is no prescribed matrix for who will determine local staffing arrangements, when or how; this means that, ‘Nigerians are not employed because of their lack of training’. Implementations of technology and knowledge transfer in practice have been very weak and the transition period of three years before implementation of full localisation appears to be inadequate.

#### Information sources:

Local Content Act (2010).

Nwaokoro, 2011, <http://jwelb.oxfordjournals.org/content/early/2011/02/09/jwelb.jwq020.abstract>

Adefulu, 2012, <http://www.odujinrinadefulu.com/documents/Nigerian%20Local%20Content%20Policy.pdf>

### 10.2.5 Does government require resource companies to source some of their goods and services from domestic suppliers?

**Old response: Yes**

**New response: Yes**

#### UPDATE STATUS: Additional information included

The Local Content Act (2010) and subsequent establishment of the NCDMB aim to increase indigenous participation (procurement, supply of technical expertise, etc.) in upstream and downstream activities in the oil and gas industry.

The Act was established to enhance the participation of indigenous companies in the oil and gas industry. This appears to be succeeding according to Ernest Nwapa (Executive Secretary of the NCDMB) in an interview with the ThisDay Newspaper (Aderinokun, 2010), who stated that local capacity has increased from about 5% in 2004 to 35% in 2010 due to the implementation of the Local Content Policy.

The schedule of the Local Content Act (2010) specifies the percentage of Nigerian content for some work items, thus ensuring that resource companies source at least the minimum required quota from indigenous companies. Section 26 of the Local Content Act (2010) requires the NCDMB to make regulations with targets for In-Country Engineering and Fabrication to ensure ‘full utilisation and steady growth of in-country capacity of Indigenous Oil, Gas and Services Companies’ engaged in various aspects of oil and gas and other operations. Insurance and legal services must be sought from Nigerian companies. Only services from Nigerian financial institutions are to be utilised, except ‘where to the satisfaction of the board it is impracticable’ (Babalakin and Co, 2010). The agency is also expected to ensure that Nigeria is the procurement hub for all oil and gas projects.

Furthermore, the Local Content Act (2010) establishes that non-compliance with Nigerian content rulings attracts a fine of 5% of the project sum for each project in which the offence is committed, or the cancellation of the project.

As highlighted in the answer to Question 10.1.2, some variables including quantity of locally fabricated materials like pipeline have also improved.

**Information source:**

Local Content Act (2010).

**10.2.6 Does government require resource companies to source some of their goods and services from either local or regional suppliers?**

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Additional information included**

The NOGICD Act (2010) states that local goods and services are the preferred source of supplies to the oil and gas industry. Operators are to establish project offices in the catchment area where projects are to be sited and may be required to have personnel that are indigenous to the area of operation (Local Content Act 2010, Babalakin 2010). Some success has been seen in this direction; for example, Caverton Helicopter, a local aviation company, received a loan of US\$ 85 million from Shell Petroleum to upgrade its fleet. This was done as part of this IOC’s effort to enhance Nigerian content development (Alike E., 2012).

As part of the improvements in the implementation of the Local Content Act within the industry, in 2013 indigenous firms executed US\$ 6.45 billion worth of contracts out of the total US\$ 10.19 billion value of contracts within the nation’s petroleum industry.

**Information source:**

<http://www.mydailynewswatchng.com/nogicd-act-local-firms-get-6-45bn-contract/>

**10.2.7 If government local content requirements exist, are local content targets based on an analysis of supply capacity and projected demand?**

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

According to Ernest Nwapa of the NCDMB, Nigerian content targets were set as 45% by 2006 and 70% by 2010. However, it is not clear from the literature available if the targets are based on analyses of supply capacity and projected demand. There are no indications of how local content targets were arrived at and whether or not the technical and human capacity of domestic suppliers was taken into consideration.

In 2008, the Centre De Recherchés Enterprises Et Societes (CRES), in conjunction with the United Nations Institute for Training and Research and Afren, carried out a study on why local content targets were not achieved in Nigeria and Angola. Their results for Nigeria identified the lack of an industrial base, the weakness of the country's infrastructure and lack of qualified personnel as reasons for the non-attainment of targets. Achieving successful local content targets goes beyond mere numbers. The lack of power, leading to high production costs and reduction in production capacity, has often been cited as a major hindrance to the local production, and has been pinpointed as being key to the decline in the manufacturing sector in general.

Edemhanria (2010) argues that it may be difficult to realise the government's targets in regard to the local content policy if the issue of local production of steel (one of the most important raw materials for fabricating pipes, etc.) and electricity are not urgently addressed. It is clear then that local content targets stand a better chance of being achieved if they are based on existing and projected capacity

**Information sources:**

<http://www.aiaenigeria.org/becans/publications.htm>

Edemhanria, Innocent I (2010). Local Content Policy and Its Implications for Nigeria. African Network for Environment and Economic Justice. ANEEJ, 8 June 2010. Web. 31 October 2010.  
[http://www.aneej.org/index.php?option=com\\_content&view=article&id=69:local-content-policy-and-its-implication-for-nigeria&catid=25:the-project](http://www.aneej.org/index.php?option=com_content&view=article&id=69:local-content-policy-and-its-implication-for-nigeria&catid=25:the-project)

### 10.2.8 Are government measures in place to support the strategic and capacity development of domestic suppliers to the resource sector?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

According to the 2012 NNRC Report, measures put in place by the Nigerian government to address the strategic and capacity development of domestic suppliers to the oil and gas sector in the country include:

- **NCDF:** This is meant to provide funding to enhance the capacities of domestic suppliers and increase local content. The NCDMB is charged with administering the fund. The NCDF is derived from 1% of any contract in the industry, which is deducted at source by the NCDMB. Portions of the NCDF are then available to domestic suppliers to improve their productivity, enhance operations and generate value creation. Having reached the NGN 11 billion mark (Alike 2012), it creates a source of funding for further development of the capacity of local and domestic suppliers in the Nigerian oil and gas sector.
- **JVs between domestic suppliers and International companies:** The Nigerian Oil and Gas Industry Content Act also encourages JV partnerships with international companies for capacity building, especially in terms of training and knowledge transfer. These arrangements often enhance the capacity of domestic suppliers to win technical bids and meet industry standards (Ihua, 2010).
- **SME capacity building in oil and gas, as well as access to finance:** The majority of domestic suppliers in the industry are SMEs. The NCDMB and SME Development Agency of Nigeria have agreed in principle to jointly promote relevant projects (Osagie, 2010; Tribune Newspaper Article 2010). Furthermore, the SME Equity Investment Scheme (SMEEIS) is also a provider of funding for SMEs. SMEEIS is a voluntary initiative of the Bankers' Committee in response to FGN's concerns and policy measures for the promotion of SMEs as vehicles for rapid industrialisation, sustainable economic development, poverty alleviation and employment generation.
- **Nigerian Oil and Gas Industry Content Joint Qualification System (NOGIC JQS):** Set up as an industry databank for local content registration and pre-qualification for domestic suppliers, NOGIC JQS became active online on 16 August 2011. Following Section 55 of the Local Content Act 2010, it is administered as a platform for: Verification of contractors' capacities and capabilities; Evaluation of application of Nigerian content in the operations of oil companies and contractors; Database for national skills development pool; Ranking and categorisation of oil service companies based on capabilities and Nigerian content; and Tracking the capacities of domestic suppliers, as well as serving as a platform for enabling their development.
- **Amnesty training for Niger Delta militants:** The clamour for development in the Niger Delta led FGN, as part of its initiatives to enhance capacity, to establish the Ministry of Niger Delta Affairs. One of this Ministry's mandates is to ensure training and capacity building in the Niger Delta, and oil and gas is one of the major training areas in this programme. Also, a skills acquisition programme was developed as part of amnesty training to improve the vocational skills of youths from Niger Delta in order to enhance their knowledge and skill base to ensure they meet standards enabling them to be sources of labour/employment for domestic suppliers and IOCs alike.

Despite all of these initiatives, strategic development appears to be deficient. There are no clear strategies for linking and maximising the use of educational institutions focused on the petroleum industry, such as the Petroleum Training Institute and Federal University of Petroleum Resources, both in Delta State, as well as the Institute of Petroleum Engineering which is part of the University of Port Harcourt Nigeria, for capacity building for the oil and gas sector in Nigeria. No mention is made of existing universities (Departments of Petroleum, Economics, Engineering, Research, etc.) in the Local Content Act (2010) or by the NCDMB as focal points for strategic partnerships with international institutions to enhance the capacity of indigenous staff.

Although they are mandated to provide scholarships by the Petroleum Act (1990) and the Local Content Act (2010), individual resource companies are responsible for these scholarships and do so at their discretion. A report by CRES (2008) shows that some IOCs appear to have links with educational institutions intended to enhance skill development. Several IOCs such as Shell also provide scholarships and have employment preferences for people from oil-producing areas.

The level of education provided by Nigerian institutions has also been called into question. With a drop in Nigerian rankings worldwide and with the highest ranked Nigerian university currently placed at just 20th position in Africa in the 4icu.org university web ranking, the quality of graduates from these institutions is not to the standards required to drive development. Clear linkages must be made between improving the educational sector and economic development, taking local content plans and targets into serious consideration.

**Information sources:**

Petroleum Act (1990).

Local Content Act (2010).

Aderinokun, 2010, <http://www.thisdaylive.com/articles/banks-pledge-financial-backing-for-local-oil-firms/83540/>

Okusami, 2010, <http://www.templars-law.com/media/AFRICA%20ENERGY%20WEEK%20PRESENTATION.pdf>

CRES (2008).

### 10.2.9 Are clear measures in place to subject beneficiaries of local content funds to transparency and accountability, including scrutiny of financial flows?

**Old response: No**

**New response: No**

**UPDATE STATUS: No observable changes**

As noted in the 2012 NNRC Report, there were few details available on the NCDF, with no clear measures for auditing beneficiaries of the Local Content Fund. The NCDMB, as the agency that administers the NCDF, is subject to Public Fund Administration guidelines.

More information needs to be made available by the NCDMB as it is the agency in charge of monitoring the implementation of NCDF. Contributions to NCDF are reported to have taken off since April 2010, which underlines the fact that NCDF should be part of the items to be included in subsequent NEITI audits.

#### Information source:

Local Content Act (2007).

## 10.3 Economic diversification

### 10.3.1 Have trade policies and tariffs been adopted by government to specifically promote economic diversification and domestic value-added?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

Evidence from the 2012 NNRC Report shows that, according to the Nigerian Investment Promotion Commission, the Nigerian government has put in place a number of trade policies, incentives and tariffs for the stimulation of private sector investment from within and outside the country. While some of the incentives are cross-cutting, others are sector specific. In the natural resource sectors, some of these incentives include development of the petrochemical/plastics industry, flat steel milling and textiles. Examples include the following:

- **Adoption of a comprehensive tariff structure.** A simpler tariff system has been introduced to promote local production. A manufacturer who imports raw materials in order to convert them into products for export purposes will only pay tariffs if the exports fail to materialise.

- **Sector-targeted trade tariffs.** Special status has been accorded to certain industries (i.e. the so-called pioneer industries – including mining of lead, zinc, iron and steel from iron ore, manufacture of iron and steel from iron ore, manufacture of cement, glass and glassware, and others) that will serve as a catalyst for further development, with some investors able to enjoy long tax holidays. Seventy-one industries are listed on the pioneer status classification and solid minerals sector incentives are particularly attractive.<sup>2</sup>
- **Drop in duty rates.** Import bans and high import tariffs have been reviewed downwards. Duties on a range of basic industrial raw materials and agricultural inputs, machinery and equipment have also been either significantly lowered or completely eliminated.
- **Taxation.** Nigeria has double taxation agreements/treaties with a number of countries to reduce the tax imposed on profits. This is to ensure that the tax payable in Nigeria on the profits of a Nigerian company being remitted into the country is reduced by the amount of 'foreign tax' paid abroad and vice versa. Examples of these countries include the UK, France, the Netherlands, Belgium, Canada and Pakistan.

**Information source:**

Nigerian Investment Promotion Council, Investment Incentives, <http://www.nipc.gov.ng/investment.html>

<sup>2</sup> The following incentives are available in the solid minerals sector:

- (a) A three- to five-year tax holiday.
- (b) Low income tax of between 20% and 30%.
- (c) Deferred royalty payments depending on the magnitude of the investment and the strategic nature of the project.
- (d) Possible capitalisation of expenditure on exploration and surveys.
- (e) Extension of infrastructure such as roads and electricity to mining sites.
- (f) The holder of a mining lease shall, where qualified, be entitled to:
  - i) Depreciation or capital allowance of 75% of the certified true capital expenditure incurred in the year of investment and 50% in subsequent years.
  - ii) Investment allowance of 5%.
  - iii) Exemption from payment of customs and import duties.
  - iv) Expatriate quota and resident permit for approved expatriate personnel.
- (g) In addition to roll-over relief under the capital gains tax, companies replacing their plant and machinery are to enjoy a once-and-for-all 95% capital allowance in the first year with 5% retention value until the assets are disposed of, with 15% being granted for replacement of an asset.

**10.3.2 Is there evidence that policies to encourage economic diversification are working?****Old response: Partially****New response: Yes****UPDATE STATUS: Some changes observed**

There are indications that some diversification is occurring within the economy perhaps as a result of policies initiated within the past decade. The recent rebasing of the Nigerian economy reveals that, apart from having the largest economy in Africa, with an estimated nominal GDP of US\$ 510 billion, the exercise reveals a more diversified economy than previously thought. The agriculture sector currently accounts for 22% of GDP (down from 35% prior to rebasing), while the service sector's contribution increased from 29% to 52% of GDP, with telecommunication rising from 0.9% to 8.7%. The manufacturing sector is now estimated to contribute 6.85% to GDP, compared to 1.9% previously, while the oil and gas sector's contribution has been revised down to 14.4% from 32.4% before rebasing. The exercise also identified new sectors like hospitality, motion picture and other entertainment sectors that had emerged over the decade.

Non-oil exports have increased impressively in recent years, so the economy is becoming less resource-dependent in terms of non-petroleum trade sector growth and natural resource industry exports as a percentage of exports. However, the new figures also show how heavily the government still relies on oil revenue rather than taxes from non-oil economic sectors for its expenditure. Petroleum exports still account for over 90% of the total value of exports.

**Information source:**

National Bureau of Statistics. Nigerian GDP Rebasing Presentation, 2014.

**10.3.3 Are government incentives for encouraging domestic value-added, time-limited and success-linked?****Old response: No****New response: No****UPDATE STATUS: No observable changes**

There is no indication of timelines or performance measurement to determine the success or otherwise of policies directed toward domestic value-added in Nigeria. There is a tendency for incentives to have a commencement date but the lifespan is subject to the sector minister's discretion. This inhibits the possibility of a time-limited intervention appropriately tied to success indicators. There are no sunset clauses in any of the policies.

**10.3.4 Is the economy becoming less resource-dependent in terms of:  
(a) Non-petroleum trade sector growth (qualitative/broad assessment)?**

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

Total non-oil export earnings by Nigerian exporters during the fourth quarter of 2013 stood at US\$ 1.54 billion, which indicates a decline of 41.5% below the level in the preceding quarter, but an increase of 56.1% above the level in the corresponding quarter of 2012. The development relative to the preceding quarter was attributed, largely, to the decline in foreign exchange receipts from all sectors.

Evidence of this growth direction can also be seen in the recent GDP rebasing exercise of 2014, as discussed in relation to Question 10.3.2 above.

**Information source:**

CBN (2013). Central Bank of Nigeria Economic Report, Fourth quarter 2013.

**10.3.5 Is the economy becoming less resource-dependent in terms of:  
(b) Natural resource industry exports as a percentage of exports?**

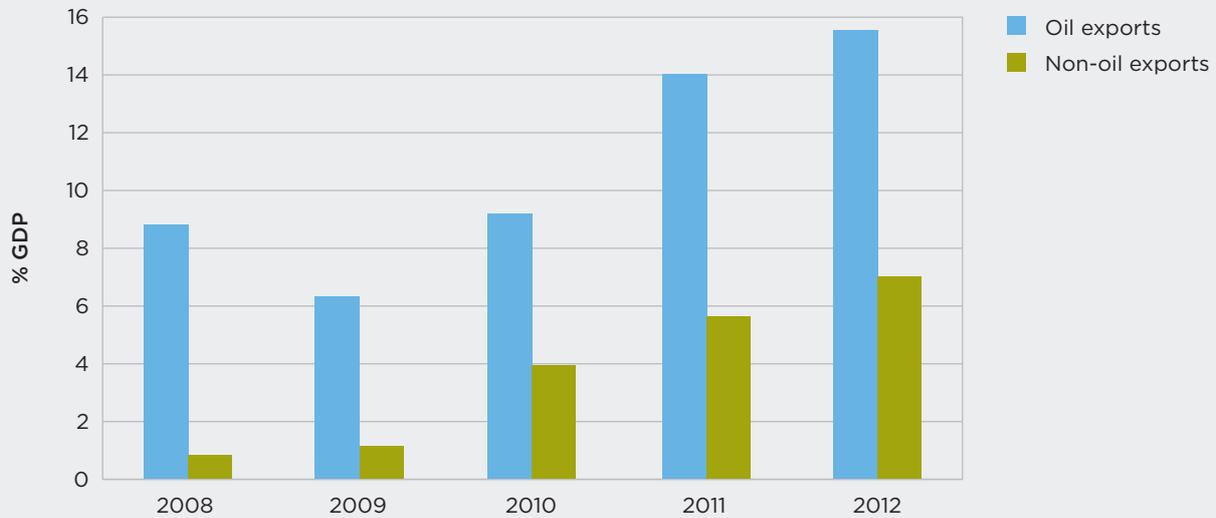
**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: Additional information included**

There has been a steady increase in the non-oil and non-natural resource component of the Nigerian economy, as presented in Figure 10.2.

**Figure 10.2: Nigerian oil and non-oil exports (2008–2012)**



Source: Nigerian Bureau of Statistics; Nigerian Economy Commentary, 2013.

**10.3.6 Is the economy becoming less resource-dependent in terms of:  
(c) Natural resource industry revenues as a percentage of total government revenues?**

**Old response: Yes**  
**New response: Yes**

**UPDATE STATUS: Some changes observed**

The natural resource component of FGN revenue has increased in actual value since 2009 and also in its percentage contribution to total government revenues. According to the Accountant-General, Jonah Otunla, federal government revenue rose 8% to NGN 825.4 billion (US\$ 5.3 billion) in July 2014 compared with NGN 763.6 billion in the previous month, as oil revenue climbed 22%. The increased revenue was due to the increased quantity of crude oil exported. Oil revenue rose to NGN 646.5 billion in the month, while non-oil revenue dropped 23% to NGN 178.9 billion compared with June, Otunla said.

**Information sources:**

CBN Statistical Bulletin.

<http://elombah.com/index.php/write-for-us/12262-nigeria-s-oil-revenue-climbs-22-to-n824bn-in-july>

### 10.3.7 Is the economy becoming less resource-dependent in terms of: (d) Natural resource industry revenue as a percentage of GDP?

**Old response: No**

**New response: Yes**

#### **UPDATE STATUS: Some changes observed**

As a component of GDP, the value of natural resources increased between 2005 and 2010, but the recent rebasing of the GDP reveals that the economy is more diversified than previously reported and that the structure of the Nigerian economy has also changed significantly. The service sector now constitute 51% of GDP, agriculture 22% and oil and gas only account for 15.9%.

#### **Information sources:**

CBN and Federal Ministry of Finance, various regular reports.

National Bureau of Statistics. Nigerian GDP Rebasing Presentation, 2014.

### 10.3.8 Are improvements in these variables due to government action?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: No observable changes**

Government policy has not led to a lower level of dependence on the natural resource sector. The dependence of government revenue on oil exports is more than 80% while its contribution to export earnings is still in the region of 90%. However, some of the noticeable improvements in the economy may not be completely unrelated to government's policies and interventions. The privatisation of government assets, improved business environment, Automotive Policy, Trade and Investment drive, and Agriculture Transformation Action Plan are some of the policies that may have influenced changes.

## PRECEPT 11: ROLE OF HOME GOVERNMENTS OF EXTRACTIVE COMPANIES

The home governments of extractive companies and capital centres should require and enforce best practice. Are home governments and the governments of capital centres acting to require, enforce and propagate best practice in a way that supports efforts at the host country level?



### Overview of the questions and ratings

#### 11.1 REVENUE TRANSPARENCY

**11.1.1** Do home country laws and capital centre regulations have an impact on the level of extractive industry transparency and accountability observed in the host country? ●

**11.1.2** Is there evidence that accounting standards for the international community and multinational companies operating in the host country are effective? ●

#### 11.2 LENDING STANDARDS

**11.2.1** Are standards established by international financial institutions relevant to the host in this context, particularly their affected communities? ●

**11.2.2** Are other lending standards relevant to the host country in this context, particularly affected communities? ●

#### 11.3 ANTI-CORRUPTION

**11.3.1** Are home country and international anti-corruption and anti-money-laundering safeguards applied to international treaties and standards established? ●

**11.3.2** Are home country and international anti-corruption and anti-money-laundering safeguards applied to national anti-corruption and anti-bribery laws in key jurisdictions? ●

## 11.4 TAX LOSS

**11.4.1** Do laws and regulations established by home countries and the international community help to address host country concerns related to capital flight and looted assets?



**11.4.2** Do any voluntary international transfer pricing, automatic information sharing, or beneficial ownership guidelines apply to help address host country concerns related to capital flight and looted assets?



### Summary of key findings

#### Revenue transparency

- Home country laws and capital centre regulations have been developed in the US and the EU to improve the level of extractive industry transparency and accountability observed in the host country, requiring registered companies to publicly report how much they pay government for access to oil, gas and minerals, country-by-country and project-by-project. However, no evidence was found that the accounting standards establishing rules for the international community and multinational companies operating in the host country are effective.
- On 22 August 2012, after a series of stakeholder (companies, advocacy groups and investors) consultations, the SEC in the US voted to adopt the regulations to implement key provisions of the Dodd-Frank Act, with the original proposal being adapted in a balanced manner to create a final rule. Although this rule has not been ratified in the US, it has generated a similar legislation in the EU parliament in which European companies are obliged to report all payments above €100,000 made to the host government.

#### Financing

- International financial institutions have developed some standards to provide socioeconomic and environmental safeguards, including the IFC and the AfDB.
- After the launch of the EP III in June 2013, the EP Association has again updated its guidance document for Equator Principles Financial Institutions (EPFIs) on incorporating environmental and social considerations into loan documentation to reflect the new language and extended scope of EP III.

### Anti-corruption

- There are a number of home country and international anti-corruption and anti-money-laundering safeguards applied through established international treaties and standards. These include the AU Convention on Preventing and Combating Corruption (CPC), the UN Convention Against Corruption (UNCAC), the World Bank's Stolen Asset Recovery (StAR) Initiative, the Financial Action Task Force (FATF) and the OECD Anti-Bribery Convention (ABC). Others are Publish What You Pay (PWYP) Coalition and Transparency International's Revenue Transparency Project. However, the impacts of these conventions within Nigeria are limited.
- Other efforts like the United Nations Global Compact (UNGC), a private sector-led voluntary initiative, have also focused on improving anti-corruption globally as dictated in its Principle 10 on anti-corruption. By partnering with the UN Office on Drugs and Crime, Transparency International, the International Chamber of Commerce, the World Economic Forum Partnership Against Corruption Initiative and the World Bank Institute, the UN Global Compact contributes to the fight against corruption by providing a platform for learning and dialogue and by offering guidance to companies on how to implement Principle 10.

### Tax loss

- Nigeria has yet to implement a tax information exchange agreement. The 2011 Global Financial Integrity survey found that there has been a recent growth in illicit outflows in Nigeria and that over the period 1970–2008, on average, fuel exporters including Nigeria lost capital at the rate of nearly US\$ 10 billion per year, far outstripping the US\$ 2.5 billion lost by non-fuel primary commodity exporters per year.
- There is recognition that operating companies may be in the zone of conflicting national interest and would preferably defer to their home countries. Thus, there is increasing demand for Nigeria to favour countries that are more amenable to its objectives and promote international best practices for all aspects of the oil and gas industry.
- No evidence was found of voluntary international transfer pricing, automatic information sharing or beneficial ownership guidelines that help address host country concerns related to capital flight or looted assets. However, Nigeria's President has notably urged African leaders to take up the fight against corruption and money laundering in order for the continent to develop. He has also advised leaders to move against and check illicit transfers of huge sums of money to the developed world from Africa through sharp practices such as transfer pricing, tax evasion, and corruption, all of which contribute to Africa's economic under-performance.

## 11.1 Revenue transparency

### 11.1.1 Do home country laws and capital centre regulations have an impact on the level of extractive industry transparency and accountability observed in the host country?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Additional information included**

The 2012 NNRC Report notes that, although regulations exist in the US and the EU, they are yet to be fully implemented. In July 2010, the US Congress passed Section 1504 of the Dodd-Frank Act, requiring companies registered with the Securities and Exchange Commission (SEC) to publicly report how much they pay governments for access to oil, gas and minerals, country-by-country and project-by-project. In October 2011, the European Commission issued draft directives requiring similar disclosures from companies listed on EU stock exchanges. Although these standards have yet to be fully implemented, they represent a landmark shift in terms of the oversight that regulators and home country governments exercise over the international operations of oil, gas and mining companies.<sup>3</sup>

The US requirement alone will cover most major internationally operating oil companies, including those with significant activities and capital invested in Nigeria, such as BP, Chevron, ConocoPhillips, ENI-AGIP, ExxonMobil, Nexen, Petrobras, Shell, Sinopec, Statoil Hydro and Total.<sup>4</sup> These companies will, under securities requirements, be compelled to disclose the payments they make to all levels of government in Nigeria, and per project. In Nigeria, this information has the ability to:

- **Reverse a legacy of secrecy.** The vast majority of Nigeria's oil production is governed by contracts that were signed decades ago and kept secret. As these contracts are not publicly available, it is not known what royalty and tax rates apply to different licences. Payment data reported at the project level will increase oversight of government returns.
- **Offer a shared basis for dialogue.** The legislature, the media, civil society and other actors need current information on government receipts to assess what is good policy.
- **Aid local communities, build trust and encourage stability.** Securities disclosures reported by project by Nigerian operators have the potential to provide communities with clear information about what value comes from oil extraction in their regions.

<sup>3</sup> International accounting standards also represent a powerful means of strengthening reporting standards across companies by ensuring greater coverage of companies and fostering a more level playing field. The International Accounting Standards Board (IASB) has in recent years considered the adoption of an IFRS covering extractives-specific reporting (e.g. of critical financial information related to production, profits and reserves). However, while the IASB was expected to make a decision in mid-2011 on whether to add this project to its official agenda, this work stream appears to have been postponed and IASB has not yet announced when it might be resumed.

<sup>4</sup> Of course, not every important multinational company with major investments in Nigeria will be covered, including companies like British Gas and Deminex. But the replication of securities requirements in other markets (in the EU, and ideally in other extractive sector capital centres such as Canada and Australia) will go a long way toward universalising these requirements for all companies.

There has been some further progress since 2012. On 22 August 2012, after a series of stakeholder (companies, advocacy groups and investors) consultations, the SEC voted to adopt the regulations to implement key provisions of the Dodd-Frank Act, with the original proposal being adapted in a balanced manner to create a final rule. Under this rule, **companies are mandated to file their first specialised disclosure report on 31 May 2014 (for the 2013 calendar year) and annually on 31 May every year thereafter.** However, this rule was challenged in 2013 by the American Petroleum Institute (API) before the US Court of Appeal, resulting in a call for a review before the law can come into effect.

Also, on 12 June 2013 the EU Parliament voted in favour of similar legislation. Under the new EU regime, European companies are obliged to report all payments above €100,000 made to the host government. The payment types to be reported include production entitlements, certain taxes, royalties, dividends, bonuses, fees and payments for infrastructure improvements. The vote also removed the ‘tyrant’s veto’ – a clause exempting companies from the reporting requirements where the host country’s criminal law bans such disclosure. Similar legislation was passed in Canada on the same date (12 June 2013).

Here in Nigeria, there has not been any significant support or systematic response to the steps taken by the international community. Recent CBN reforms can be said to have created a precursor of regulatory uniformity within the banking sector, which can be replicated in the oil and gas sector. The proposed PIB would be a good basis to ensure there is similar uniformity for the oil and gas industry operators in order to enhance transparency and accountability.

**Information sources:**

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171484002#.U3yRI5H7HUY>

<http://www.nytimes.com/2012/08/23/business/sec-votes-to-require-more-disclosure-on-source-of-minerals.html>

**11.1.2 Is there evidence that accounting standards for the international community and multinational companies operating in the host country are effective?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

There is no tangible evidence yet, perhaps as a result of several delays in the implementation of the Dodd-Frank and EU recommendations. While accounting standards such as IFRS for multinationals may be operational, evidence of the use of such standards is not reflective of public perception of their impact on host country practices.

## 11.2 Lending standards

### 11.2.1 Are standards established by international financial institutions relevant to the host in this context, particularly their affected communities?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Some changes observed**

In January 2012, according to the 2012 NNRC Report, the IFC released revisions to its Sustainability Framework (i.e. its performance standards), which strengthen IFC commitments on climate, human rights, gender, corporate governance and capacity building. Improvements included:

- **Putting greater emphasis on stakeholder consultation**, including requirements for clients to engage in a process of 'informed participation' with potentially directly affected communities and to obtain Free, Prior and Informed Consent (FPIC) from potentially directly affected indigenous communities prior to beginning development activities. Nigeria's indigenous communities have unfortunate experiences with IFC lending and the need for community consent; it was following the execution of Ken Saro-Wiwa and other Ogoni activists in 1995 that the IFC cancelled a planned US\$ 3 billion LNG project that the activists had opposed. In recent years, the IFC has funded infrastructure, financing and capacity-building projects in extractive sectors in Nigeria; the new informed participation and FPIC requirements are likely to apply to some of these projects, as well as to any new development and production projects. In June 2014 a community of thousands of Nigerian farmers was able to bring a hearing against Shell in a UK Court to pay compensation for oil spills in their communities.
- **Launching a new access to information policy**, requiring the IFC to disclose more project-level environmental, socioeconomic and development impacts, and to require clients in the extractive industry to disclose their contracts with host governments.

The AfDB has also developed lending standards that include some provisions for social and environmental standards, but very little if any of this information, or information on the implementation of these standards, is available in the public domain.

At the end of the 2012 IFC update, there was a decision from February 2013 to start a three-year process to review and update the Environmental, Health and Safety Guidelines, which are technical reference documents with general and industry-specific examples of Good International Industry Practice.

Additionally, the AfDB also published its Country Strategy Paper proposing the strategy for supporting Nigeria's development efforts for 2013 through to 2017, focusing on creating a sound policy environment and investing in critical infrastructure.

**Information sources:**

<http://bit.ly/1gQf675>

<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Nigeria%20-%202013-2017%20-%20Country%20Strategy%20Paper.pdf>

### 11.2.2 Are other lending standards relevant to the host country in this context effective, particularly for affected communities?

**Old response: Yes/No**

**New response: Yes/No**

**UPDATE STATUS: Some changes observed**

According to the NNRC 2012 Report, the IFC performance standards have played an important role as a catalyst for similar ‘safeguard’ standards elsewhere, such as through the adoption of these standards by the project finance industry, in the form of the EPs.<sup>5</sup> In 2012, the EP governing body undertook internal consultation on revised EP standards, began public consultations in May 2012, and launched the new principles at the end of 2012. The revised EPs were expected to have some relevance for Nigeria following the implementation of the PIB, which proposes to turn the NNPC into a limited liability NORC. This would enable it to seek external financing rather than relying on yearly congressional funding approvals. The promise of greater access to competitive financing in international capital markets might provide an incentive for the NNPC to implement the disclosure and process rules of the EPs.

After the launch of the EP III in June 2013, the EP Association has again updated its guidance document for Equator Principles Financial Institutions (EPFIs) on incorporating environmental and social considerations into loan documentation to reflect the new language and extended scope of EP III. It now includes specific clauses on Independent Environmental and Social Consultant Reviews and reporting requirements for borrowers. The body noted, however, that the guidance document is to assist EPFIs in appropriately incorporating ESCs into loan documentation, but is not a required legal framework.

**Information sources:**

<http://www.equator-principles.com/index.php/media-and-news>

[http://www.equator-principles.com/resources/ep\\_guidance\\_for\\_epfis\\_on\\_loan\\_documentation\\_march\\_2014.pdf](http://www.equator-principles.com/resources/ep_guidance_for_epfis_on_loan_documentation_march_2014.pdf)

<sup>5</sup> The EPs have broad international support (adopted by 72 banks and financial institutions as at mid-2011) and include assurance mechanisms whereby companies with funding from ‘Equator banks’ submit annual audit reports on their implementation of the EPs.

## 11.3 Anti-corruption

### 11.3.1 Are home country and international anti-corruption and anti-money-laundering safeguards applied to international treaties and standards?

**Old response: Yes/No**

**New response: Yes/No**

#### **UPDATE STATUS: Additional information included**

Although regional, international and home country conventions and anti-corruption laws all have a role to play in bolstering Nigerian anti-corruption efforts, the application of these has so far been very limited. These conventions and laws mentioned in the 2012 NNRC BE Report include:

- **The CPCC:** Established in 2003, it had 45 signatories by mid-2010, of which 31 had ratified the convention, including Nigeria (in 2006).<sup>6</sup> Unfortunately, the impact of the AU CPCC has been very limited.
- **UNCAC,** launched in 2005, aims to criminalise corruption in overseas enterprises and may have a slightly larger impact on Nigerian anti-corruption efforts. It has a broad membership, with over 140 signatories, including Nigeria. Implementation requires that the convention be domesticated into national law and that the participating country have certain key 'implementing institutions' including: (i) an access to information law; (ii) independent anti-corruption agencies; (iii) whistleblower protection legislation; and (iv) an independent and impartial judiciary. The impacts of UNCAC on anti-corruption standards and regulations are mainly in providing a clear international norm – i.e. a 'universal value' – regarding the importance of addressing corruption issues. With the passing of Nigeria's FOI Act in 2011, an opportunity may exist to link this achievement to support for other UNCAC implementing institutions.
- **The World Bank's StAR Initiative** assists developing countries in recovering funds stolen by corrupt leaders. The Initiative's inaugural action plan, published in 2007, took Nigeria as a case study for the rationale behind StAR's own work, citing the looting by General Sani Abacha of US\$ 3-5 billion during his 1993-1998 rule. Although only US\$ 505 million of this loss was eventually repatriated, this recovery – motivated by official Nigerian investigations and aided by a Mutual Legal Assistance agreement that the Obasanjo government signed with Swiss authorities in 1999 – is a model for international cooperation on asset recovery.
- FATF is an intergovernmental standard-setting body focused on policy remedies to combat money laundering and terrorist financing. It aims to increase transparency within the international financial system by advocating best practice recommendations (e.g. for criminalising money-laundering activities) and facilitating state cooperation with international actors and financial institutions. Nigeria has made a high-level commitment to work with FATF but as at February 2012 FATF deemed Nigeria to not yet have made significant progress with its overall anti-money-laundering agenda.

<sup>6</sup> In 2008, the OECD and AfDB launched a joint initiative, based on the OECD ABC and the AU CPCC, with the aim of working with African policy-makers, businesses and regional and international organisations in order to boost private sector competitiveness, by promoting standards of corporate integrity and accountability.

- **The OECD ABC**, launched in 1997, establishes legally binding standards to criminalise the bribery of foreign public officials in international business transactions. However, the monitoring mechanisms of the OECD ABC are fairly weak, and it lacks a sanction mechanism and a strong sectoral focus.

However, there has been some recognised improvement in the international anti-corruption campaign among business communities, governments, civil society and other stakeholders. Since 2012, the efforts of the United Nations Global Compact (UNGC), a private sector-led voluntary initiative, have focused on improving anti-corruption globally as dictated in Principle 10.

By partnering with the UN Office on Drugs and Crime, Transparency International, the International Chamber of Commerce, the World Economic Forum Partnership Against Corruption Initiative and the World Bank Institute, the UN Global Compact contributes to the fight against corruption by providing a platform for learning and dialogue and by offering guidance to companies on how to implement Principle 10. The UNGC invites participant companies and countries to sign on to a Call to Action that integrates good governance and anti-corruption into the post-2015 Development Agenda.

Also, following satisfaction with Nigeria's improvement and implementation of the mutually agreed Action Plan of the Global Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) compliance, the FATF (in its plenary meeting held in Paris on 16 and 18 October 2013) has removed Nigeria from the list of countries identified as jurisdictions with significant deficiencies in their AML/CFT regimes. The country will now work with a FATF-style regional body as it continues to address the full range of AML/CFT issues identified in the Mutual Evaluation Reports.

**Information sources:**

UNGC (2014). Anti-Corruption.

[http://www.unglobalcompact.org/issues/transparency\\_anticorruption/](http://www.unglobalcompact.org/issues/transparency_anticorruption/) (accessed 30 June 2014).

<http://www.fatf-gafi.org/topics/fatfgeneral/documents/plenary-outcomes-oct-2013.html>

**11.3.2 Are home country and international anti-corruption and anti-money-laundering safeguards applied to national anti-corruption and anti-bribery laws in key jurisdictions?**

**Old response: Yes**

**New response: No**

**UPDATE STATUS: Some changes observed**

Despite the UK government's prosecution of James Ibori and other foreign governments' initiatives, there have been no indications of improvements in international anti-corruption and anti-money-laundering safeguards applied within Nigeria. On the contrary, a number of controversial allegations about public officials being engaged in corrupt practices in the management of public finances have cast heavy doubts on the sincerity of the government's war against corruption. As mentioned throughout this report, allegations of missing oil funds to the tune of US\$ 20 billion emerged without any alerts from safeguards or standards in place.

Additionally, petrol subsidy scams have been exposed by a number of panels of inquiry. However, thorough investigations and sanctions, where allegations have been confirmed, continue to seem difficult within the Nigerian political context. This means corruption may have worsened. Moreover, public perception of anti-corruption endeavours has also consistently declined.

**Information sources:**

<http://www.justice.gov/opa/pr/2011/March/11-crm-313.html>

UK Bribery Act.

## 11.4 Tax loss

### 11.4.1 Do laws and regulations established by home countries and the international community help to address host country concerns related to capital flight and looted assets?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes provides some guidance on stemming losses through improved tax policy. The Forum includes 100 member countries, including Nigeria and, in fact, Nigeria is one of only 10 resource-dependent low- or middle-income countries in the Forum. It is, however, yet to implement a tax information exchange agreement, a bilateral instrument that serves as the mechanism for tax exchange between host and home countries.

Not much has changed since the 2012 NNRC BE Report, which noted that, in 2011, Global Financial Integrity saw a growth in illicit outflows (simultaneous to a rise in oil prices) 'from several oil producers such as the United Arab Emirates, Kuwait, Venezuela, Qatar, Nigeria, Kazakhstan and Indonesia' and reported that the top 10 exporters of illicit capital (all of them oil exporters) account for 'an average of 70% of cumulative illicit outflows from developing countries over the period 2000–2008.' Looking back further, over the period 1970–2008 Global Financial Integrity finds that 'on average, fuel exporters including Nigeria lost capital at the rate of nearly USD 10 billion per year, far outstripping the USD 2.5 billion lost by non-fuel primary commodity exporters per year.' Illicit tax loss at the hands of corporate accounting malfeasance is clearly a domestic problem for Nigeria, and one with international implications.

**Information sources:**

Kar, Dev and Karly Curcio, *Illicit Financial Flows from Developing Countries: 2000-2009; update with a focus on Asia* (Washington, DC: Global Financial Integrity, 2011).

Hollingshead, Ann. *The Implied Tax Revenue Loss from Trade Mispricing* (Washington, DC: Global Financial Integrity: 2010).

'Extractive Industries and Illicit Financial Flows': <http://www.u4.no/publications/extractive-sectors-and-illicit-financial-flows-what-role-for-revenue-governance-initiatives/>

**11.4.2 Do any voluntary international transfer pricing, automatic information sharing, or beneficial ownership guidelines apply to help address host country concerns related to capital flight and looted assets?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

There are no such guidelines in place in Nigeria. However, in May 2013, during his state visit to South Africa, President Goodluck Jonathan urged African leaders to take up the fight against corruption and money laundering in order for the continent to develop. He advised leaders to move against and check illicit transfers of huge sums of money to the developed world from Africa through sharp practices such as transfer pricing, tax evasion, and corruption, all of which contribute to Africa's economic under-performance.

**Information source:**

Usman, T. (2013). Jonathan urges African leaders to fight corruption, capital flight. *Premium Times*, 7 May 2013.

<http://www.premiumtimesng.com/news/133137-jonathan-urges-african-leaders-to-fight-corruption-capital-flight.html> (accessed July 2014).

## PRECEPT 12: ROLE OF PRIVATE SECTOR COMPANIES

All extraction companies should follow best practice in contracting operations and payments.



### Overview of the questions and ratings

#### 12.1 SOCIAL LICENCE TO OPERATE

**12.1.1** Do private sector extractive companies take sufficient steps to maintain their 'social licence to operate' by actively engaging with government and community stakeholders?



**12.1.2** Do companies take adequate steps to ensure delivery of benefits to the community?



**12.1.3** Do they take adequate steps to ensure delivery of benefits to wider society?



**12.1.4** Do they operate with integrity, inclusivity and transparency?



**12.1.5** Do they set consistent internal standards and ensure staff and sub-contractor compliance?



**12.1.6** Do they respect citizens' rights?



#### 12.2 BEST AND LEADING PRACTICES

**12.2.1** Are extraction companies following best practice in contracting, operations and payments?



**12.2.2** Do the companies consistently comply with national or international laws, standards and best practice?



**12.2.3** Are companies committed to investing in social programmes and to CSR?



## Summary of key findings

Private companies, in their statements and reports, emphasise extensive efforts to benefit the host country and communities, however, many citizens and external observers call these efforts into question. Moreover, there is legitimate debate about what is the responsibility of companies as opposed to the government. Whose fault is the lack of infrastructure in producing communities? How much can JV companies be expected to do about gas flaring when government fails to pay its share of investment costs? What are the implications of setting low penalty rates for flaring? To what extent are companies required to self-regulate in the absence of competent regulatory authorities?

### Social licence to operate

- The evidence indicates that some engagement between private sector extractive companies and FGN exists, but this is more limited between companies and communities.
- All multinational companies have made commitments to CSR as well as to social programmes in the communities in which they operate. In response to the UNGC initiative and other initiatives like the GRI, some companies like Oando Oil and Gas are beginning to join efforts to document and report on a wider outlook of their operations beyond CSR. A new sustainability approach encourages a comprehensive strategy of action that considers the three dimensions of people, planets and profits. These have brought visibility to commitments for companies to secure a social license to operate.
- However, many public commentaries still indicate that companies have not done enough in this regard although the blame is also directed towards host governments.
- Gas flaring, oil spillages and inadequate oil well abandonments are examples of violations of the rights of people to live in a healthy, safe environment.

### Best and leading practice

- The NEITI audit and reconciliation report covering the period 2009 to 2011 provides insights into some notable contract and payment issues. These include differences between payments recorded by companies and by government on royalties and signature bonuses.
- The greatest source of payment failure undoubtedly relates to the absence of any adequate measure of the volume of crude extracted at source or accountability for the oil stolen between the field and the export terminal.
- PSCs do not make any provision for how parties should treat the gas available for commercial exploitation.
- Available research suggests that oil companies do not work in compliance with national and international laws, especially in regard to pollution management.

## 12.1 Social licence to operate

### 12.1.1 Do private sector extractive companies take sufficient steps to maintain their 'social licence to operate' by actively engaging with government and community stakeholders?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Some changes observed**

Evidence from the 2012 NNRC Report indicates that engagement between private sector extractive companies, government, and communities exists to varying degrees. Commentators generally agree that while active engagement exists between company and FGN stakeholders, engagement between company and community stakeholders occurs but is often not of sufficient scope and quality to justify and maintain a 'social licence to operate'. However, engagements with local government councils are more robust and have greater depth. In many cases examined, local government council projects are often supported by extractive companies operating in their domain. Similarly, infrastructural projects by extractive companies are commissioned for the benefit of host communities. Findings indicate that all multinational companies have made commitments to CSR as well as to social programmes, especially in the communities where they operate. Community liaison officers are generally elected or appointed to facilitate interaction between the host communities and the companies, while social interventions include programmes in education, sports, micro-credit schemes, health, etc. In most instances, the oil-bearing communities in the Niger Delta are dotted with projects initiated or supported through the CSR programmes of oil companies.

There have also been instances of engagements between state governments and companies. Aside from statutory responsibilities, which include payment of certain operational fees, oil companies generally engage with states on a range of infrastructural and social issues. Collaborations in this regard have often occurred in the education, health and power sectors. In the education sector, for instance, scholarship programmes for deserving indigenes of the states have been jointly supported. State government-owned schools have benefitted from infrastructural facilities provided by oil companies.

However, observers note the shortfalls of these efforts. Celestine Akpobari, of the Ogoni Solidarity Forum and Social Action, says that oil companies operating in Nigeria assume that once they have engaged federal government, their job is complete: 'For them, communities are merely collateral damage ... they (companies) feel in no way obliged to consult them (communities) on the many issues that border on people's livelihood and environment'. Akpobari adds: 'If communities were engaged, none would agree to gas flaring, which is standard practice in the Delta'.

Alagoa Morris, of Friends of the Earth Nigeria, says that where company-driven community engagement exists it is selective: 'Standard oil company practice involves discussions with small groups of community members, quite distinct from all (community) stakeholders ... this narrow engagement amounts to a divide and rule strategy, which has escalated conflicts between oil companies and communities'. For example, according to Morris, the failure of SPDC when operating in Ikarama to engage broadly with the community led to an unprecedented sabotaging of 17 oil installations to compel the company to engage.

Green Isaac, a community volunteer, agrees with Morris's observation that the violent conflict and disruption of oil activities is largely caused by the failure of the oil companies to actively engage with the communities because "the companies view communities with contempt, feeling no sense of corporate responsibility for them. This has been intensified by the fact that no laws exist to compel oil companies to engage with communities'. He adds that on rare occasions where companies have made attempts to engage, it has been borne out of stiff pressure by the communities and has usually been unproductive.

A report by Social Action, entitled 'Fuelling Discord' (2009), examines the relationships between communities and oil companies in three Niger Delta communities. The report's findings confirm the aforementioned perceived relationship and further suggests that oil companies use monetary incentives to divide communities and weaken democratic and development structures in order to operate freely. The report claims that this situation is facilitated and maintained by the lack of government goods and service provision in the Delta, which creates socioeconomic dependency on the companies.

On a different note and in response to the UNGC (described in relation to Question 11.3 above) and other initiatives like the GRI, companies are beginning to join efforts to document and report on a wider outlook of their operations beyond CSR. The approach encourages a comprehensive strategy of action that considers the three dimensions of people, planets and profits, i.e. the social, environment and economic impact of the industry. This thinking requires that companies take responsibility for their entire supply chain and enforce sustainable principles and practices at every point of their operations. In doing so, host communities become an integral part of the company's decision-making process as the need to obtain a social licence to operate becomes imperative.

Industry improvements have been identified, with examples including Chevron Nigeria Limited's General Memorandum of Understanding (GMOU) model for addressing relationships with clusters of communities impacted by the company's onshore operations and government. Despite the challenging context, where substantial mistrust and antagonism have existed historically between communities and companies, Chevron's GMOU model has been able to transform the outcomes for residents and the company. In other words, the GMOU approach has been used to obtain a social licence to operate within the communities.

In another instance, Oando's Sustainability Report documents activities that have helped the company integrate sustainability at the core of its operations in difficult circumstances in the Niger Delta. From conceptualisation and delivery of value-adding products and services, to the development of local communities through sustainable social investment, Oando has been able to organise impact on host communities into its corporate governance strategy.

These sort of improvements remain at a relatively small scale and require the regulator to take on the responsibility of driving the process for industry-wide participation. For example, the government role in ensuring that the EITI standards are domiciled for all operators is critical. Communities should be encouraged to take ownership of operations and become active stakeholders themselves.

**Information sources:**

Social Action, Fuelling Discord, 2009.

<http://www.minorityrights.org/5752/nigeria/delta-minority-groups.html>

Hoben, M., Kovick, D., Plumb, D., and Wright, J. (2012). Corporate and Community Engagement in the Niger Delta: Lessons Learned from Chevron Nigeria Limited's GMOU Process (accessed 10 June 2014).

[http://www.cbuilding.org/sites/default/files/field\\_expertise\\_products/Corporate%20and%20Community%20Engagement%20in%20the%20Niger%20Delta\\_Lessons%20Learned.pdf](http://www.cbuilding.org/sites/default/files/field_expertise_products/Corporate%20and%20Community%20Engagement%20in%20the%20Niger%20Delta_Lessons%20Learned.pdf)

Oando (2012). Sustainability Report. [http://www.oandopl.com/wp-content/uploads/Oando-Sustainability-Report\\_D6\\_FEB2014.pdf](http://www.oandopl.com/wp-content/uploads/Oando-Sustainability-Report_D6_FEB2014.pdf) (accessed 26 June 2014)

### 12.1.2 Do companies take adequate steps to ensure delivery of benefits to the community?

**Old response: No**

**New response: No**

#### **UPDATE STATUS: Additional information included**

As reported in the 2012 NNRC BE Report, all the IOCs operating in Nigeria continue to provide information about their CSR programmes. While community and civil society respondents agreed that, in most communities, there is a measure of benefit directly attributable to the oil companies (mostly in the form of primary and secondary school buildings, scholarships, hospitals and town halls), they differed on whether those 'benefits' were commensurate with the profits of the oil companies and the negative impact of their activities on the communities.

Aside from the delivery of target benefits to host communities affected by projects, Nigerian companies are generally noted for participating in funding programmes in all categories of CSR including education, health and infrastructure. SPDC, for example, says it has given back considerably to the community. In a web chat, it says its largest contribution is in the form of taxes and royalties where 95% of revenue after tax goes to the government. 'We also do a lot for our host communities in the area of education, health, and employment generation ... SPDC currently supports 27 health facilities in the Niger Delta. Other important benefits relate to the indirect employment we create through contracts'. It is also reported that the company contributes annually to social investment, including small business development, education, community health services, agriculture and infrastructure projects: 'A lot of these projects are implemented in partnership with government, government agencies, international organisations, NGOs and communities themselves'. Companies are required to contribute to the Niger Delta Development Commission, which used government and company funds to promote development in oil-producing states. These contributions totalled over US\$ 80 million in 2008, according to the NEITI report.

IOCs continue to award scholarships for indigenes of local communities to further their education at the undergraduate and postgraduate levels, with some also offering secondary school scholarships. These give local communities the opportunity to have well trained indigenes who should then take up the responsibility of giving back to their communities after their studies. Some of these companies also have foundations like the SME fund Grofin, which assist local communities in growing their businesses by providing growth finance (a critical part of SMEs) and other business support.

However, in the 2012 NNRC Report, Vivian Bellonwu of Social Action states that the presence of infrastructure in the host communities was undeniable but that it is not commensurate with the perceived profits the companies derive from those areas and that the negative impacts of oil exploration activities are much greater than what they get in return as benefits. Additionally, Jim Dorgu, Chairman of the Bayelsa State NGO Forum, is of the view that whatever benefits have been accrued by host communities were produced in response to community agitation and pressure, and as such should not be seen as an indication of a commitment to planned measures to deliver community benefits.

Nevertheless, Dorgu feels the blame lies with FGN, which should have primary responsibility for developing the oil communities. According to him, it is the failure of the government to lead by example and pioneer service delivery to host communities that has engendered neglect of the communities by companies. Festus Iyayi, an author and social commentator based in the Niger Delta, posits in a lecture paper that the crisis in the Delta region is a result of the failure of both FGN and the oil companies to adequately address the issue of development benefits.

### **Information sources:**

Financial Times (2013). The Africa Sustainability Barometer.

<http://www.thisisafricaonline.com/content/download/10863/192512/file/African%20Sustainability%20Barometer.pdf>

<http://www.grofin.com/development-impact-solutions/our-development-partners/our-strategic-partnership-with-the-shell-foundation.aspx>

<http://pengassan.org/old/pdf/Pengassan%20Paper%20On%20The%20Niger%20Delta%20Crisis%20At%20Ijebu%20-%20Ode.pdf>

<http://www.shelldialogues.com/sites/default/files/Nigeria%20Webchat%20-%20July%202011%20-%20Session%201.pdf>

<http://neiti.org.ng>

### 12.1.3 Do companies take adequate steps to ensure delivery of benefits to wider society?

**Old response: No**

**New response: No.**

#### **UPDATE STATUS: Additional information included**

As reported in the 2012 NNRC Report, most benefits accrue through tax and other payments made to the Nigerian government, which are shared, according to Nigeria's revenue allocation formula, between federal, state and local levels. This payment amounts to a substantive portion of the revenue of Nigerian governments at the various tiers.

Some of the companies actually take steps to deliver benefits to the wider society beyond the petroleum sector, since a fund like the Grofin Fund is not only limited to the local indigenes where the company operates. More importantly, education scholarships are available for undergraduate and postgraduate level to empower people and are awarded on merit across the federation.

All oil companies in Nigeria present facts and figures that indicate that they have ensured benefits to the wider society. SPDC, for instance, says it is contributing to Nigeria's power generation projects. However, overwhelming commentaries claim that oil companies have not done enough in this regard. It should be mentioned, on the other hand, that this position is reinforced by the fact that most Nigerians perceive that oil has not been of much benefit to them, rather than any particular failing of oil companies. The FGN Secretary recently made a similar claim when he said that the country's oil resources were yet to be exploited for the benefit of its people.

Patrick Naagbantou, Executive Director of the Centre for Human Rights, Environment and Development, feels that oil companies have no interest in benefits, either to communities within the domain of their activities or to the wider society: 'For (oil) multinationals, it is all about profit. The only duty they recognise is that of making the required payments to the federal government and their shareholders'.

Amiebi Clarkson, a human rights lawyer in Bayelsa State, suggests that most oil companies use non-interference in the politics of the country as a convenient excuse to turn a blind eye to the failure of government partners to utilise oil wealth for the benefit of wider society: 'When it comes to taking steps to see that benefits of oil wealth are delivered to the wider society, they cite their policy of non-interference that ties their hands. However, when the interests of oil companies are being debated in the National Assembly, they lobby freely. Isn't that interference with the law making process?'

A report by the Climate Justice Programme and Environmental Rights Action and Friends of the Earth Nigeria, entitled 'Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity' (2005), suggests that the only benefits they ensure delivery of are their own and those of the corrupt elite. It argues that far from delivering benefits to wider society, oil activities have brought economic and environmental misery to wider society.

Another aspect, also difficult to objectively assess, is the contributions made by companies through the provision of employment and contracts to local individuals and companies. As has been mentioned throughout this report, Nigeria has local content requirements that certainly encourage companies to source employees and inputs locally and they report widely on these contributions. However, it is also reported that the standards are unevenly enforced by the relevant authorities.

**Information sources:**

<http://www.grofin.com/development-impact-solutions/our-development-partners/our-strategic-partnership-with-the-shell-foundation.aspx>

<http://www.vanguardngr.com/2012/04/oil-yet-to-be-exploited-for-nigerians-benefit-anyim/>

<http://www.climatelaw.org/cases/case-documents/nigeria/report/gas.flaring.in.nigeria.html>

**12.1.4 Do companies operate with integrity, inclusivity and transparency?****Old response: No****New response: No****UPDATE STATUS: No observable changes**

There has been no change observed in this area since the 2012 NNRC BE Report. On the theme of integrity, Obodekwe opines that this is not a consideration for oil companies: 'Where is the integrity when oil companies arm groups? Where is the integrity when they operate in areas where people live in abject poverty, or where oil pollutes the lands and waters of the community? No, integrity is not a consideration at all. What the multinationals do at the global scene is image laundry. It is calculated to give the impression all is well, even when the facts on the ground point to the opposite'.

On whether extractive companies operate inclusively, responses range from good to fair; while it is a fact that oil companies have put in place structures to facilitate some level of participation (especially with stakeholders in the communities where they operate), opinions from communities indicate that the politics of inclusion have mostly been badly managed and have led to community dissent. In the operations of oil companies, inclusivity mostly involves consultations with chiefs and community elders as well as awarding low-level contracts to community members. But according to communities and civil society respondents, this inclusivity has been done selectively and has alienated other sections of the community, which in turn breeds discontent and often crisis. In Rumuekpe, an oil-bearing community in Rivers State with installations operated by SPDC, Agip, Total and a local oil company, this practice led to an intra-communal crisis where all houses in the community were destroyed and the community abandoned by its inhabitants.

Speaking on the subject of transparency in a policy dialogue on oil and gas management in federal countries with the theme 'Ensuring Transparency and Accountability', the Governor of Delta State Emmanuel Uduaghan stated that oil companies did not declare the actual number of barrels of oil produced daily, which, to him, denied the country huge resources. He blamed this on lack of management. According to him, he participated in a seminar where five different consultants had different data on the oil produced by the oil companies, indicating that even the companies were not transparent or honest in their dealings.

There is indeed a lot of opacity. While companies do participate in NEITI (which is required by Nigerian law), they do not comply with global best practices. Companies do not disclose project-level revenue data, contracts, EIAs, production data by field, and other crucial information, and confidentiality clauses are common. SPDC has recently started publishing oil spill data, which is a bright spot on the transparency front.

A report by Transparency International (2011) on extractive sector company transparency shows that the NNPC has the least transparent record of the 44 national and international energy companies examined. In rating a list of oil and gas companies that make up 60% of global output, the NNPC was the only company to score zero on information disclosure, which included the provision of details of deals agreed with governments and partners on energy projects. The average score was 65%. The large foreign companies score poorly on the disclosure of information about their operations in specific countries, such as Nigeria. Falling well behind field-leading Statoil (69%) are Eni (20%), Total (11%), Exxon (10%), SPDC (10%) and Chevron (8%).

According to Bonny Akaeze, a local government employee in Delta State, the problem of transparency does not only occur at the NNPC, however, but cuts across the various layers of government and the oil companies. Akaeze claims that the reason that this problem has become so prevalent is due to the fact that the necessary institutional frameworks for transparency have not been strengthened. Steve Obodekwe, a Niger Delta-based journalist, feels that there is no incentive for companies to change this situation because it allows them to earn unprecedented profits.

#### Information sources:

[http://africanquarters.com/archive/index.php?option=com\\_content&view=article&id=1377:nigerian-oil-firm-has-poorest-transparency-study&catid=49:economy&Itemid=84](http://africanquarters.com/archive/index.php?option=com_content&view=article&id=1377:nigerian-oil-firm-has-poorest-transparency-study&catid=49:economy&Itemid=84)

<http://nnn.com.ng/?p=7089>

[http://transparency.org/whatwedo/pub/promoting\\_revenue\\_transparency\\_2011\\_report\\_on\\_oil\\_and\\_gas\\_companies](http://transparency.org/whatwedo/pub/promoting_revenue_transparency_2011_report_on_oil_and_gas_companies)

[http://africanquarters.com/archive/index.php?option=com\\_content&view=article&id=1377:nigerian-oil-firm-has-poorest-transparency-study&catid=49:economy&Itemid=84](http://africanquarters.com/archive/index.php?option=com_content&view=article&id=1377:nigerian-oil-firm-has-poorest-transparency-study&catid=49:economy&Itemid=84)

### 12.1.5 Do companies set consistent internal standards and ensure staff and sub-contractor compliance?

**Old response: Yes**

**New response: Yes**

**UPDATE STATUS: No observable changes**

As reported in the 2012 NNRC BE Report, all the companies examined (SPDC, Total FINA ELF, Chevron and Agip) set internal codes of practice covering a wide range of issues. In the case of SPDC, the largest multinational oil company in Nigeria, its Code of Conduct document is a relevant guide. It prescribes behavioural patterns binding on all staff (including contract staff and others acting on the company's behalf), JV partners (where SPDC has control), and contractors.

SPDC also stipulates standards covering the environment, health, safety, sustainable development, human rights, bribery and corruption, dealing with government officials, and political activities and payments, while the company's General Business Principles outline broader guidelines governing how SPDC carries out its business. Indeed, most IOCs in Nigeria stipulate business and operating principles, standards, and codes.

Peter Bloom, of Amnesty International’s Media for Justice Project in Nigeria, supports this view: ‘What the oil companies replicate on their websites are what ought to be, quite distinct from what is. In reality, they cut corners whenever it is possible and profitable for them, they interfere in the internal local and national politics of the home country, they destroy the environment, instigate conflict, and disrespect country laws.’

In line with what Bloom suggests, despite these avowed commitments it is the opinion of many sector commentators that they exist only on paper and are not sufficiently followed or enforced by oil companies in Nigeria. Romeo Need, a human rights lawyer, states that, ‘The manner that oil companies in Nigeria operate cannot be viewed as being in line with industry ethical standards. They regularly flout standards, cut corners, destroy the environment and operate as overlords. They pitch communities where they operate against each other, and in at least one instance (the Ogoni) purchased arms ostensibly for the suppression of community people.’

**Information source:**

[http://wwwstatic.shell.com/static/aboutshell/downloads/who\\_we\\_are/sgbps/sgbp\\_english.pdf](http://wwwstatic.shell.com/static/aboutshell/downloads/who_we_are/sgbps/sgbp_english.pdf)

**12.1.6 Do companies respect citizens’ rights?**

**Old response: No**  
**New response: No**

**UPDATE STATUS: No observable changes**

The 2012 NNRC BE Report cites a report by Platform, a UK-based human rights and environment advocacy group, entitled ‘Counting the Costs’ (2011), which gives evidence of SPDC’s complicity in violating citizens’ rights and instigating conflicts. Key findings of the report are that:

- Platform has heard testimony and seen contracts implicating Shell in regularly assisting armed militants with lucrative payments. In one case in 2010, SPDC is alleged to have transferred over US\$ 159,000 to a group credibly linked to militia violence.
- Shell admits that, from 2006 onwards, the company paid thousands of dollars every month to armed militants in the town of Rumuekpe, in the full knowledge that the money was used to sustain three years of conflict.
- A company manager exposed structural problems with Shell’s community development programme, claiming that ‘the money is not going into the rightful hands’ and that poor community engagement caused SPDC to shut down one-third of its oil production in August 2011 after 12 oil spills in the Adibawa area.

Isaac Osuoka, of Social Action Nigeria, cites continued gas flaring in the Niger Delta as a clear case of violation of the rights of the people to live in a healthy, safe environment. Furthermore, he states that the oil spillages, which destroy farmlands and pollute rivers, are a violation of the right to life: ‘When your activities neglect and erode people’s livelihood, you have denied them their right to life, as well as violated laws.’

These, and numerous other documented accounts, suggest that oil companies operating in Nigeria pay little or no attention to the rights of citizens, and may actively work in alliance with the government to violate them. However, perhaps unsurprisingly, the oil companies vehemently deny all allegations of wrongdoing and any complicity in human rights abuses.

**Information source:**

*<http://blog.platformlondon.org/2011/10/03/counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta/>*

## 12.2 Best and leading practices

### 12.2.1 Are extraction companies following best practice in contracting, operations and payments?

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

In 2013, the US Court of Appeal dismissed a lawsuit instituted by organisations in the oil industry to challenge the Dodd-Frank Act. The Act is a US law that requires all US and foreign oil companies to mandatorily disclose publicly all payments made to the US and foreign governments where they operate. The NEITI noted that the decision was worthy of emulation by all countries that subscribe to the global EITI, and should spur Nigeria to quickly pass the PIB, which is currently before the National Assembly.

This US law is also in line with a major declaration by the EU to adopt an agreement among all EU countries to compel all EU-listed companies operating in the oil, gas, mining industry to make similar public disclosures on payments made to governments at home and their host countries on project-by-project basis. With these laws in place, it is expected that extraction companies will, going forward, begin to follow best practice in all segments of their operations, payments and contracting.

However, there are still instances of oil majors deliberately fleecing the country through their complex extractive business models and dealings with the government. The issue of cost padding is prevalent among oil multinationals, which constantly increase capital expenditure costs in an attempt to remain 'economically viable' for the projects. A peculiar case is that of Total's Ofon 2 field, located on OML 102. The cost of the project was increased by 132.6% to US\$ 3.78billion from US\$ 2.85 billion, bringing the total costs to about US\$ 6.63 billion.

Total had used its influence at the Presidency and the Ministry of Petroleum Resources ‘to get it approved at over \$1billion above the original estimates.’ This is also a common practice among oil majors. Lending credence to this, NAPIMS in its economic analysis of the project in a memo dated 9 August 2010, with reference number NAP/PL/01.04 and exclusively obtained by Vanguard, concluded after its review of the estimates that: ‘the economics of the project based on the updated FDP (Field Development Plan) is not robust and adds no value to the Federal Government of Nigeria.’

In terms of payments from the IOCs, the greatest source of failure undoubtedly relates to the absence of any adequate measure of the volume of crude extracted at source, making it impossible to accurately and verifiably calculate the correct tax or royalty revenues that are due to government. As Ogbonnaya Orji, who sits on the board of NEITI, observes: ‘Nobody can tell you exactly how much of our crude is extracted from our soil... we depend on records from the oil companies. That clearly has to change.’

**Information sources:**

Okafor, C. (2013). NEITI Lauds US Courts Dismissal of Suit against Disclosure Law – ThisDay. Oil Revenue Tracking Initiative. <http://www.oilrevenue.org/index.php/2013-08-23-05-51-22/itemlist/date/2013/5?start=30>

<http://www.vanguardngr.com/2014/05/oil-majors-fleece-nigeria-inflated-project-costs/>

<http://www.neiti.org.ng>

**12.2.2 Do the companies consistently comply with national or international laws, standards and best practice?**

**Old response: No**

**New response: No**

**UPDATE STATUS: Additional information included**

From the 2012 NNRC Report, a research paper by Aghalino and Eyinla of the University of Ilorin Nigeria, entitled ‘Oil Exploitation and Marine Pollution: Evidence from the Niger Delta, Nigeria’ (2009), draws on two case studies of oil pollution involving Mobil and Texaco and draws the conclusion that oil companies do not work in compliance with national and international laws, especially with respect to pollution management. Comparing the legal framework on oil pollution in Nigeria to that in other countries, the paper states: ‘Government inertia in enforcing laws seems to have informed the lukewarm attitude of the oil majors to environmental protection and conservation. This is in spite of the fact that the Nigerian Petroleum Act, 1969 makes it mandatory for an oil company to adopt all practicable precautions to prevent pollution, and where such pollution occurs, taking remedial measures to control and remove it’.

A report by UNEP indicates that SPDC had violated key national and international laws in its many years of oil extraction. Similarly, a report by Steiner entitled ‘Double Standards’ (2010) concludes that: ‘SPDC Nigeria continues to operate well below internationally recognised standards to prevent and control pipeline oil spills, and thus is out of compliance with Nigerian law’. However, despite the reference to SPDC here, civil society and community respondents consulted were of the view that legal violations apply to all oil companies operating in Nigeria.

Other standards such as those in transparency are not well fulfilled. For example, while companies have signed up to EITI – both internationally and in Nigeria – their voluntary reporting practices are limited. Compliance is mostly borne out of pressure from civil society groups and communities. Company operations have been disrupted by citizen unrest stemming from the high level of distrust that has existed in the industry. MOUs are signed with a failure to follow through on the implementation agreements. As a result, there is still a significant gap between the levels of compliance observed by companies in their home countries compared with those observed in Nigeria. A sort of double standard approach to corporate governance has already been alleged; this may be as a result of a weak or compromising regulator that fails to enforce sanctions to encourage consistent compliance with best practices standards. It is expected that as government care for its citizen increases, it will take a position to fight for the welfare of those citizens.

**Information sources:**

<http://milieudedefensie.nl/publicaties/rapporten/double-standard>

[http://postconflict.unep.ch/publications/OEA/UNEP\\_OEA.pdf](http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf)

[http://www.eccplatform.org/index.php?option=com\\_content&view=article&id=2977:counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta&catid=94:conflict-transformation-news&Itemid=191](http://www.eccplatform.org/index.php?option=com_content&view=article&id=2977:counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta&catid=94:conflict-transformation-news&Itemid=191)

<http://www.krepublishers.com/02-Journals/JHE/JHE-28-0-000-09-Web/JHE-28-3-000-09-Abst-PDF/JHE-28-03-177-09-1964-Aghalino-S-O/JHE-28-03-177-09-1964-Aghalino-S-O-Tt.pdf>

Extracts from Expert Panel discussion with Dr Otive Igbzor, June 2014.

### 12.2.3 Are companies committed to investing in social programmes and to CSR?

**Old response: Partially**

**New response: Yes**

**UPDATE STATUS: Additional information included**

As previously noted in the answers to questions 12.1.2 and 12.1.3, all multinational companies have made commitments to certain social programmes and CSR, especially in the communities where their operations are located. These activities cover education, sports, micro-credit schemes, health, etc. The oil-bearing communities in the Niger Delta are dotted with projects flowing from the CSR programmes of oil companies. While in the opinion of the researchers these CSR projects are fairly adequate, the perception of respondents in the communities where they are located is the opposite. Since there are no strict international or local benchmarks for CSR, it is difficult to either argue or agree with this perception. However, the scale of neglect of social infrastructure and other areas in these communities, and the near total absence of government presence, may be responsible for this position. In the opinion of the researchers, communities have placed the burden of local development on oil companies operating in their domains rather than on the federal, state and local governments that have the responsibility for these.

The companies have continued to expand and increase the scope of the grants they make available in the education of local people, in health care service and also in the area of electricity generation.

Also, as divestments of IOCs continue to take place, it can be assumed that the new indigenous owners who have a good knowledge of the terrain will improve in their commitment to social programmes. However, it is important to note that these indigenous companies have always been involved in the industry, even within the IOCs, and thus their practices may not be any different.

**Information source:**

Extracts from Expert Panel Discussion with Dr Otive Igbzor, June 2014.



[www.nigerianrc.org](http://www.nigerianrc.org)