

EITI International Secretariat

Validation of Nigeria

Report on initial data collection and stakeholder consultation by the EITI International Secretariat

16 September 2016

Abbreviations

API	American Petroleum Institute (measurement for heaviness crude)
BEPS	Base Erosion and Profit Shifting
BO	Beneficial Ownership
Bpd	Barrels Per Day
BTU	British Thermal Unit
CAs	Carry Agreements
CAC	Corporate Affairs Commission
CBN	Central Bank of Nigeria
CIT	Corporate Income Tax
CNL	Chevron Nigeria Limited
COMD	Crude Oil Marketing Division
COSM	Crude Oil Stock Management
DCA	Domestic Crude Allocation
DMO	Debt Management Office
DPK	Dual Purpose Kerosene
DPR	Department of Petroleum Resources
DSS	Department of State Services
ECA	Excess Crude Account
ECOWAS	Economic Community of West African States
EDT	Education Tax
EFCC	Economic and Financial Crimes Commission
EOI	Expression of Interest
EITI	Extractive Industries Transparency Initiative
EU	European Union
FAAC	Federal Account Allocation Committee
FCT	Federal Capital Territory
FGN	Federal Government of Nigeria
FIRS	Federal Inland Revenue Service
FMF	Federal Ministry of Finance
FMPR	Federal Ministry of Petroleum Resources
FOB	Free on Board
GDP	Gross Domestic Product
IMF	International Monetary Fund
IOC	International Oil Company
IPP	Independent Power Producer
JDA	Nigeria - São Tomé and Príncipe Joint Development Authority
JDZ	Nigeria - São Tomé and Príncipe Joint Development Zone
JV	Joint venture
KRPC	Kaduna Refinery and Petrochemical Company
LGA	Local Government Area
LGC	Local Government Council
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
MCA	Modified Carry Agreement
MMBTU	Million British Thermal Unit
MOU	Memorandum of Understanding
MT	Metric ton
NAPIMS	National Petroleum Investment Management Services

NBS	National Bureau of Statistics
NCUDA	Nigerian Content Development Act
NCDMB	Nigerian Content Development and Monitoring Board
NCS	Nigeria Customs Service
NDDC	Niger Delta Development Commission
NEITI	Nigeria Extractive Industries Transparency Initiative
NESREA	National Environmental Standards and Regulations Agency
NESS	Nigerian Export Supervision Scheme
NGC	Nigerian Gas Company
NIMASA	Nigerian Maritime Administration and Safety Agency
NIWA	National Inland Waterways Authority
NLNG	Nigeria Liquefied Natural Gas
NNPC	Nigerian National Petroleum Corporation
NPDC	Nigerian Petroleum Development Company
NSE	Nigerian Stock Exchange
NSIA	Nigerian Sovereign Investment Authority
OAUgF	Office of the Auditor General of the Federation
OECD	Organisation for Economic Co-operation and Development
OEL	Oil Exploration License
OML	Oil Mining License
OPA	Offshore Processing Agreement
OPEC	Organization of Petroleum Exporting Countries
OPL	Oil Prospecting License
OPTS	Oil Producers Trade Section
OSP	Official Selling Price
PAYE	Pay As You Earn
PEP	Politically Exposed Person
PHRC	Port Harcourt Refining Company
PIB	Petroleum Industry Bill
PMS	Premium Motor Spirit
PPMC	Pipelines and Product Marketing Company, Ltd.
PPPRA	Petroleum Products Pricing and Regulatory Authority
PPT	Petroleum Profits Tax
PRSTF	Petroleum Revenue Special Task Force
PSC	Production Sharing Contract
PSF	Petroleum Support Fund
RDP	Reserve Development Project
RP	Realisable Price
RPEA	Refined Product Exchange Agreement
SAA	Strategic Alliance Agreement
SC	Service Contracts
SPDC	Shell Petroleum Development Company
SIR	Société Ivoirienne de Raffinage
SRMF	Sole Risk Marginal Field
STP	São Tomé e Príncipe
SURE-P	Subsidy Reinvestment Program
TOR	Terms of Reference
TUPNI	Total Upstream Nigeria Limited
USD	United States Dollar
VAT	Value Added Tax
UN	United Nations

UNDP	United Nations Development Programme
WAGP	West African Gas Pipeline
WHT	Withholding Tax
WRPC	Warri Refining and Petrochemicals Company

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Executive Summary

Nigeria has been a pioneer in implementing the EITI, and many of the elements in the current EITI Standard build on Nigeria's efforts to move beyond the minimum disclosure requirements. The initial findings of this Validation exercise suggest that Nigeria has an excellent point of departure to continue making process and remain at the forefront of EITI implementation. A number of recommendations and suggested corrective actions, listed below, should help Nigeria make a full transition to the EITI Standard.

Nigeria commenced its Validation under the EITI Standard on 1 July 2016. This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures¹ and applied the Validation Guide² in assessing Nigeria's progress with the EITI Standard.

Nigeria provides an exceptionally complex case for the EITI, both in the structure and size of its extractive industries and in the fact that all requirements of the EITI Standard are applicable in the Nigerian context, particularly in its oil and gas sector. Nigeria has appropriated EITI implementation to such a degree that it has helped shape development of the EITI Standard and developed one of the most extensive EITI reporting processes globally. In some areas the national process has taken on a life of its own. The challenge for a Validation exercise has been to strike a balance between preserving the ambition of the national process while identifying areas where further work could help set Nigeria on a path to continued international leadership. While the assessment has not yet been reviewed by the NSWG or been quality assured, the Secretariat's preliminary assessment is that requirements 1.3, 1.4, 1.5, 2.2, 2.3 2.6, 3.2,3.3, 4.1, 4.3, 4.6, 4.8, 4.9, 5.2, 6.1a, 6.2 and 6.3 have not been fully addressed in Nigeria. Two of these (Requirements 2.4 and 4.4) are assessed as "unmet with inadequate progress". The recommendations and suggested corrective actions identified through this process relate in particular to MSG oversight, data quality assurance and comprehensiveness of reporting by both government and industry as well as state-owned enterprises, including quasi-fiscal expenditures, financial relations with government and level of state ownership.

What emerges from this initial assessment exercise is the need not necessarily to overhaul the NEITI process but rather to take a step back and ensure the impressive infrastructure Nigeria has built over time effectively addresses areas of the Standard that have not to date been addressed. Addressing these areas should not necessary make NEITI Reports longer, but rather more focused on providing new information that is both pertinent to the Nigerian context and required to comprehensively address requirements of the Standard.

Nigeria was designated compliant under the EITI Rules in March 2011 and has been implementing the EITI since 27 September 2007. Implementation of the EITI in Nigeria is undertaken by a National Stakeholders Working Group (NSWG). The Federal Government of Nigeria first announced its first commitment to the EITI in November 2003 through a public announcement by President Olusegun Obasanjo.

Overall conclusions

Over more than a decade of implementation, Nigeria's EITI (NEITI) process has gone well beyond the minimum EITI Requirements by including assessments of physical and process flows alongside the

¹ <https://beta.eiti.org/document/validation-procedures>.

² <https://beta.eiti.org/document/validation-guide>.

reconciliation of financial payments. Nigeria was also the first country to enact legislation institutionalising EITI implementation and remains one of only three countries with a dedicated EITI law. Nigeria continues to lead the way in turning recommendations from EITI reports into concrete action. In some areas however, the Standard has now overtaken NEITI and additional efforts will be required to comprehensively align NEITI with the requirements of the Standard.

The government has actively supported the EITI through public statements, enabling legislation and funding for EITI implementation. The passing of the NEITI Act in May 2007 established a dedicated government agency with a current staff of 54 employees and regular coverage in the national media. Representatives from agencies such as the Central Bank of Nigeria (CBN) and the Federal Inland Revenue Service (FIRS) have actively contributed to drive the work of the Nigeria's NSWG, provided data for EITI Reports³ and supported the entrenching of EITI reporting in government systems.

A key strength of EITI implementation in Nigeria has been the extension of EITI reporting to areas not required by the EITI Standard that have nevertheless been considered meaningful due to local circumstances. Even before the enactment of the 2013 EITI Standard, the NSWG included information on license allocations, state participation, subnational transfers and direct payments as well as calculations of companies' tax liabilities. Nigeria has also made efforts to go beyond the minimum requirements of the Standard, in areas including reconciliations of crude oil lifting figures, disaggregated and granular information on crude oil exports and disclosures related to the midstream refining sector. It has also conducted work on beneficial ownership disclosure.

The NSWG has developed a complex institutional framework to build trust amongst the three stakeholder groups. At the same time, the nature of NEITI as both a specialised government agency under the NEITI Act of 2007 and a multi-stakeholder platform has led the NSWG to develop more as an advisory board with some oversight functions than as the main driver of implementation. This latter role is to a large extent fulfilled by the NEITI Secretariat, which coordinates the work of the NSWG and its committees, undertakes data collection for EITI reporting and involves stakeholders in its work as and when their specific competencies are required. Whereas this approach has certainly proven effective in empowering NEITI to break new ground, it would appear to have come at the cost of meaningful stakeholder oversight of the EITI process. It would now seem timely to revisit the institutional structure of EITI implementation in Nigeria to improve formal NSWG operational oversight and relieve the NEITI Secretariat of some of its leadership responsibilities.

Nigeria presents a complex case for the EITI, given the size of the oil and gas sector, the practical deviations from the outdated regulatory framework and challenges in government entities' record-keeping. The oil and gas industry in particular is one in which all requirements of the Standard apply, covering the whole of Nigeria's upstream from barter of the SOE's in-kind revenue to transportation revenues. Since 2011, the NSWG has extended the scope of reporting to the nascent solid minerals sector, which presented its own complexities given the dominance of large-scale construction companies in quarrying and small-scale operators in precious metal mining. Nigeria now publishes separate EITI Reports for the two sectors, with the period from procurement of the Independent Administrator⁴ to publication of the EITI Reports often exceeding one year. In light of the lengthy procurement process

³ While the EITI Report is referred to as the NEITI Audit in the Nigerian context, we adopt the term EITI Report to avoid confusion with statutory audits in line with international standards.

⁴ While the Independent Administrator (IA) is referred to as an Auditor in the Nigerian context, we adopt the term IA for consistency and to avoid confusion with statutory audits in line with international standards.

mandated by Nigerian law, the NEITI Secretariat has expanded its role to scoping work and data collection in order to meet reporting deadlines. Meanwhile the scope of reporting has increased under the Standard, but disclosures in NEITI's Reports do not appear to have kept up. Nigeria has not undertaken a scoping study for either solid minerals or oil and gas under the EITI Standard.

Given Nigeria's high dependency on oil and gas, there is a vibrant national debate about sector management, the level at which the state should participate in the sector and the future prospects of the oil and gas industry in Nigeria. The EITI contributes actively to this debate through regular publication of policy briefs, opinion pieces on suggested legislative reform, news articles, workshops and, more recently, its social media platform.

Looking ahead, there is significant scope for entrenching EITI reporting in government and company systems. While NEITI's data collection automation project is meant to improve the efficiency of data collection by moving it online, there is scope for more mundane solutions to ensuring robust quality assurance procedures are followed in the normal production of government extractive industries data. There is likewise scope for industry to consider means of producing EITI information on a regular basis, as part of regular reporting, and to integrate certification of EITI disclosures in regular auditing cycles. This is a clear moment of opportunity for Nigeria under a new administration committed to improving transparency and governance of its extractive industries, including wholesale reform at the historically opaque NNPC.

Recommendations

While the following report includes recommendations for specific reforms the NSWG may wish to consider implementing, the following is a list of strategic recommendations that could help Nigeria make greater use of the EITI as an instrument to support reforms.

- NEITI's institutional structure should be revisited to ensure greater accountability between NSWG members and their constituencies by undertaking a comprehensive review of all governance documents together. This could include revisions to the Board Charter to ensure that constituencies can nominate their representatives, constituency guidelines that explain how nominations should take place and ensure that representatives can be held accountable, and a clearer definition of the roles and responsibilities of the representatives from geopolitical zones.
- As the four-year strategic plan comes to an end, a thorough discussion between and within constituencies is needed on what sectorial challenges the EITI Standard can help address and how. This should lead to a revision of the objectives of EITI implementation to ensure that they are aligned with national priorities.
- Existing platforms for engaging stakeholders such as the newly-formed Company Forum and the Civil Society Steering Committee could be used more effectively to improve the relevance of NSWG discussions to national debates and address key demands of stakeholders beyond the membership of the NSWG. A first step could be to move responsibility for stakeholders away from NEITI's Communications Department.
- The NSWG should consider undertaking scoping studies (either in-house by the NEITI Secretariat or by a contractor) for both solid minerals and oil and gas ahead of its next EITI Reports to ensure that all aspects of the EITI Standard are fully considered and addressed. Nigeria has not undertaken an oil and gas scoping study since 2006 and a solid minerals scoping study since

2011, despite this being a consistent recommendation of recent solid minerals EITI Reports.

- In preparing the next EITI Reports, the NSWG should find a workable solution to the provision of quality assurance certification for EITI disclosures from both government and companies to ensure that reconciled payments and revenues were subject to credible, independent audit, applying international auditing standards. The NSWG should work with the Office of the Auditor General of the Federation (OAuGF), the Nigerian National Petroleum Corp. (NNPC), the IA and industry NSWG members in particular to establish a robust quality assurance framework. The NSWG should consider procuring its next IA earlier in the year to allow for sufficient data collection time and for timely publication of its EITI Reports.
- The NSWG should ensure that future EITI Reports clearly include all revenue streams listed under Requirement 4.1.b in the scope of reconciliation. It should also ensure that the IA assesses the materiality of non-reporting companies and government entities as well as provide its opinion on the comprehensiveness and reliability of the EITI Report.
- The NSWG should ensure that future EITI Reports clarify the practices related to SOEs' retained earnings and reinvestment, any changes in government ownership in SOEs or their subsidiaries during the year(s) under review and provide a comprehensive assessment of any loans or loan guarantees extended by the state or SOEs to oil and gas companies. The NSWG should agree a clear definition of SOEs and of quasi-fiscal expenditures undertaken by SOEs in the extractive industries.
- In preparing its next O&G EITI Report, the NSWG should assess the existence of infrastructure provisions during the scoping phase to ensure that companies' disclosures are categorised according to strict definitions. It should assess the materiality of any such transportation revenues and disclose such revenues should they be assessed as material.
- In preparing the next EITI Reports, the NSWG should assess the materiality of both direct subnational payments and subnational transfers prior to data collection. Should the NSWG consider that it is not possible to reconcile material direct subnational revenues in its annual EITI reporting, it should submit a request for adapted implementation to the EITI Board. Future EITI Reports should also disclose the specific formula for calculating transfers to individual states and LGAs, to support an assessment of discrepancies between budgeted and executed subnational transfers.
- The NSWG should ensure that future EITI Reports clarify the exact number of solid minerals, oil and gas licenses awarded and transferred in the year(s) under review, highlighting any non-trivial deviations from statutory procedures. The NSWG should work with the Nigeria- São Tomé and Príncipe Joint Development Authority to disclose information on any licenses awarded or transferred in the Joint Development Zone in the year(s) under review. The NSWG should also clarify the technical and financial criteria used for assessing license allocations and transfers, both for discretionary oil and gas licenses and for solid mineral license awards and transfers. The NSWG should also ensure that the dates of application and license coordinates for all (solid minerals, oil and gas) licenses held by material companies are publicly available. The government may wish to consider making solid minerals, oil and gas license information available publicly as part of an online license system.
- The NSWG should ensure that future EITI Reports clarify the government's policies on beneficial

ownership and contract disclosures and provide information on the legal ownership of all companies required to report in the next EITI Report and any previously-disclosed contracts.

- The NSWG should ensure future EITI Reports provide disaggregated production values as well as export volumes and values for all key minerals produced including crude oil and natural gas.
- The NSWG should ensure future EITI Reports clarify whether mandatory social expenditures exist in the oil and gas sector and ensure that reporting of mandatory social expenditures be disaggregated by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures.
- In preparing its next EITI Reports, the NSWG should liaise with relevant government entities to provide the size of the oil and gas sector in absolute terms, the solid mineral sector's share of government revenues in relative terms, the value of oil and gas exports in absolute and relative terms and the size of solid minerals employment in absolute terms for the year(s) under review.
- As companies and civil society become more actively engaged in the broader aspects of EITI implementation, NEITI may wish to reconsider the role played by the constituencies in communications and dissemination. Linking NEITI's workplans to national priorities and securing the active participation of constituencies in their drafting could help engage constituencies more actively in targeted communications activities. Bringing in the company constituency at a strategic stage could also help ensure their active support for the messages, while ensuring that their views are adequately reflected would help build trust in the content.
- The NSWG is encouraged to further entrench extractive sector transparency in government systems, and take steps to move towards more frequent production of EITI information on a routine basis. The NSWG may consider undertaking a study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats could also be explored.

Figure 1 – initial assessment card

EITI Requirements		LEVEL OF PROGRESS				
		No	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)				Green	
	Industry engagement (#1.2)				Green	
	Civil society engagement (#1.3)			Yellow		
	MSG governance (#1.4)			Yellow		
	Workplan (#1.5)			Yellow		
Licenses and contracts	Legal framework (#2.1)				Green	
	License allocations (#2.2)			Yellow		
	License register (#2.3)			Yellow		
	Policy on contract disclosure (#2.4)		Orange			
	Beneficial ownership (#2.5)	Grey	Grey	Grey	Grey	Grey
	State participation (#2.6)			Yellow		
Monitoring production	Exploration data (#3.1)				Green	
	Production data (#3.2)			Yellow		
	Export data (#3.3)			Yellow		
Revenue collection	Comprehensiveness (#4.1)			Yellow		
	In-kind revenues (#4.2)					Blue
	Barter agreements (#4.3)			Yellow		
	Transportation revenues (#4.4)		Orange			
	SOE transactions (#4.5)				Green	
	Direct subnational payments (#4.6)			Yellow		
	Disaggregation (#4.7)				Green	
	Data timeliness (#4.8)			Yellow		
	Data quality (#4.9)			Yellow		
Revenue allocation	Revenue management and expenditures (#5.1)				Green	
	Subnational transfers (#5.2)			Yellow		
	Distribution of revenues (#5.3)	Grey	Grey	Grey	Grey	Grey
Socio-economic contribution	Mandatory social expenditures (#6.1.a)			Yellow		
	Discretionary social expenditures (#6.1.b)	Grey	Grey	Grey	Grey	Grey
	SOE quasi-fiscal expenditures (#6.2)			Yellow		
	Economic contribution (#6.3)			Yellow		
Outcomes and impact	Public debate (#7.1)				Green	
	Data accessibility (#7.2)	Grey	Grey	Grey	Grey	Grey
	Follow up on recommendations (#7.3)				Green	
	Outcomes and impact of implementation (#7.4)				Green	

Introduction

Nigeria was the first country in Africa to implement the EITI, one year after the EITI was first mooted at the World Sustainable Development Summit held in Johannesburg, South Africa in October 2002.⁵ Over more than a decade of implementation Nigeria has published EITI Reports covering 15 fiscal years in oil and gas and seven fiscal years in solid minerals, developed an impressive institutional structure for implementation and achieved compliance under the EITI Rules.⁶

Brief recap of the sign-up phase

The Federal Government of Nigeria first announced its commitment to the Extractive Industries Transparency Initiative (EITI) in November 2003.⁷ The Nigeria EITI (NEITI) was launched in February 2004 when a first National Stakeholders Working Group (NSWG) was established.⁸ Nigeria's first Validation report, published in 2009, provides an overview of the sign-up steps.⁹ An EITI-specific bill was introduced to the National Assembly in December 2004 and the resulting NEITI Act was passed into law on 28 May 2007. Nigeria's first EITI Report, covering oil and gas over 1999-2004, was published in 2006. Nigeria was accepted as an EITI Candidate country on 27 September 2007 and published its second EITI Report, covering 2005, in August 2009.

The decision to implement the EITI was part of the Obasanjo administration's larger agenda of structural and governance reforms, responding to civil society pressure and as a means to improve relations with Nigeria's external creditors.¹⁰ The National Economic and Empowerment Development Strategy (NEEDS) launched in 2003 included key institutional and governance reforms, of which EITI was a part.¹¹

Objectives for implementation and overall progress in implementing the workplan

NEITI's objectives are framed by the NEITI Act¹² and its four-year strategic plan (2013-2016),¹³ while the

⁵ "Introduction" (p.11), Nordiska Afrikainstitute (2011), 'Natural Resource Governance and Eiti Implementation in Nigeria', http://www.resourcegovernance.org/sites/default/files/NEITI_report.pdf.

⁶ Nigeria submitted its final Validation report to the EITI Board on 29 June 2010. Nigeria was deemed 'close to compliant and the EITI Board agreed that a review would be undertaken by the EITI International Secretariat following the publication and dissemination of the 2006-2008 report. Having published this third EITI Report in January 2011, NEITI became compliant with EITI in March 2011. See Background (pp.2-3), EITI (1 March 2011), Secretariat Review: Nigeria and NEITI (March 2011), 'Nigeria finally becomes EITI Compliant', <http://neiti.org.ng/index.php?q=news/2011/03/01/nigeria-finally-becomes-eiti-compliant>.

⁷ See press clippings available on <https://business-humanrights.org/en/president-obasanjo-says-nigeria-will-publish-openly-the-revenues-it-receives-from-oil-industry-shell-welcomes-the-move>.

⁸ NEITI, 'About NEITI', <http://neiti.org.ng/index.php?q=pages/about-neiti>.

⁹ NEITI (December 2009), 'Nigeria Final Validation report', https://eiti.org/files/Nigeria_Validation_Report_ENG_0.pdf.

¹⁰ International Institute for Environment and Development (2014), 'Localising transparency: exploring EITI's contribution to sustainable development', <http://pubs.iied.org/pdfs/16555IIED.pdf>.

¹¹ NEITI (April 2014), 'EITI implementation in Nigeria: outcomes, impacts and challenges', http://unctad.org/meetings/en/Presentation/SUC_GCF2014_080414_AHMED.pdf.

¹² The NEITI Act set five key objectives for EITI implementation: to ensure due process and transparency in the payments made by all extractive industry companies (EICs) to the Federal Government of Nigeria (FGN) and statutory recipients; to monitor and ensure accountability in the revenue receipts of the FGN from EICs; to eliminate all forms of corrupt practices in the determination, payment, receipts and posting of revenue accruing to the FGN from EICs; to ensure transparency and accountability by government in the application of resources from payments received from EICs; and to ensure conformity with the principles of the EITI. See Federal Republic of Nigeria (2007), 'NEITI Act 2007', <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

¹³ The Strategic Plan identified three strategic goals: Achieve operational excellence in regulation and enforcement across the extractive industries through delivery of effective audit, continuous monitoring and evaluation, and stronger regulation, enforcement and compliance management; attain optimum stakeholder participation in extractive industry transparency and

annual objectives are defined in its annual workplans. The Strategic Plan was the product of discussions at a two-day NSWG retreat on 21-22 November 2012.¹⁴ Its strategic goals set the objectives for the workplans spanning 2013-2016.¹⁵ Since April 2016, the new NSWG has started work on reviewing the 2012-2016 Strategic Plan and on drafting a second Strategic Plan covering 2017-2021.¹⁶

As the strategic plan has not been updated since the introduction of the EITI Standard, its objectives are not currently aligned with national priorities in the broader sense of the Standard. This hasn't stopped NEITI from interpreting the broad objectives in the NEITI Act to seek out and address areas of importance for the sector. For example, in 2016 NEITI began producing Policy Briefings to provide input to ongoing national debates. More information is provided in section 3 below.

The NSWG normally updates its workplan every fall and reviews it halfway through the year. Due to the dissolution of the NSWG in 2015, the NSWG has not formally approved the 2016 workplan. A draft 2016 workplan is nevertheless available on NEITI's website and was distributed to constituencies for comments in February 2016. Due in part to the general lack of funds in the federal budget, a number of activities in the workplan had yet to commence as of July 2016 and a shortfall of roughly NGN 1.7 billion was expected from an NGN 2.4 billion budget. This is explained in further detail under requirement 1.5 below.

History of EITI Reporting

The multi-stakeholder group (MSG), known as the National Stakeholders Working Group (NSWG), was first convened in February 2004. The NEITI Act of 2007 established a government agency under the office of the Presidency to oversee EITI implementation, providing formal powers to the NSWG and creating an institutional structure for the NEITI in relation to the National Assembly, the Auditor General and others.¹⁷

Nigeria's first EITI Report, covering oil and gas over 1999-2004, was published in 2006 and helped shape the EITI Rules. Nigeria was accepted as an EITI Candidate country on 27 September 2007 and published its second EITI Report, covering 2005, in August 2009. The Federal Government established an Inter-Ministerial Task Team (IMTT) in 2005 to examine issues highlighted by the NEITI Reports and develop remediation measures.¹⁸

Nigeria submitted its final Validation report to the EITI Board on 29 June 2010. The Board shared the Validator's concerns regarding the timeliness of NEITI reporting and the governance process. While Nigeria's second EITI Report had been finalised in 2007, it was only published in 2009.¹⁹ The Board also sought steps to strengthen the functioning of the NSWG. The Board agreed that a review would be undertaken by the EITI International Secretariat following the publication and dissemination of the 2006-

accountability through effective stakeholder relationship management, collaboration and cooperation; build NEITI's capacity to achieve its mandate, vision and strategy. See NEITI (2013), 'NEITI Strategic plan (2013-2016)',

<http://www.neiti.org.ng/sites/default/files/page/uploads/neiti-4-year-strategic-plan.pdf>.

¹⁴ See minutes of NSWG meeting, 21-22 November 2012, unpublished, provided by NEITI Secretariat.

¹⁵ <http://neiti.org.ng/index.php?q=publications/annual-workplans>.

¹⁶ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

¹⁷ Myanmar EITI (October 2013), 'EITI in Myanmar: Institutional options', <http://myanmareiti.org/download/file/fid/334>

¹⁸ NEITI (April 2014), 'EITI implementation in Nigeria: outcomes, impacts and challenges',

http://unctad.org/meetings/en/Presentation/SUC_GCF2014_080414_AHMED.pdf.

¹⁹ Niger Delta Professionals for Development (January 2010), Is EITI really helping improve global good governance? Examining the Resource Curse, Corruption, and Nigeria's EITI Implementation Experience, <http://nidprodev.org/EITI%20-%20Nigeria%20Analysis.pdf>.

2008 report.²⁰ Having published this third EITI Report in January 2011, NEITI became compliant in March 2011.²¹ By July 2016, Nigeria had published EITI Oil and Gas Reports covering 15 fiscal years, having published its 2009-2011 Report in January 2013, its 2012 Report in March 2015 and its 2013 Report in May 2016. Nigeria also extended EITI reporting to the solid minerals sector, publishing its first EITI Solid Minerals Report covering 2007-2010 in December 2012, its 2011 Report in May 2014, its 2012 Report in December 2012 and its 2013 Report in May 2016.

The NEITI Oil and Gas Reports, which from the outset included financial, physical and process audits, went beyond the minimum EITI criteria and were considered the 'Gold standard of global EITI' by the World Bank.²² The physical report tracks volumes of production, lifting and exports, reconciling figures between figures from companies, NNPC and the Federal Government. The process report covers how agencies manage the sector, including licensing, pricing of government equity oil, the management of the government's interest in joint ventures (JVs), crude oil supplies to refineries and oil imports. The financial report reconciles company payments and government revenues, including the financial revenue flows from state-owned enterprises to the Federal Government. In addition to large amounts of detailed quantitative and qualitative information about the oil and gas industry, the NEITI Reports also highlighted challenges and formulated recommendations for reform.²³

Summary of engagement by government, civil society and industry

The current NSWG operates under Terms of Reference (ToR) defined both by the NEITI Act²⁴, passed on 28 May 2007, and by the NSWG Board Charter²⁵, published in January 2011. While the NEITI Act effectively defines the NSWG's ToR, the Board Charter was agreed to resolve ambiguities in the legislation related to governance that were highlighted during Nigeria's 2010 Validation.²⁶ Members of the NSWG are statutorily obliged to meet four times a year, but the dissolution of the NSWG in 2015 has made this impossible in 2015 and 2016. The NSWG only discloses minutes of the meetings to parties with a "legitimate interest".²⁷ A list of current NSWG members, last renewed in May 2016, is included in Annex A.

As in every other EITI process, stakeholder relations have at times been difficult and marked by lack of trust and lack of commitment. After a general dip in government engagement over the last two periods, the new NSWG, appointed by the incoming Buhari administration in May 2016, marks a return to the high-level government representation characteristic of earlier implementation, with the Federal Ministry

²⁰ Background (pp.2-3), EITI (1 March 2011), Secretariat Review: Nigeria.

²¹ NEITI (March 2011), 'Nigeria finally becomes EITI Compliant', <http://neiti.org.ng/index.php?q=news/2011/03/01/nigeria-finally-becomes-eiti-compliant>.

²² World Bank (August 2011), 'Political Economy of the Petroleum Sector in Nigeria', http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1916541 and International Institute for Environment and Development (2014), 'Localising transparency: exploring EITI's contribution to sustainable development', <http://pubs.iied.org/pdfs/16555IIED.pdf>.

²³ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?', <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

²⁴ Federal Republic of Nigeria (2007), 'NEITI Act 2007', <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

²⁵ NEITI (January 2011), 'NSWG Board Charter', <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiboardcharter-010211.pdf>.

²⁶ Myanmar EITI (October 2013), 'EITI in Myanmar: Institutional options', <http://myanmareiti.org/download/file/fid/334>

²⁷ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>

of Solid Minerals, Federal Ministry of Finance and NNPC all represented.²⁸ Likewise, the creation of a platform for company engagement in December 2015 and the increased awareness in the civil society constituency of its internal governance challenges suggest that stakeholders are taking necessary steps to address possible weaknesses in the constituencies.

Key features of the extractive industry

Nigeria's economy is heavily dependent on its natural resources. Though the oil and gas industry's contribution to national Gross Domestic Product (GDP) fell from 14.4% in 2011²⁹ to 10.29% in Q1-2016, it remains the major contributor to Nigeria's economy. The drop in the oil and gas sector's contribution to GDP in this period was also related to rebased GDP figures published in 2013, which reflected the growing weight of non-oil sectors since the previous rebasing in 1993 and made Nigeria the largest economy in Africa.³⁰ The oil and gas sector contributed around 75% of government revenues and over 90% of exports in 2014³¹, but only provided employment to 20,000 directly and an estimated 100,000 indirectly.³² Nigeria's production of solid minerals, mainly limestone, granite and laterite, are far more limited, with the sector accounting for only 0.3% of GDP in 2015.³³

Despite short-term disruptions to its production, Nigeria was the world's 10th largest oil producer (and Africa's largest³⁴), sixth largest oil exporter and fourth largest liquefied natural gas (LNG) exporter in 2015.³⁵ The light (high API gravity) sweet (low-sulphur) crude oil Nigeria's oilfields produce is particularly easy to refine.³⁶ However, ambitions to expand oil production from an average of 2.2 million barrels per day (bpd) in 2013 to 4 million bpd by 2020 have been hampered by conflict and sabotage of oil installations in the Niger Delta.³⁷

The Federal Government, through its state-owned oil company, the Nigeria National Petroleum Corporation (NNPC), plays a significant role in the oil and gas sector. It holds direct equity ownership in six producing joint ventures (JV) onshore and in shallow waters, and receives a share of production (and holds some equity stakes in) nine production-sharing contracts in the deep-water offshore, mostly awarded in the early 1990s. All of the 'super-major' international oil companies (IOCs) are represented in Nigeria and have increasingly focused on offshore exploration and production in the Gulf of Guinea in the past decade. Indigenous oil companies have been expanding, particularly onshore and in shallow waters,

²⁸ See NSWG membership 2016-present,

http://www.neiti.org.ng/sites/default/files/pdf_uploads/List%20of%20Board%20Members%20and%20pics%20new.pdf.

²⁹ p.30, NEITI (May 2016), NEITI 2013 Oil and Gas Report.

³⁰ Nigerian Statistical Organisation (April 2014), FAQ on Nigeria GDP rebasing Exercise,

<http://www.nigerianstat.gov.ng/pdfuploads/FAQ%20on%20Nigeria%20GDP%20Rebasing.pdf>.

³¹ Nigeria Natural Resource Charter and Center for Public Policy Alternatives (December 2014),

http://nigerianrc.org/sites/default/files/NNRC_2014BenchmarkingExercise_Summary.pdf.

³² Nigeria Natural Resource Charter and Center for Public Policy Alternatives (December 2014),

http://nigerianrc.org/sites/default/files/NNRC_2014BenchmarkingExercise_Summary.pdf.

³³ Premium Times (16 March 2016), Nigerian govt. targets 10% GDP for solid minerals — Fayemi,

<http://www.premiumtimesng.com/business/200221-nigerian-govt-targets-10-gdp-solid-minerals-fayemi.html>

³⁴ NNPC, Oil production, <http://www.nnpcgroup.com/nnpcbusiness/upstreamventures/oilproduction.aspx>

³⁵ EIA (May 2016), Country Analysis Brief: Nigeria,

https://www.eia.gov/beta/international/analysis_includes/countries_long/Nigeria/nigeria.pdf and

<http://www.resourcegovernance.org/our-work/country/nigeria>

³⁶ Petroleum.co.uk, Sweet vs Sour Crude Oil, <http://www.petroleum.co.uk/sweet-vs-sour>

³⁷ Nigeria Natural Resource Charter and Center for Public Policy Alternatives (December 2014),

http://nigerianrc.org/sites/default/files/NNRC_2014BenchmarkingExercise_Summary.pdf.

and have acquired stakes in some JV blocks sold by IOCs since 2010.

While Nigeria has four oil refineries, they operate well below installed capacity and the bulk of oil production is exported. The country imported roughly USD 10 billion in refined fuel for domestic consumption in 2015.³⁸ Meanwhile Nigeria's 4000 MW electricity production³⁹ for a population of over 170 million is ten times lower than South Africa's, with a population of 53 million. Nigeria was ranked 136 of 174 in Transparency International's 2014 Corruption Perceptions Index⁴⁰ and 169 of 189 in the World Bank's 2016 Doing Business Report.⁴¹ Nigeria is estimated to have lost significant revenue to lapses in governance, particularly of its oil and gas industry. The Global Financial Integrity NGO estimates that Nigeria lost NGN 3.8 trillion (USD 22 billion) in 2002-2011 due to trade misinvoicing alone, partly associated with the oil and gas sector.⁴² Estimates of lost government revenue from the Nigerian oil and gas industry vary significantly. In February 2014 then-Governor of the Central Bank of Nigeria, Lamido Sanusi, alleged that NNPC had failed to remit some USD 20 billion to the Federal Government over an 18-month period in January 2012 - June 2013.⁴³ A subsequent PwC audit published in April 2015 identified USD 18.53 billion in unremitted funds from NNPC during this period.⁴⁴

Since his election in May 2015, President Buhari has announced wide-ranging reforms of the oil and gas industry. Appointing new leadership of NNPC in June 2015, President Buhari has announced plans to redevelop the reformist Petroleum Industry Bill, assessment of all contracts, review of the downstream fuel subsidies and a renegotiation of oil-for-fuel swap agreements among others. The over 50% price drop in international oil prices from late 2014 has put significant pressures on the government's finances and the country's balance of payments.⁴⁵

Explanation of the Validation process

The EITI International Board agreed at its 33rd Board meeting in Oslo, Norway that fifteen countries, including Nigeria will undergo Validations starting 1 July 2016.

1. Validation is an essential feature of the EITI process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the

³⁸ World Bank (November 2015), 'Nigeria Economic Report', http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/T_MNA/2015/12/13/090224b083c4fe48/2_0/Rendered/PDF/Nigeria0economic0report.pdf.

³⁹ World Bank (2016), 'Doing Business 2016 Nigeria', http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/11/13/090224b0831b508f/2_0/Rendered/PDF/Doing0business0efficiency000Nigeria.pdf.

⁴⁰ <http://www.transparency.org/cpi2014/results>

⁴¹ World Bank (2016), 'Doing Business 2016 Nigeria', http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/11/13/090224b0831b508f/2_0/Rendered/PDF/Doing0business0efficiency000Nigeria.pdf.

⁴² See GFI Integrity, Trade misinvoicing outflows (GER) data by country, <http://www.gfintegrity.org/issues/data-by-country/>

⁴³ Reuters (6 February 2015), Special Report: Anatomy of Nigeria's \$20 billion "leak", <http://www.reuters.com/article/us-nigeria-election-banker-specialreport-idUSKBN0LA0X820150206>.

⁴⁴ PwC (February 2015), 'Auditor-General for the Federation: Investigative forensic audit into the allegations of unremitted funds into the Federation Accounts by the NNPC', http://cloudflare.qurium.info/premiumtimesng.com/docs_download/Full%20report--20billion%20dollars%20missing%20oil%20money.pdf.?cf=1.

⁴⁵ US Department of State (May 2015), 'Nigeria Investment Climate Statement 2015', <http://www.state.gov/documents/organization/241898.pdf>.

EITI Standard. The Validation report will, in addition, address the impact of the EITI in the country being validated, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The validation process is outlined in chapter 4 of the EITI Standard.⁴⁶

2. Validation procedure. In February 2016 the EITI Board approved a revised Validation system. The new system has three phases:

1. Data collection undertaken by the International Secretariat
2. Independent quality assurance by an independent Validator who reports directly the EITI Board
3. Board review.

In May 2016, the Board agreed the [Validation Guide](#), which provides detailed guidance on assessing EITI Requirements, and more detailed [Validation procedures](#), including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator. As previously, there are extensive opportunities for stakeholder participation, as set out below.

The Validation Guide includes a provision that: “Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG workplan, these should be outlined upon the request of the MSG”. The NEITI NSWG did not request any issues for particular consideration.

3. Data collection by the International Secretariat. The International Secretariat’s work will be conducted in three phases:

1. Desk Review. Prior to visiting the country, the Secretariat will conduct a detailed desk review of the available documentation relating to the country’s compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

This work will include initial consultations with stakeholders, who are invited to submit any other documentation they consider relevant. Without prejudice to the ability of the Board to exercise their discretion to consider all available evidence, the Secretariat will not take into account actions undertaken after the commencement of Validation. The desk review was conducted in the period 1-24 July 2016 and included documents provided by NEITI.

2. Country visit. The country visit took place on 25 July – 5 August 2016. All meetings took place in

⁴⁶ See also <https://eiti.org/validation>.

Abuja and Lagos. The secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group.

In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentiality are respected.

The list of stakeholders to consult was prepared by NEITI, with inputs and suggestions from the International Secretariat. It is the International Secretariat's view that the report covers views of the key stakeholders engaged in the EITI process.

3. Reporting on progress against requirements. Based on these consultations, the International Secretariat will prepare a report making an initial evaluation of progress against requirements in accordance with the Validation Guide. The report will not include an overall assessment of compliance. The report will be made available to the multi-stakeholder group for comment prior to quality assurance by the Independent Validator.

The International Secretariat's team comprised: Alex Gordy, Pablo Valverde, Sam Bartlett, Eddie Rich and Ines Schjolberg Marques.

4. Independent Validation. In accordance with the EITI Standard, the EITI Board will appoint a Validator who will report to the Board via the Validation Committee. The Validator will assess whether the Secretariat's initial validation has been carried out in accordance with the Validation Guide. This will include: a detailed desk review of the relevant documentation for each requirement and the Secretariat's initial evaluation for each requirement, and a risk-based approach for spot checks, and further consultations with stakeholders. The Board may request that the Validator undertake spot checks on specific requirements. The Validator will amend or comment on the Secretariat's report as needed. The Validator then prepares a short summary (the Validation Report) for submission to the Board. This will include the Validator's assessment of compliance with each provision, but not an overall assessment of compliance. The multi-stakeholder group will be invited to comment on the Validation Report.

5. Board Review. The final stage in the process is the review by the EITI Board. The Validation Committee will review the Validator's assessment and any feedback from the multi-stakeholder group. The Validation Committee will then make a recommendation to the EITI Board on the country's compliance with the EITI Requirements. The EITI Board will make the final determination of whether the requirements are met or unmet, and on the country's overall compliance in accordance with provision 8.3.a.ii of the EITI Standard. There is an appeal process, as per requirement 8.8.

Part I – MSG Oversight

1. Oversight of the EITI process

1.1 Overview

This section relates to stakeholder engagement and the environment for implementation of EITI in country, the governance and functioning of the multi-stakeholder group (MSG), and the EITI work plan.

1.2 Assessment

Government engagement in the EITI process (#1.1)

Documentation of progress

Public statement: There are strong public statements of support on record from current and past administrations.

Current president Muhammadu Buhari has repeatedly expressed support for NEITI since taking office on 29 May 2015. His administration listed fighting corruption and enhancing transparency as key elements of its policy agenda.⁴⁷ President Buhari publicly pledged to “review and implement audit recommendations by NEITI including those on remittances and remediation” within the first 100 days of his government.⁴⁸ At the UK Anti-Corruption Summit on 12 May 2016, President Buhari affirmed the Federal Government of Nigeria’s commitment (FGN) to continue working through the EITI to strengthen transparency and welcomed the 2016 EITI Standard, noting in particular the requirements on beneficial ownership and sale of the state’s share of production.⁴⁹ He also committed to enhance disclosure of payments to government for the sale of oil, gas and minerals, complementing ongoing work in the EITI. On 4 March 2016, Vice President Yemi Osinbajo confirmed the Buhari administration’s commitment to implementing the EITI.⁵⁰ Vice President Osinbajo also committed to implement the findings and recommendations of NEITI audit reports at a press conference following his meeting with former EITI Chair Clare Short on 18 June 2015.⁵¹

Previous administrations have regularly issued regular public statements of support for EITI implementation. President Goodluck Jonathan expressed government support for NEITI both in meetings

⁴⁷ IMF (April 2016), ‘Nigeria 2016 Article IV Consultation’, <https://www.imf.org/external/pubs/ft/scr/2016/cr16101.pdf>, and APC election manifesto, <http://apc.com.ng/apcroadmap.pdf>.

⁴⁸ Buhari, Muhammed (27 April 2015), “My 100 days covenant with Nigerians”, Osun Defender. Repost available on <http://www.empowerednewswire.com/2015/04/02/just-in-what-president-elect-will-do-in-first-100-days-in-office-gmg-letter-to-nigerians/>.

⁴⁹ FGN (12 May 2016), Country statement from Nigeria, London Anti-Corruption Summit, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-_FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf.

⁵⁰ NEITI (4 March 2016), “Nigeria committed to EITI”, <http://neiti.org.ng/index.php?q=news/2016/03/04/nigeria-committed-eiti>.

⁵¹ NEITI (18 June 2015), “We will implement NEITI audit reports – Buhari”, <http://neiti.org.ng/index.php?q=news/2015/06/18/we-will-implement-neiti-audit-reports-buhari> and in minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

with the EITI Chair⁵² and in public fora.⁵³ President Jonathan met with NSWG members on two occasions and with the Executive Secretary once.⁵⁴ President Musa Yar'Adua also reiterated government support for NEITI on several occasions, including at the inauguration of the new NEITI NSWG on 29 January 2008. He stated that NEITI was critical to Nigeria's development objectives and that Nigeria had benefitted from signing up to the EITI.⁵⁵ President Olusegun Obasanjo originally committed Nigeria to implement the EITI in November 2003⁵⁶ and established the Nigeria EITI (NEITI) National Stakeholders Working Group (NSWG) on 16 February 2004.⁵⁷

Senior lead: The chairmanship of the NSWG has rotated since 2007 between senior government officials (ministers) and senior civil society representatives. The Chair of the NSWG is directly responsible to the President and to the National Assembly.⁵⁸

President Buhari appointed Minister of Solid Minerals Kayode Fayemi Chair of the National Stakeholder Working Group (NSWG) in February 2016.⁵⁹

Active engagement: Government engagement at the federal level was institutionalised through the NEITI Act of 2007.

The NEITI Act of 2007 created a specialised government agency with its own budget line in the Federal Budget of Nigeria amounting to USD 7 million in 2016. The act also empowered NEITI to use external funding and borrow from banks as needed. NEITI employed 54 staff as of 1 July 2016.⁶⁰

The FGN has created a multi-sectorial body to implement lessons from NEITI Reports. The inter-ministerial task team (IMTT) consisting of the heads of government, petroleum, mining and financial departments was established in 2005 under President Obasanjo with a mandate to address recommendations identified in NEITI Reports. The IMTT met twice in 2014 and once in 2015.⁶¹ The IMTT is discussed in further detail under Requirement 7.3 below, "Lessons learned and follow up on recommendations".

The legislative and judicial branches of government have created institutional structures to follow up on lessons from NEITI Reports. In June 2016, the Senate of Nigeria announced the creation of an "Ad hoc committee on the 2013 audit report of the Nigerian EITI" to "look into the findings of the Audit Report,

⁵² See for example President Jonathan's meeting with EITI Chair Clare Short on 14 October 2013, EITI (16 October 2013), "Billions at stake as Nigeria seeks more accountability", <https://eiti.org/news/billions-stake-nigeria-seeks-more-accountability>

⁵³ See for example The Nigerian Voice (16 October 2013), "Jonathan wants EITI's support for FG's fight against oil theft", <http://www.thenigerianvoice.com/news/126704/jonathan-wants-eitis-support-for-fgs-fight-against-oil-the.html>

⁵⁴ See for example minutes of NSWG meeting, 27 March 2014, unpublished, provided by NEITI Secretariat.

⁵⁵ This Day (30 January 2008), "Yar'Adua: Anti-Graft War not PR Gambit", <http://allafrica.com/stories/200801300447.html>

⁵⁶ See relevant news clippings available on <https://business-humanrights.org/en/president-obasanjo-says-nigeria-will-publish-openly-the-revenues-it-receives-from-oil-industry-shell-welcomes-the-move>.

⁵⁷ see p.15, NEITI (December 2009), 'Nigeria Final Validation report', https://eiti.org/files/Nigeria_Validation_Report_ENG_0.pdf and p.5 of NEITI (June 2015), 'NEITI Annual Activity Report 2014', <https://eiti.org/files/NEITI%20Annual%20Activity%20Report%202014.pdf>.

⁵⁸ NEITI Board Charter (January 2011), Article 3.2.2.

⁵⁹ Minister Fayemi took over from Ledum Mitee, former President of the Movement for the Survival of Ogoni People, who was appointed Chair of the NSWG by President Jonathan in 2012. Mr. Mitee was the second senior civil society representative appointed to Chair the NSWG, following the appointment of former head of the Academic Staff Union of Nigerian Universities (ASUU) and President of the Nigerian chapter of Transparency International Professor Assisi Asobie in 2007. Professor Asobie was in turn preceded by Minister of Solid Minerals Obiageli Ezekwesili in 2004. Before her appointment, responsibility for EITI implementation was initially with the Special Advisor to the President in the period 2003-2007 before transitioning to the statutorily independent NEITI following the adoption of the NEITI Act in May 2007.

⁶⁰ An organigram of NEITI is available in the annexes.

⁶¹ According to NEITI Annual Progress Reports for 2014 and 2015.

and recommend to the Senate, in order to task the Executive arm of the Government to ensure the recovery of unremitted funds, prosecute all found culpable and take new legislative actions to block all leakages in the future”.⁶² A joint task force with the Economic and Financial Crimes Commission (EFCC) was announced on 16 June 2016 to enforce required actions under the 2007 NEITI Act.⁶³ The joint task force and the Senate Committee are discussed in further detail in section 2.3 below, “Lessons learned and follow up on recommendations”.

The GLN has sought ways to overcome and address bottlenecks in EITI implementation. The 2007 NEITI Act introduced penalties of up to N 30,000,000 (currently equivalent to approximately USD 95,000) for companies that did not disclose information upon request by NEITI or provided incorrect information.⁶⁴ The Act also makes company directors and government officials personally responsible for companies or government agencies not disclosing information upon request or providing incorrect information.⁶⁵ More information is available in section 1.2 below. Previous administrations also initiated attempts to address challenges to EITI implementation.⁶⁶

Government is generally represented at a high level on the NSWG and representatives attended NSWG meetings regularly.⁶⁷ Government representation on the current NSWG includes the Federal Minister of Solid Minerals, who chairs the NSWG, the Executive Secretary of NEITI, the Permanent Secretary of the Federal Ministry of Finance and the Group Managing Director (GMD) of the state-owned oil company, NNPC.⁶⁸ The level of government representation was lower during the period 2012-2015, when the GMD of NNPC was the highest-ranking government representative on the NSWG.⁶⁹

In accordance with the NEITI Act, representatives from the geopolitical zones in Nigeria also sit in the

⁶² Full text of the inaugural address by Senator Barau Jibrin, Chairman of the Committee, on 23 June 2016 is available in the annex.

⁶³ NEITI (June 2016), ‘2013 Audit Reports: NEITI takes case to EFCC’, <http://www.neiti.org.ng/index.php?q=news/2016/06/17/2013-audit-reports-neiti-takes-case-efcc>.

⁶⁴ NEITI Act Article 16.3; “An extractive industry company which delays or refuses to give information or report under this Act, or wilfully or negligently fails to perform its obligations under this act, commits an offence and is liable on conviction to a fine not less than N30,000,000.”

⁶⁵ Articles 16(5) and 16(6).

⁶⁶ For example, an expanded, high-level inter-ministerial task team was announced in December 2014 under President Jonathan to, among other things, “identify any bottlenecks to the realization of [the work of NEITI] and make any necessary recommendations to Government through the Secretary to the Government of the Federation”. NEITI (December 2013), Federal government inaugurates expanded reconstituted inter-ministerial task team (IMTT) on NEITI reports’, <http://neiti.org.ng/index.php?q=news/2013/12/24/federal-government-inaugurates-expanded-reconstituted-inter-ministerial-task-team-im>.

⁶⁷ Due to the dissolution of the NSWG, only two meetings were held in 2015 instead of the four prescribed by the NEITI Act of 2007. Five of the nine government representatives attended both meetings in 2015, two attended one and a further two did not attend either. All absentees were representatives from the geopolitical zones. NEITI (June 2016), ‘NEITI Annual Activity report 2015), http://neiti.org.ng/sites/default/files/pdf_uploads/AAR%202015.pdf. The extent to which representatives from geopolitical zones represent government was not clear and is discussed below. Four meetings were held in 2014, with six government representatives attending all four meetings and three – all representatives from the geopolitical zones – attending three each. See NSWG meeting attendance chart in NEITI (June 2015), ‘Annex 2 to NEITI Annual Activity Report 2014’, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-Annual-Report/NEITI-NSWG-Attendance-2014.pdf.

⁶⁸ See NSWG membership 2016-present, http://www.neiti.org.ng/sites/default/files/pdf_uploads/List%20of%20Board%20Members%20and%20pics%20new.pdf.

⁶⁹ See NSWG membership 2012-2015, http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEW%20NEITI%20NSWG%20MEMBERS.pdf. Government representation was at a high rank in 2008-2012 also including the GMD of NNPC, the Accountant General of the Federation (AGF) and the Executive Chairman of the Federal Inland Revenue Service (FIRS), as well as the Executive Secretary of NEITI. See NSWG membership 2008-2012, <http://www.neiti.org.ng/sites/default/files/page/uploads/neiti-nswgmembers-230910.pdf>.

NSWG. As they are political appointees and are neither nominated nor accountable to state government, it is unclear to what extent they represent government.⁷⁰

With few exceptions, federal government entities participated actively in EITI reporting. Sub-national (state) governments were not engaged in EITI reporting.⁷¹

Stakeholder views

Stakeholders from all constituencies noted that although government commitment had at times wavered, the NEITI Act ensured a minimum level of continuity over the last decade. There was also general consensus that the current administration had brought back a level of commitment and support that had been largely missing over the two last administrations.

A letter to the EITI Chair Clare Short from a coalition of CSOs dated 21 July 2015 noted what it considered the “decay” in political support for NEITI under the Jonathan administration.⁷² A 2014 report from the International Institute for Environment and Development describes⁷³ how the pace of implementation slowed significantly following publication of the first NEITI Report and passage of the NEITI Act. It notes that the political commitment of President Obasanjo’s successor, President Yar’Adua, was even weaker and implementation stagnated.⁷⁴ A 2011 study on EITI implementation in Nigeria argued that the government and the NEITI appeared to use CSOs’ contributions as means of achieving credibility and legitimacy in the eyes of the international community and donors instead of achieving a high level of transparency and accountability in the extractive sector in Nigeria.⁷⁵

All of the government representatives consulted stressed the importance that the current administration places on the EITI. According to Minister Fayemi, the current Chair of the NSWG, this is also reflected in the level of government representation on the current NSWG. This was echoed by former National Coordinator and current Minister of State for Planning and Budget Zainab Ahmed, who also noted that a number of the reforms of the current administration are drawn from recommendations from the NEITI process. A Presidential Advisor also said that the fact NSWG was among the first Federal Boards to have been reconstituted under the current administration should be seen as a sign of the importance that the government attaches to NEITI.

From taxi drivers to the President of the Senate, all stakeholders were unanimous in identifying lack of

⁷⁰ For an example of how representatives of geopolitical zones are at times considered government representatives, see the division of constituencies listed in NEITI (June 2015), ‘Annex 2 to NEITI Annual Activity Report 2014’, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-Annual-Report/NEITI-NSWG-Attendance-2014.pdf.

⁷¹ See initial assessment of Requirement 4.1 below. The Central Bank of Nigeria (CBN), the Department of Petroleum Resources (DPR), the Federal Inland Revenue Service (FIRS) and NNPC’s Crude Oil Marketing Department (COMD) reported as requested for the 2013 reporting exercise. Other agencies collecting specific levies and fees, such as the Nigerian Export Supervision Scheme (NESS) and the Nigerian Maritime Administration and Safety Agency (NIMASA), did not report for the 2013 Oil and Gas NEITI Report. In mining, most government entities were actively engaged in EITI reporting.

⁷² Civil society organizations working for transparency and accountability in the extractive sector in Nigeria (21 July 2015), Re: Dissolution of NEITI National Stakeholders Working Group (NSWG), letter to the EITI International Board Chair.

⁷³ International Institute for Environment and Development (2014), ‘Localising transparency: exploring EITI’s contribution to sustainable development’, <http://pubs.iied.org/pdfs/16555IIED.pdf>.

⁷⁴ The report notes the eight-month delay in appointing a new NSWG Board following elections in 2012. Following citizens’ protests at efforts to remove fuel subsidies in 2012, the Goodluck administration committed to greater reforms, through the Petroleum Industry Bill (PIB), the establishment of various committees including the Petroleum Revenue Special Task Force, and remediation of issues in the NEITI reports. International Institute for Environment and Development (2014), ‘Localising transparency: exploring EITI’s contribution to sustainable development’, <http://pubs.iied.org/pdfs/16555IIED.pdf>.

⁷⁵ Abutudu, M. & Garuba, D., Current African Issues (2011), “Natural Resource Governance and EITI Implementation in Nigeria”, <http://nai.diva-portal.org/smash/get/diva2:471319/FULLTEXT01>.

remediation or follow-up to NEITI's findings as NEITI's greatest weakness. Stakeholders from all constituencies expressed a hope that this would change under the current administration and made reference to the recent calls for increased cooperation between NEITI and the Economic and Financial Crimes Commission, the Senate and the Auditor General of the Federation. Stakeholders expressed general disappointment with the work thus far of the Inter-Ministerial Task Team but also hope that a reconstituted IMTT would be able to make progress under the current administration.

Members of the secretariat and government representatives noted that the financial constraints affecting the country as a whole would also affect the government's ability to fully fund the NEITI process. Former members of the NSWG expressed disappointment that funding constraints had in previous years also prevented the regular publication of a Fiscal Allocation and Statutory Disbursement Report as per the workplan. Representatives from the Secretariat said that NEITI would seek to cover these funding gaps.

None of the stakeholders consulted believed that the representatives from the geopolitical zones represented the government constituency as they were not accountable to local governments nor did they directly report to them. When asked what interests she represented in her geopolitical zone, a member of the NSWG responded "none, or rather all except for the government's. Maybe civil society's?".

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. There are regular, public statements of support from the government, a senior individual has been appointed to lead on the implementation of the EITI, and senior government officials are represented on the MSG. The NEITI Act is a powerful tool to empower the NSWG and resolve bottlenecks as well as secure the continuity of the process. Stakeholders note that although government engagement in the EITI process has at times been weak, the current representation on the MSG shows that the government is taking the process seriously. Although funding is a challenge, this appears to be systemic and is not indicative of a lack of government engagement.

To continue making progress in this requirement, the FGN is encouraged to reconstitute and empower the IMTT to address the challenges identified through NEITI Reports.

Industry engagement in the EITI process (#1.2)

Documentation of progress

Active engagement: Industry representatives participate in NSWG discussions and companies report regularly.

Companies engage with the EITI in Nigeria through their representative in the NSWG. The NEITI Act of 2007 reserves positions for "[a] representative of extractive industry companies" and "experts in the extractive industry".⁷⁶ The Act does not exclude other company representatives from also being appointed as part of the 15-member NSWG, nor are "industry experts" excluded from representing a sub-constituency in their own right. Since 2008, the company representative has been the sitting Chair of the

⁷⁶ NEITI Act of 2007, articles 6.2a(i) and (iv).

Oil Producers' Trade Section (OPTS) of the Lagos Chamber of Commerce, the oil and gas industry producers' advocacy group.⁷⁷ In the current NSWG, the Chair of the Miners' Association of Nigeria (MAN) – an industry association – was appointed as one of the industry experts.⁷⁸

Industry representatives, herein industry experts, participated regularly in meetings of the NSWG.⁷⁹ The company representative and the industry experts are regularly cited in NSWG minutes. Minutes of the Technical Committee of the NSWG also showed active participation. The Technical Committee is a standing committee and is chaired by an industry expert (see Annex A).

The NSWG has created a platform to facilitate industry engagement.⁸⁰ The Company Forum held its inaugural meeting in December 2015⁸¹ with the participation of representatives from each of the four main industry associations (hydrocarbons and solid minerals).⁸² A draft memorandum of understanding (MOU) between NEITI and the associations was agreed and is expected to be signed shortly.⁸³ The MOU commits companies to “a) work with NEITI in its implementation of the EITI principles in Nigeria; b) attend and participate actively at the meetings of the FORUM; c) be actively involved in re-evaluating existing strategies and designing new strategies for the implementation of the EITI in Nigeria; d) maintain a current work plan, fully aligned with the reporting and validation deadlines set by the NEITI; and e) render all support and cooperation that NEITI may from time to time require in achieving its objectives.”⁸⁴

Companies consistently reported in NEITI oil and gas audits, but not all companies reported all of the required information.⁸⁵ In the last Solid Minerals EITI Report covering 2013 seven companies did not

⁷⁷ See the OPTS website, <http://opts-ng.com/>. Addax, Afren, Chevron, Dubri, ExxonMobil, Midwestern, Moni Pulo, ND Western, Neconde, Nexen, Nigeria Agip Oil Company (NAOC), Oando, Pan Ocean, Petrobras, Sapetro, Seplat, Septa Energy, Shell, Shoreline, Statoil, Total and WalterSmith. In partnership with NNPC these companies account for over 80% of oil produced in Nigeria.

⁷⁸ Industry experts in previous NSWGs included industry consultants and individuals with long experience working for the industry. See NSWG membership 2008-2012 (<http://www.neiti.org.ng/sites/default/files/page/uploads/neiti-nswgmembers-230910.pdf>), NSWG membership 2012-2015 (http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEW%20NEITI%20NSWG%20MEMBERS.pdf) and NSWG membership 2016-present

(http://www.neiti.org.ng/sites/default/files/pdf_uploads/List%20of%20Board%20Members%20and%20pics%20new.pdf.)

⁷⁹ In 2015 they attended both of the meetings held before the dissolution of the MSG. In 2014 the industry representative participated in three of the four NSWG meetings held (through her proxy). Two of the three industry experts attended all of the meetings held that year and the third – a mining engineer – participated in none of them. See NEITI (June 2016), ‘NEITI Annual Activity report 2015), http://neiti.org.ng/sites/default/files/pdf_uploads/AAR%202015.pdf and NSWG meeting attendance chart in NEITI (June 2015), ‘Annex 2 to NEITI Annual Activity Report 2014’, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-Annual-Report/NEITI-NSWG-Attendance-2014.pdf.

⁸⁰ At its 16 June 2015 meeting, the NSWG resolved to constitute a “Companies’ Forum” ahead of its next meeting scheduled for September 2015. See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

⁸¹ NEITI Annual Activity Report 2015 (June 2016), p. 42-43, http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-AAR-2015.pdf.

⁸² The Oil Producers Trade Section, representing oil exploration and production companies; the Independent Petroleum Producers Group (IPPG), representing the independent oil exploration and production companies; the Nigeria Association of Indigenous Petroleum Explorers and Producers (NAIPEC), representing indigenous oil exploration and production companies; and the Mining Association of Nigeria (MAN), representing companies engaged in the mining of solid minerals.

⁸³ According to the draft MOU, the Forum is meant to “be a platform for the companies to strengthen the participation and interaction in implementing the EITI process in Nigeria; secure the commitment of the companies in rendering all necessary support to NEITI in its efforts to meet the EITI Standard; and enable the parties to do all such things and take all relevant steps as are required to implement the EITI in Nigeria.” See the draft MOU for the Companies’ Forum, unpublished, provided by NEITI Secretariat

⁸⁴ Article 3.2, companies’ obligations.

⁸⁵ In the last Oil and Gas EITI Report covering 2013, 12 of the 41 material companies did not report their field legal contract templates. See initial assessment of Requirement 4.1 below.

report. Their combined payments to government accounted for 0.28% of total government-declared solid minerals revenue and were thus considered non-material.⁸⁶

Enabling environment: The NEITI Act of 2007 provides an enabling legal environment for EITI reporting. There do not appear to be legal barriers to reporting.

The NEITI Act, originally introduced to the National Assembly in December 2004 and passed on 28 May 2007,⁸⁷ set the legal framework for mandatory disclosure and created NEITI as an autonomous, self-accounting body reporting directly to the FGN President and the National Assembly.⁸⁸ Under the act NEITI became responsible for developing a framework for transparency and accountability in the reporting and disclosure by all extractive industry companies of revenue to the FGN.⁸⁹

The NEITI Act introduced criminal sanctions against individuals, organisations, companies or government departments which fail to comply with the reporting requirements in the NEITI Act.⁹⁰ Under article 16 of the act the NSWG may recommend to the President of the FGN to “suspend or revoke the operational license of any company that fails to perform its obligations under the Act.” There do not appear to be examples of individuals, organisations, companies or government departments actually having been prosecuted for breaches of the NEITI Act.

A requirement to comply with the reporting requirements of the NEITI act has also been included in legislative reform proposals. The draft Petroleum Industry Governance Bill (PIGB), submitted to the National Assembly in December 2015 and currently under review, included several clauses related to full compliance with the NEITI Act. These clauses were also included in PIGB’s predecessor, the Petroleum Industry Bill (PIB),⁹¹ which was introduced to the National Assembly in July 2012 and was scrapped in June 2015.⁹²

There do not appear to be legal barriers to reporting. Although the NEITI Act includes clauses protecting confidential information,⁹³ it also gives NEITI broad powers to, among other things, “promote or undertake any other activity related to its functions and which, in its opinion, is calculated to help achieve its overall objectives.”⁹⁴

Stakeholder views

All industry representatives consulted expressed their general support for the work that NEITI does. For almost all of the industry representatives, this support was understood in terms of compliance with

⁸⁶ See initial assessment of Requirement 4.1 below.

⁸⁷ p.15, NEITI (December 2009), ‘Nigeria Final Validation report’, https://eiti.org/files/Nigeria_Validation_Report_ENG_0.pdf.

⁸⁸ Section 1 of Federal Republic of Nigeria (2007), ‘NEITI Act 2007’, <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

⁸⁹ Section 3 of Federal Republic of Nigeria (2007), ‘NEITI Act 2007’, <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

⁹⁰ All directors and other management of non-compliant companies risk penalties of at least two years imprisonment and a fine of at least NGN 5 million, unless the person can prove a) that refusal to report was against their consent and/or b) that all due diligence was performed.

⁹¹ Section 4 (p.13) of FGN (18 July 2012), The Petroleum Industry Bill, <http://www.nigeria-law.org/Legislation/LFN/2012/The%20Petroleum%20Industry%20Bill%20-%202012.pdf>.

⁹² Reuters (7 December 2015), “Exclusive: Stalled Nigerian oil law broken up, new law splits state giant”.

⁹³ See sections 3.b, 3.d and 3.e of Federal Republic of Nigeria (2007), ‘NEITI Act 2007’, <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

⁹⁴ See section 3.i of the NEITI Act 2007, <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

NEITI's reporting requirements. For most stakeholders consulted this was the extent of the companies' engagement with NEITI, and there was general surprise at the suggestion that the constituency's priorities should be reflected in NEITI's annual workplans. When asked whether companies should be able to influence the scope of NEITI's reports, some company representatives argued that this would pose a conflict of interests as it could affect the independence of the "NEITI Audit".⁹⁵

The perception was widespread across constituencies that NEITI was first and foremost a well-respected statutory body that carried out annual independent audits with which companies have no choice but to comply. When asked what purpose it then served to have company representation in the NSWG, stakeholders from all constituencies noted that companies played a role in adapting the reporting templates so these would be better suited to companies' reporting systems.

According to its Chair, the Company Forum was established to guide industry's engagement in the NEITI and represents a third necessary pillar alongside the Civil Society Steering Committee and the Inter-ministerial Task Team. While the industry representative noted that companies had not been significantly involved in shaping the scope of EITI reporting or in dissemination and outreach in the past, the Companies Forum was seen as opening the way for more active engagement. The representative also expressed hope that the forum would catalyse more synergies between oil and gas companies and solid minerals companies. While representatives from the companies expressed unanimous support for its creation, it was clear that the Forum did not arise from a perceived need from companies and there appeared to be some confusion among industry representatives as to what had led to its creation.

All stakeholders were of the opinion that there were no significant barriers to disclosure in Nigeria. A NEITI secretariat staff stated that the provisions for commercially sensitive information in the NEITI Act did not relate to payments to government, but only to seismic information and that companies interpreted the clauses in the NEITI Act in this way. Such provisions had never been invoked by companies refusing to report and thus were not considered loopholes, according to the staff consulted. The general approach taken by companies appeared to be that NEITI is a government agency, and as such information requirements were seen as statutory requirements with which companies need to comply.

NSWG members and NEITI secretariat staff stressed that all constituencies are given an opportunity to express their views on the workplan, annual progress report, NEITI Reports and other documents of the NSWG through their representatives. Industry representatives on the NSWG confirmed that this was the case. With one exception, industry representatives consulted outside the NSWG did not recall having been consulted except on the development of the reporting templates. A former NSWG Chair said that in the early days of the process industry had played a very active role in discussing the technical issues of reporting, including scope and quality assurance, and expressed sadness that this was no longer the case.

A concern of the constituency that was repeatedly raised was the use that NEITI gave to the findings of NEITI reports. Representatives on and off the NSWG noted that although the constituency was asked to provide comments and these were reflected in the reports, this balance was lost when NEITI carried out its advocacy campaigns. When asked whether it was possible for companies to influence NEITI's advocacy activities, for example through the workplan, stakeholders from all constituencies expressed concerns that this could affect the independence of NEITI. When asked further what means companies have to halt

⁹⁵ The stakeholder mapping carried out in 2011 in connection with the development of a communications strategy noted that companies saw their relationship with the EITI in terms of compliance. The "summary of their motivation and behaviour" was quoted as "NEITI is a statutory body and we comply with the statute establishing it. We cooperate with them whenever they call on us." <http://www.neiti.org.ng/sites/default/files/documents/uploads/revised-communications-strategy-document.pdf>.

an information campaign they considered harmful or untrue, more than one company representative made reference to their lawyers.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement.

The NEITI Act of 2007 provides an enabling legal environment for EITI reporting and there do not appear to be legal barriers to company disclosure. On the contrary, companies can be prosecuted under the Act for not reporting information as required. Stakeholders have not expressed concerns about companies being unable to report to, or engage with, the MSG.

Companies are actively and effectively engaged in the EITI process, but only as providers of information. Industry representatives on and off the MSG confirmed that except for a yearly workshop to improve the design of the reporting templates, the broader constituency was otherwise not engaged in deciding questions of scope, workplans or other decisions by the MSG. This is not due to not having an opportunity to do so. Instead, many stakeholders consulted, including company representatives, argued that it would not be desirable for companies to participate more actively in the shaping of the EITI process as it could affect the independence of what is first and foremost understood by them to be an independent government audit.

The MSG has itself identified the need to improve how the industry constituency engages with NEITI and with stakeholders outside the MSG. The newly-created Company Forum should help address these challenges and explains the Secretariat's positive initial assessment. For the Company Forum to effectively address the challenges of the constituency however it will need to be used to give the constituency a voice in the development of the EITI in Nigeria and avoid becoming exclusively a mechanism for dissemination of NEITI's activities to its members.

Civil society engagement in the EITI process (#1.3)

Documentation of progress

The Constitution of the Federal Republic of Nigeria of 1999 guarantees freedom of expression and of the press.⁹⁶ Freedom House ranked Nigeria as "partly free" in its 2015 Freedom in the world ranking, with a rating of 4.5 out of 7 in both 2015⁹⁷ and 2016⁹⁸.

There is evidence that the Civil Society Steering Committee has considered and shared with the NSWG a definition of what constitutes an enabling environment for civil society. There is also evidence that CSSC has shared with the NSWG the findings of the MSI Integrity Report of 2015 that looked specifically at the role of civil society in EITI implementing countries.⁹⁹

⁹⁶ Constitution of the Federal Republic of Nigeria (1999), Articles 38 and 39, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

⁹⁷ <https://freedomhouse.org/report/freedom-world/2015/nigeria>.

⁹⁸ <https://freedomhouse.org/report/freedom-world/2016/nigeria>.

⁹⁹ The following conditions define enabling environment for civil society according to the CSSC: "a) the existence of multi-party democracy, b) Access to Information & Press Freedom, c) Capacity of CSOs and the State, d) Institutionalization of EITI

Expression: Civil society representatives are able to engage actively in public debate on NEITI and on issues concerning the sector.

There were numerous examples of civil society representatives speaking in public about the EITI process. The selection of independent administrators,¹⁰⁰ the GLN's decision to dissolve the NSWG in 2015,¹⁰¹ the process of appointing the Executive Secretary of NEITI,¹⁰² and the possibility of suspension by the EITI Board for late reporting¹⁰³ were among the issues publicly criticised by civil society and discussed in national newspapers. NSWG minutes show that these concerns were also voiced and discussed at NSWG meetings and in meetings of the NSWG Civil Society Steering Committee (CSSC, discussed in further detail below). No examples were identified of civil society representatives having been unable to voice concerns with the EITI process.

There were numerous examples of civil society representatives speaking in public about natural resource governance. Civil society organisations inside and outside the EITI process regularly voiced harsh criticism of the government's management of natural resource.¹⁰⁴ Minutes of the CSSC show that civil society regularly provided direction to NEITI's dissemination and advocacy activities. Civil society, media organisations and trade unions are all represented in the CSSC. Civil society organisations regularly publish press releases and policy notes following the publication of NEITI Reports, calling on the government to implement the recommendations in the report.¹⁰⁵ No examples were identified of civil society representatives having been unable to voice concerns about how the sector was managed.

Operation: There were no indications of legal, regulatory, administrative or actual barriers to civil society preventing participation in EITI, nor any obvious restrictions of fundamental rights.

Registration of non-state actors (NSA), hereunder civil society organisations, is the responsibility of the Corporate Affairs Commission (CAC). The registration procedures are available online and the process typically takes less than a month.¹⁰⁶ It is possible to register an NSA without engaging the services of a legal practitioner, chartered accountant or chartered secretary. Registration requires payment of a NGN 20,000 registration fee (approximately USD 60). According to reports in the press there were some 46,000 non-state actors registered in the CAC's database in 2009.¹⁰⁷

There do not appear to be restrictions on access to funding for civil society organisations, restrictions on

Implementation." From the CSSC Report to the NSWG, 10 March 2015. Not public minutes shared with the Secretariat.

¹⁰⁰ Premium Times (January 2012), 'NEITI defends auditors', <http://www.premiumpremiump.com/business/3587-neiti-defends-auditors-choice-amid-criticism-from-civil-society.html>.

¹⁰¹ Real news (August 2015), 'CSOs at War over Dissolution of NEITI Board', <http://realnewsmagazine.net/oil-gas/csos-at-war-over-dissolution-of-neiti-board/>.

¹⁰² Daily Nigeria News (February 2016), 'NEITI Act was breached in Adio's appointment process – PWYP', <http://www.dailynigerianews.com/2016/02/26/neiti-act-was-breached-in-adios-appointment-process-pwyp/>.

¹⁰³ See for a recent example The Authority (30 May 2016), "Nigeria still at risk of EITI sanction over audit reports – PWYP", <http://www.authorityngr.com/2016/05/Nigeria-still-at-risk-of-EITI-sanction-over-audit-reports--PWYP/>

¹⁰⁴ See for example the Niger Delta Budget Monitoring Group (<http://www.nigerdeltabudget.org>) for an example of a critical civil society organisation outside the EITI process and policy briefs by the Civil Society Legislative Advocacy Center (CISLAC) for an example of advocacy by civil society organisations directly involved in NEITI.

¹⁰⁵ PWYP has provided copies of press releases. See also CISLAC (February 2016 'Policy options on implementing Nigeria Extractive Industries Transparency Initiative for impact', <http://cislacnigeria.net/index.php/2013/02/28/policy-options-on-implementing-nigeria-extractive-industries-transparency-initiative-for-impact/>.

¹⁰⁶ See Corporate Affairs Commission, 'Registration of Incorporated Trustees (NGO's)', <http://new.cac.gov.ng/home/registration-of-incorporated-trustees-ngos/>.

¹⁰⁷ All Africa (September 2009), 'Over 46,000 NGO's Registered in Nigeria', <http://allafrica.com/stories/200909240191.html>.

holding meetings or legal or administrative barriers to the dissemination of information. It is not a requirement to provide information about funding when registering an NSA at the CAC.¹⁰⁸ No examples were identified of civil society organisations working with extractives having been unable to operate freely.

Association: Civil society groups engaged in the EITI process are able to communicate and cooperate with each other regarding the EITI process.

Under the terms of a memorandum of understanding signed between NEITI and CSOs in 2006¹⁰⁹ and updated on June 2014, civil society has the right and the obligation to disseminate information in NEITI Reports, consult with the broader civil society and be consulted through its representatives on the NSWG.¹¹⁰

The key structure for facilitating interaction between the NSWG and the broader civil society is the Civil Society Steering Committee (CSSC).¹¹¹ The steering committee holds regular public meetings.¹¹² Its composition includes NSWG members and representatives from different groups of society. Its mandate is to “advise the NSWG on Civil Society matters; facilitate interface between Civil Society and the NSWG; and support the implementation of civil society activities of NEITI”. The civil society representative on the NSWG is the Chair of the CSSC.¹¹³ NSWG members on the CSSC currently include the representative of the labour unions and representatives from the geopolitical zones. As of 1 July 2016, the selection of the remaining members of the CSSC awaited a final decision by the civil society constituency.¹¹⁴ Previous CSSCs included representatives from the media, host communities, academia and youth groups, among others.¹¹⁵ The NEITI Executive Secretary and the Director of Communications sit on the CSSC. The Director of Communications serves as the committee secretary.

The right for civil society organisations to: “develop their own independent programs in the promotion of transparency in the extractive industries” is explicitly recognised.¹¹⁶ Publish What You Pay Nigeria (PWYP

¹⁰⁸ Freedom House has registered punctual concerns –including on funding restrictions – in connection with the presidential election in 2015 as well as intimidation by criminal organisations (Boko Haram). Freedom House also notes that government agencies routinely refuse to release information sought through the Freedom of Information Act passed in 2011. Freedom House (2015), Freedom in the world – Nigeria, <https://freedomhouse.org/report/freedom-world/2015/nigeria>.

¹⁰⁹ See MoU on <http://www.resourcegovernance.org/sites/default/files/MSG%20MOU%202006.pdf>.

¹¹⁰ The MOU commits the NSWG to “consult CSOs through their representatives in the [Civil Society Steering Committee] and other stakeholders” when “drawing up the guidelines for hiring independent administrators and in establishing ground rules for audit operations”. It also commits the NSWG to among other things “support the work of the CSSC as one of several mechanisms for monitoring, evaluating and validating EITI Country implementation in Nigeria”. For their part, civil society organisations are among other things expected to “ensure proper consultation”, “provide effective feedback to their respective constituencies on the outcomes of meetings and discussions not later than 1 week after [meetings]” and “take responsibility on wider dissemination of NEITI audit reports and constructive engagement on the remediation issues in collaboration with NEITI”. See NEITI-CSO: Memorandum of understanding, <http://neiti.org.ng/index.php?q=pages/civil-society>.

¹¹¹ See articles IV-VI under the NSWG’s responsibilities in the Memorandum of Understanding between civil society and the NSWG.

¹¹² MSI Integrity (February 2015), ‘Protecting the cornerstone: assessing the governance of EITI MSGs’, http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/MSI_EITI-report_download-2c.pdf.

¹¹³ Article 8.5.1. of the Board Charter.

¹¹⁴ Committee representatives on the current NSWG are available here:

http://neiti.org.ng/sites/default/files/pdf_uploads/List%20of%20Board%20Members%20and%20pics%20new_1.pdf.

¹¹⁵ See <http://neiti.org.ng/index.php?q=documents/neiti-civil-society-steering-committee-members> for a full list of CSSC members during the periods 2013-2015 and 2008-2012.

¹¹⁶ Guiding principles, NEITI-CSO: Memorandum of understanding, <http://neiti.org.ng/index.php?q=pages/civil-society>.

Nigeria) has played an important role in organising civil society,¹¹⁷ together with the Zero Corruption Coalition¹¹⁸ and other civil society organisations. Additional details on the roles of the different coalitions and civil society organisations are available in the annex. There are no indications that civil society has been restricted from engaging in outreach to broader civil society, including related to discussions about MSG representation and the EITI process.

Engagement: Civil society is encouraged to be involved in the design, implementation, monitoring and evaluation of the EITI through participation in meetings of the NSWG, the CSSC and dissemination events.

Civil society organisations, labour unions and the media engage with NEITI through their representatives in the NSWG. The NEITI Act of 2007 reserves positions for “[a] representative of civil society” and “[a] representative of labour unions in the extractive industries”.¹¹⁹ The act does not exclude other civil society representatives from also being appointed as part of the 15-member NSWG. The process for selecting or appointing the civil society representative is discussed in detail below.

There are examples of broader civil society groups being engaged and asked to provide input to the development of the EITI in Nigeria. Recognising that the role of civil society was not as clear as that of other stakeholders, consultations were carried out in 2012 to better understand what local communities and other civil society groups thought the role of civil society should be and how the EITI should develop in Nigeria.¹²⁰ The ensuing report listed the following priorities for civil society engagement in the EITI process in Nigeria: agenda setting; public education and enlightenment; being agents of change and social mobilisation; monitoring and overseeing the sector; advising NEITI as professionals in their areas of interest; whistle blowing; observing the NEITI process through their representatives in the NSWG; and providing feedback to NEITI.¹²¹ Newspaper articles show that civil society has played a role in pushing NEITI and the FGN to go beyond the minimum reporting requirements of the EITI.¹²²

The NSWG Board Charter of 2011 lists “proactive engagement based on the principles of dialogue, inclusivity, participation and empowerment” as the principles guiding NEITI’s engagement with civil society organisations.¹²³ The Charter charges the Executive Secretary of NEITI with responsibility for ensuring that CSOs “receive information about NEITI and invitations to participate in NEITI processes”. It also requires that all NSWG Members “be interested and involved in NEITI’s activities involving CSOs”.¹²⁴ To facilitate and promote interaction with stakeholders from civil society and the media outside of the NSWG, the Charter formalised the creation of the NSWG Civil Society Steering Committee (CSSC) and the Communication Committee (CC). A full-time Civil Society Liaison Officer position was also created.¹²⁵

¹¹⁷ <http://www.publishwhatyoupay.org/members/nigeria-2/>

¹¹⁸ <https://www.facebook.com/ZeroCorruptionCoalition/>

¹¹⁹ NEITI Act of 2007, articles 6.2a(i) and (iv).

¹²⁰ Ekhaton, Eghosa Osa (December 2014), ‘The roles of civil society organizations in the Extractive Industries Transparency Initiative in Nigeria’ in the International Journal of Not-for-Profit Law / vol. 16, no. 2, <http://www.icnl.org/research/journal/vol16iss2/v16n2%20Ekhaton.pdf>.

¹²¹ NEITI (2012), ‘Civil Society in the NEITI process’, <http://neiti.org.ng/sites/default/files/page/uploads/civil-society-neiti-process.pdf>.

¹²² See for example <http://www.nigerianeye.com/2011/09/civil-society-challenges-fg-on-oil.html>.

¹²³ NEITI Board Charter (January 2011), item 16, <http://neiti.org.ng/sites/default/files/documents/uploads/neitiboardcharter-010211.pdf>.

¹²⁴ NEITI Board Charter (January 2011), item 16, <http://neiti.org.ng/sites/default/files/documents/uploads/neitiboardcharter-010211.pdf>.

¹²⁵ NEITI (2013), NEITI Handbook, <http://www.neiti.org.ng/index.php?q=publications/neiti-handbook>.

At its meeting of 17 December 2013, the CSSC approved the creation of three sub-committees to look specifically at issues of remediation, dissemination and “EITI”, the last of which was tasked among other things with finding ways to “broaden, enhance and deepen CSO understanding and participation in the EITI”.¹²⁶ The terms of reference were proposed by the national secretariat and adopted by the members of the CSSC.¹²⁷

The MoU between the NSWG and civil society recognises the right and responsibility of the CSSC to “monitor, evaluate and validate implementation of the EITI in Nigeria”. It also commits the NSWG to “involve CSOs in the continuous redefinition and improvement of the NEITI platform as a tool for reforming Nigeria’s extractive industry”. NSWG minutes show that the CSSC provides regular recommendations and feedback for decision by the NSWG. There are examples of civil society publicly denouncing situations where it believes that implementation of the EITI is threatened or delayed.¹²⁸

The MoU also recognises the “joint responsibility of the CSOs and NSWG” to “build capacity of CSOs and citizens to respond to NEITI process”.¹²⁹ The 2015 Annual Progress Report records technical or institutional support provided by NEITI and others on at least five occasions to civil society in 2015, and a five-day capacity building workshop on oil and gas was organised by the CSSC in 2015.¹³⁰ There is no evidence that similar attempts were undertaken outside Abuja and Lagos in recent years.

Civil society members participate actively in meetings of the NSWG and public events organised by NEITI.¹³¹ Attendance records also show that civil society is represented in the dissemination of information provided through NEITI Reports. NEITI officials and civil society representatives regularly attend each other’s workshops and events in Lagos and Abuja.¹³² There do not appear to be recent examples of dissemination events in local communities by NEITI or civil society organisations, although this appears to have been more common in the past.¹³³

Access to public decision-making: Civil society representatives are able to speak freely on transparency and natural resource governance issues. There is evidence that NEITI Reports play a significant role in

¹²⁶ The terms of reference of the CSSC sub-committees are available in the annex.

¹²⁷ See the minutes of the CSSC meeting of 17 December 2013, available with the Secretariat.

¹²⁸ See for example <http://allafrica.com/stories/201511041385.html>.

¹²⁹ Guiding principle VII, NEITI-CSO: Memorandum of understanding, <http://neiti.org.ng/index.php?q=pages/civil-society>.

¹³⁰ See http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-AAR-2015.pdf and <http://neiti.org.ng/index.php?q=news/2015/06/12/communique-issued-end-five-day-capacity-building-workshop-oil-and-gas-sector-governance>.

¹³¹ The representative of civil society organisations attended both meetings in 2015 and all four of the meetings in 2014. The representative of the unions missed one meeting in 2014 and one in 2015. See NSWG meeting attendance chart in NEITI (June 2015), ‘Annex 2 to NEITI Annual Activity Report 2014’, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-Annual-Report/NEITI-NSWG-Attendance-2014.pdf. Attendance records also show that civil society members regularly attend public events organised by NEITI such as the public opening of financial proposals for NEITI Reports, public presentation of NEITI Reports and workshops for the development of reporting templates.

¹³² Examples include the “Summit on institutionalizing sustainable reforms in the oil and gas sector in Nigeria”, co-organised by CISLAC in Lagos in December 2015 and attended by 9 NEITI officials, or the “Public presentation of the 2009-2011 Oil and Gas Report and 2007-2010 Solid Minerals Report” organised by NEITI in Abuja in July 2013 and attended by 30 civil society representatives. Attendance sheets are available with the Secretariat.

¹³³ The regional roadshows undertaken by NEITI in the six geopolitical zones in the past served a dual purpose of disseminating EITI information to key stakeholders (CSOs, community leaders, state government officials, local government officials and traditional leaders) as well as forums for interaction and stakeholder canvassing. International Institute for Environment and Development (2014), ‘Localising transparency: exploring EITI’s contribution to sustainable development’, <http://pubs.iied.org/pdfs/16555IIED.pdf>.

contributing to civil society's analysis, research and advocacy.

The CSSC's sub-committee on remediation is the main body for the coordination of civil society action on NEITI's recommendations for the sector.¹³⁴ It is meant to support and supplement the efforts of the inter-ministerial task team to take action on NEITI's findings. There are examples of the sub-committee providing concrete recommendations to the government for reform of the sector as a direct result of NEITI's Reports and/or capacity building workshops.¹³⁵

There is evidence that civil society has promoted and engaged in discussions around the revised Petroleum Industry and Governance Bill (PIGB) in July 2016¹³⁶ and the draft Petroleum Industry Bill (PIB) before it. Civil society played a key role in formulating recommendations on the PIB through the NSWG, which formed a task team including CSOs to provide input to the PIB at its 20 June 2013 meeting.¹³⁷ The NEITI's position paper on the PIB was published in 2013¹³⁸, with CSO input evident in more specific calls for the PIB to clarify the status of the PIB Host Community Fund.¹³⁹ This has been linked to the PIB's inclusion of provisions for strengthening NEITI.¹⁴⁰

The World Bank and DFID's Facility for Oil Sector Transparency and Reform in Nigeria (FOSTER) program have provided capacity-building support for civil society targeted at improving their impact in public decision-making. A concrete result of this was the development of a workplan for civil society to work on remediation monitoring and support for the period September 2014 to August 2015. The workplan included activities along cross-cutting issues such as developing capacity and mobilising resources, but also specific tasks concerning domestic crude allocation, license awards, crude measurements, the relationship between NNPC and its joint venture partners, underassessment of taxes and other revenue streams, and loss of income for the FGN from unclear gas agreements.¹⁴¹ The new CSSC has not met since the dissolution of the NSWG and the CSSC in 2015, as its civil society members have not yet been selected by the constituency.

Stakeholder views

Civil society representatives unanimously said that they were not constrained in carrying out their role in the EITI and in their dissemination and advocacy activities. The only issue that was raised in this regard was the government's occasional demand upon registration that the name of an organisation be

¹³⁴ The terms of reference of the CSSC Sub-committee on remediation are available in the annex. The sub-committee is chaired by the representative of civil society organisations on the NSWG, who is also the Chair of the CSSC. Representatives from the CSSC sit on the sub-committee, which can also invite others to participate as needed.

¹³⁵ See for example the "Communiqué issued at the end of a five-day capacity building workshop on oil and gas sector governance by the civil society steering committee (CSSC) of Nigeria Extractive Industries Transparency Initiative (NEITI), (8-12 June 2015), <http://neiti.org.ng/index.php?q=news/2015/06/12/communique-issued-end-five-day-capacity-building-workshop-oil-and-gas-sector-governance>. The communiqué includes 12 recommendations to the FGN. See also CSSC (2014), 'Position paper on remediation of NEITI audit findings', annexed to The World Bank (September 2014), 'NEITI CSSC Strategy and Work Plan for Remediation Monitoring and Support – Consultation summary report'. Provided by the national secretariat.

¹³⁶ NEITI (14 July 2016), NEITI lists conditions for a new PIGB, <http://www.neiti.org.ng/index.php?q=news/2016/07/14/neiti-lists-conditions-new-pib>.

¹³⁷ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

¹³⁸ NEITI (2012), NEITI position paper on the PIB, <http://neiti.org.ng/sites/default/files/news/uploads/neiti-position-pib.pdf>.

¹³⁹ NEITI (22 July 2013), "NEITI calls for clarity on PIB Host Community Fund", <http://neiti.org.ng/index.php?q=news/2013/07/22/neiti-calls-clarity-pib-host-community-fund>.

¹⁴⁰ International Institute for Environment and Development (2014), 'Localising transparency: exploring EITI's contribution to sustainable development', <http://pubs.iied.org/pdfs/16555IIED.pdf>.

¹⁴¹ The World Bank (September 2014), 'NEITI CSSC Strategy and Work Plan for Remediation Monitoring and Support – Consultation summary report'. Provided by the national secretariat.

amended if it could be understood to suggest a government-sanctioned or federal activity. This was not seen as an important concern by stakeholders.

None of the stakeholders consulted considered it a problem that two of the Chairs of the NSWG had been civil society representatives, although a number of people from all constituencies noted that having a minister chair the NSWG as was currently the case would probably help the process become more meaningful. One former Chair argued meanwhile that having a civil society member chair the NSWG ensured a higher level of independence and accountability. Everyone agreed that once a civil society representative became Chair, his or her responsibility was no longer to the constituency and he or she became accountable to the President and Parliament, as per the NEITI Act.

All stakeholders took it for granted that media and the labour unions were an integral part of civil society. Opinions were divided as to whether the representatives from the geopolitical zones also represented civil society, with most believing that they did not. As mentioned above, at least one such representative currently on the NSWG did in fact see her role as representing civil society in her geopolitical zone. Stakeholders from all constituencies and representatives from past NSWGs also noted regularly that some representatives from the geopolitical zones were recognised members of the media in their own right.

Representatives from all the constituencies highlighted the important role that civil society plays in the dissemination of information found in EITI reports and advocacy in the sector. A member of NEITI's Communications Department explained that different civil society groups were approached by the department depending on specific communications need. A panel discussion at the induction retreat of the new NSWG on April 2016 noted that CSOs were "the weakest part of the NEITI tripod" and that there was a need to provide support to CSOs who typically operated within limited budgets. It was also stated the need for the definition of CSOs and their needs to be expanded, noting the importance that the capacities of the various stakeholders not be exaggerated but their contributions be acknowledged.¹⁴²

Whereas the role of companies was generally understood in terms of *upstream* activities (preparation of templates and presentation of information upon request), the role of civil society was almost exclusively understood by stakeholders in terms of *downstream* activities (dissemination and impact).¹⁴³

Notwithstanding this emphasis on the downstream activities, the secretariat provided evidence that the constituency through its representatives in the NSWG was given the opportunity to comment on strategic documents like the workplan and approve the terms of reference for the Independent Administrator.

Stakeholders from all constituencies and members of the secretariat made reference to the Civil Society Steering Committee as an effective platform for the engagement of civil society, including the media. When questioned further it became unclear to what extent members of the constituency actually see the CSSC as an effective method of communication: when asked how civil society makes its opinion known to NEITI, members of the constituency and their representative on the NSWG said that their main method of communication was through press releases and other public statements. It also became unclear to what extent the CSSC has actually carried out activities of dissemination towards local communities and

¹⁴² NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

¹⁴³ This was not least clear in how the secretariat explained the CSSC, which in a presentation by the Communications Department was explained to the Secretariat as "a platform for civil society's role on dissemination/advocacy, public education, outreach, remediation and feedback/petitions and resource mechanism".

training events for civil society over the last two years. With the exception of a five-day training for civil society held on 8-12 June 2015 on the 2012 Oil and Gas EITI Report and broader industry governance, no evidence of dissemination or training events for civil society was provided to the Secretariat despite numerous requests.¹⁴⁴

Civil society representatives expressed concerns about the way in which the current representative to the NSWG had been appointed. These concerns are discussed in further detail under Requirement 1.4 below. More broadly, there were concerns that the Publish What You Pay (PWYP) structure under which civil society had organised its engagement with the EITI was currently dysfunctional and hampered the broader constituency's ability to engage actively in the development of NEITI. This is something that has also been raised in the past.¹⁴⁵ Stakeholders within and outside the PWYP structure consistently said that they had not been consulted in the development of workplans, terms of reference or other NEITI decision-making. Often this was linked by interlocutors to the fact that PWYP Nigeria has not conducted a General Assembly or refreshed its leadership in at least eight years, meaning that civil society did not have a way to hold their representative accountable. According to a number of stakeholders, including a former Chair of the NSWG and some secretariat staff, the decision by CISLAC in 2016 to unilaterally nominate a civil society representative for appointment should be seen in this light, as PWYP Nigeria had proven unable to organise a process to select a new leadership. International civil society consulted confirmed that there were pervasive challenges within the PWYP Nigerian coalition that would not be easily solved.

The Secretariat has repeatedly requested the current leadership of PWYP Nigeria to provide the minutes of the last General Assembly and their Charter, without success. PWYP Nigeria informed the Secretariat in August that a General Assembly was being planned for September 2016. At the time of writing no further information had been provided about this or appeared to be publicly available.

NRGI has noted that Nigerian civil society is not engaging in the solid minerals sector. As a result, "the deeply enriching NEITI audit reports in the sector are scarcely disseminated and often unused after their official launch. To this extent," NRGI concludes, "civil society has fallen cheap to the same criticisms it makes of Nigerian government's failure in economic diversification."¹⁴⁶

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress in meeting this requirement.

Civil society in Nigeria is able to engage in public debate without restraint, coercion or reprisal, and its representatives are able to operate freely in relation to the EITI process. Through the Civil Society Steering Committee, NEITI has developed a structure to ensure that civil society representatives are able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the

¹⁴⁴ See <http://www.neiti.org.ng/index.php?q=news/2015/06/12/communique-issued-end-five-day-capacity-building-workshop-oil-and-gas-sector-governance>.

¹⁴⁵ For example, a 2011 study on EITI implementation in Nigeria noted the internal strife dividing CSOs in Nigeria's EITI process. Disagreements in the Publish What You Pay coalition are noted, which led to the formation of a separate CSO named the Coalition for Accountability and Transparency in Extractive Industry, Forestry and Fisheries in Nigeria. The main driver of these internal crises was linked in the study to personality clashes. See Abutudu, M. & Garuba, D., Current African Issues (2011), "Natural Resource Governance and EITI Implementation in Nigeria", <http://nai.diva-portal.org/smash/get/diva2:471319/FULLTEXT01>.

¹⁴⁶ <http://goxi.org/profiles/blogs/overcoming-the-limits-of-eiti-in-nigeria-by-daуда-garuba>.

EITI process. The CSSC also provides a platform for civil society representatives to communicate and cooperate with each other regarding the EITI process.

Despite a favourable framework for civil society engagement, the impression from the stakeholder consultations is that civil society on the MSG does not in fact function as a link between the EITI and the broader constituency. Except as concerns dissemination, there is no evidence that the broader constituency is consulted or otherwise engaged in the design, implementation, monitoring or evaluation of the EITI process. As a member of the national secretariat explained it, the structures are in place and the information is provided to civil society's representative on the MSG, but it does not seem that the constituency is regularly consulted. More worryingly, it does not appear that civil society considers the existing platforms for engagement with the MSG adequate, choosing instead to communicate with NEITI through public demands and press releases.

If this requirement were only intended to address structural barriers to civil society engagement, the Secretariat's assessment would have been that Nigeria has made satisfactory progress. As civil society's internal challenges effectively hamper the participation of the broader constituency in the EITI process, Nigeria will need to take steps to enable full civil society participation in order to move beyond meaningful progress.

MSG governance and functioning (#1.4)

Documentation of progress

NSWG composition and membership: Constituencies have limited ability to participate in the selection of their representatives.

The current NEITI National Stakeholders Working Group (NSWG) was established on 23 February 2016.¹⁴⁷ It includes three government members including its Chair, Dr Kayode Fayemi, Federal Minister of Solid Minerals Development.¹⁴⁸ Industry has one representative on the NSWG,¹⁴⁹ as does civil society.¹⁵⁰ In addition, there are six NSWG seats earmarked for representatives from Nigeria's six geopolitical zones,¹⁵¹ two seats for industry experts¹⁵² and a representative of the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG)).

The NEITI Act of 2007 and the NEITI Board Charter of 2011 set the legal framework for the appointment of the NSWG by the President of the FGN.¹⁵³ According to the Board Charter,¹⁵⁴ members of the NSWG are

¹⁴⁷ See NSWG membership 2016-present,

http://www.neiti.org.ng/sites/default/files/pdf_uploads/List%20of%20Board%20Members%20and%20pics%20new.pdf.

¹⁴⁸ The two other government representatives are Dr Mahmoud Isa-Dutse, Permanent Secretary of the Federal Ministry of Finance, and Ibe Kachiwku, Group Managing Director of NNPC.

¹⁴⁹ The Chair of OPTS, Clay Neff, managing director of Chevron Nigeria Ltd.

¹⁵⁰ Kolawole Banwo of the Civil Society Legislative Advocacy Centre (CISLAC).

¹⁵¹ South-South, South-West, South-East, North-Central, North-East and North-West.

¹⁵² Representatives from the Nigeria Mining and Geosciences Society and the Miners Association of Nigeria.

¹⁵³ Article 6.1 of the Act states that "The NSWG shall be constituted by the President and shall consist of a chairman and no more than 14 other members, one of whom shall be an Executive Secretary". Article 6.2a states that "in making appointment into the NSWG, the President shall include i) representative of extractive industry companies, ii) representative of civil society, iii) representative of labour unions in the extractive industry, iv) experts in the extractive industry and v) one member from each of the six geopolitical zones".

¹⁵⁴ "The act empowers the NSWG to formulate policies and regulations to give effect to the provisions of the act for the

appointed on the basis of their individual merit but they represent specific stakeholder groups or sectors “except where otherwise stated in their respective letters of appointment”.¹⁵⁵ The Charter sets out the personal qualifications that would be necessary for a person to be eligible and qualified to become an NSWG member, including the traits that would disqualify him or her.¹⁵⁶ Article 7 of the NEITI Act sets a maximum tenure for NSWG members of four years, non-renewable, except for the Executive Secretary, whose maximum tenure extends for 5 years, non-renewable (article 6.3).

With the exception of civil society, there is no indication that other constituencies are expected or able to take part in the process of appointing representatives to the NSWG. Rather, appointments are made on the basis of specific positions that would fulfil the criteria in the NEITI ACT.¹⁵⁷ The exceptions are the Executive Secretary¹⁵⁸ and the representatives from the six geo-political zones, which are appointed by name. There are no criteria for the appointment of representatives from the geo-political zones, other than the general criteria in the Charter of ensuring adequate representation in terms of capacity, gender and geography.¹⁵⁹ The specific case of civil society is explained in further detail below.

There have been allegations of corruption in connection with appointments for federal boards, with allegations of payments of up to NGN 50 million (approximately USD 160 thousand) per appointment.¹⁶⁰ No such allegations appear to have been raised against appointees of the NSWG.

The NSWG serves at the pleasure of the President of the FGN and is disbanded every time a new government is elected.¹⁶¹ On 17 July 2015, the administration of President Buhari announced the suspension of all federal boards, including NEITI NSWG. This was publicly criticised by civil society representatives.¹⁶² Past presidents have similarly suspended federal boards at the onset of a new administration.¹⁶³ In recent times, it has taken between eight to seventeen months for an incoming

effective implementation of NEITI’s objectives and functions” NEITI (undated), ‘NEITI Board Charter for the NSWG’, <http://neiti.org.ng/index.php?q=documents/neiti-board-charter-nswg>.

¹⁵⁵ Article 2.1.3 in the Board Charter, <http://neiti.org.ng/sites/default/files/documents/uploads/neitiboardcharter-010211.pdf>.

¹⁵⁶ To summarise, NSWG members should be adults of sound mind and proven integrity with an ability to make sensible and informed decisions, contribute to matters under consideration and with an unequivocal commitment to furthering the interests of NEITI. See Article 2.2 in the Board charter.

¹⁵⁷ “The composition of the new Governing Board is as follows: (i) Honourable Minister of Solid Minerals Development – Chairman, (ii) Permanent Secretary, Federal Ministry of Finance – Member, (iii) Group Managing Director, Nigeria National Petroleum Corporation (NNPC) – Member, (iv) President, Miners Association of Nigeria – Member, (v) Representative of the Civil Society Organizations (to be elected by the organizations) – Member, (vi) President, Nigeria Mining and Geosciences Society – Member, (vii) President, Nigeria Union of Petroleum and Natural Gas (NUPENG) – Member”. The remaining NSWG members (representatives of the 6 geopolitical zones and the Executive Secretary) are mentioned by name. <http://www.channelstv.com/2016/02/23/buhari-approves-new-board-members-for-neiti/>.

¹⁵⁸ The NEITI Act includes the Executive Secretary as one of the NSWG members appointed by the President. Further details on the selection process are available under “National Secretariat” below.

¹⁵⁹ Article 2.4.1 in the Board Charter. The representatives from the six geopolitical zones are meant to guarantee a certain degree of geographical representation, but it is unclear what constituencies they can be said to represent. At the 6th EITI Global Conference in Sydney in May 2013, discussion at a session dedicated to Nigeria’s EITI discussed the level of representation of local constituencies and feedback mechanisms between the NSWG and local stakeholders. Participants at the session noted that the representatives from the geopolitical zones did not represent NGOs, and several participants noted the lack of strong mechanisms between local constituencies and the NSWG. International Institute for Environment and Development (2014), ‘Localising transparency: exploring EITI’s contribution to sustainable development’, <http://pubs.iied.org/pdfs/16555IIED.pdf>.

¹⁶⁰ The Sun (May 2016), ‘Board appointments: job seekers pay n50m each’, <http://sunnewsonline.com/board-appointments-job-seekers-pay-n50m-each/>.

¹⁶¹ NSWGs have been disbanded and re-appointed following elections in 2007, 2012 and 2015.

¹⁶² See for example <http://realnewsmagazine.net/oil-gas/csos-at-war-over-dissolution-of-neiti-board/>.

¹⁶³ For example, President Obasanjo assumed office for a second term on 29 May 2003 and reconstituted the federal boards in July 2004; President Yar’adua was sworn in on 29 May 2007 and reconstituted all federal boards on 16 October 2008; and

administration in Nigeria to reconstitute all federal boards. The current NSWG was reconstituted after 7 months (July-February), one month less than the previous NSWG.

The NSWG has a statutory role in the appointment process insofar as it is tasked under the Charter with ensuring that its composition is adequate and that it collectively contains “the skills, experience, diversity... and mix of personalities appropriate to the strategic direction of NEITI...”¹⁶⁴ There are no details on how this is supposed to happen in practice and whether this review is supposed to take place before or after the appointment by their appointment. It is also not clear whether this review is to be undertaken by the NEITI secretariat in the event that the NSWG has been disbanded.

NSWG members also have a responsibility under article 2.4.2 of the Board Charter to ensure “a seamless transition and the preservation of institutional memory and maintenance of continuity on the NSWG”. Article 9 in the Charter states that “all new NSWG Members will undergo an induction programme aimed at facilitating their understanding of NEITI and the environment in which it operates”.¹⁶⁵ There is evidence of induction of new NSWG members, with trainings both on EITI and broader extractives governance issues following refreshments both in 2016¹⁶⁶ and in 2012.¹⁶⁷

The NSWG can recommend to the President the removal of an NSWG member. Grounds for removal include gross misconduct, incompetence and failure to attend meetings. NSWG members can also lose their membership if they become legally disqualified from “acting as a director of a company at any time during his/her term in office”.¹⁶⁸

Civil society representation: The process by which the current civil society representative was appointed has been publicly criticised by PWYP Nigeria for not having been sufficiently consulted with the constituency.

The right of civil society to independently elect their representatives at all levels in the NEITI process and design their own programmes is recognised in the latest MoU (11 June 2014) between CSOs and NEITI.¹⁶⁹ The original composition of the NSWG as approved by President Buhari on 23 February 2016 noted that the representative of the Civil Society Organisations would “be elected by the organizations”.¹⁷⁰

The current representative of the civil society organisations on the NSWG, Mr. Kolalowe Banwo, was appointed by President Buhari on 24 March 2016 with retroactive effect from 19 February 2016. A press

President Jonathan assumed office on 29 May 2011 and reconstituted all federal boards on 22 August 2012.

¹⁶⁴ Article 2.4.1 in the Board charter. Article 2.3.3 explicitly states that the NSWG should “provide recommendations” to the President where a casual vacancy occurs.

¹⁶⁵ «the induction programme will include: background on NEITI and guidance on the operations of NEITI... instructions in the key financial statements... a clear identification of reciprocal expectations on appointment... familiarisation with NEITI’s operations, staff and operational environment [including stakeholders and strategic partners] and... corporate governance as well as fiduciary duties and responsibilities». Article 9.1.

¹⁶⁶ The NEITI Secretariat held a two-day induction workshop for new NSWG members in April 2016.

¹⁶⁷ See NSWG meeting minutes, 18 October 2012, Ref: NSWG 12/3, unpublished, provided by the NEITI Secretariat. At the 6th EITI Global Conference in Sydney in May 2013, discussion at a session dedicated to Nigeria’s EITI focused on civil society capacity. A number of capacity constraints were listed, including challenges in understanding issues across the extractive industry value chain, limited use of information and lack of coordination and collaboration amongst NGOs. Some participants argued that there was nevertheless more capacity within Nigerian CSOs than in other countries. International Institute for Environment and Development (2014), ‘Localising transparency: exploring EITI’s contribution to sustainable development’, <http://pubs.iied.org/pdfs/16555IIED.pdf>.

¹⁶⁸ Article 2.3.6 in the Board Charter.

¹⁶⁹ http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-CSO-MOU-040714.pdf.

¹⁷⁰ <http://www.channelstv.com/2016/02/23/buhari-approves-new-board-members-for-neiti/>.

release was issued that same day by the Civil Society Legislative Advocacy Centre (CISLAC) praising the appointment of Mr. Banwo.¹⁷¹ A second press release was issued by PWYP Nigeria on 6 April criticising Mr. Banwo's nomination on the grounds that it had not been consulted with other members of the PWYP Nigeria coalition.¹⁷² The release did not raise concerns about Mr. Banwo's independence or integrity, but rather about the process through which he had been nominated. This was itself followed by a crass third press release which argued in favour of the process followed as an alternative to what the signatories considered the "personalisation" of PWYP Nigeria under the current leadership.¹⁷³ The process leading to the appointment of Mr. Banwo is treated in greater detail in the stakeholder consultations below.

Civil society does not currently have guidelines or procedures for the nomination of representatives to the NSWG.¹⁷⁴ In their absence, Nigerian civil society has to a large extent organised itself for effective implementation of the EITI under the PWYP Coalition.¹⁷⁵ This does not mean that the Head of PWYP has automatically become the civil society representative in the past. Rather, in previous processes civil society has provided three candidates and the President of the FGN, aided by the national secretariat, has appointed one of them to represent the constituency.

Neither the NEITI Act nor the Board Charter limit the number of seats on the NSWG that may be allocated to civil society.¹⁷⁶ The two last NSWGs were chaired by individuals from the civil society constituency who did not represent their constituency but rather the whole of the NSWG.¹⁷⁷ Consequently these NSWGs had three representatives from civil society (the Chair, the civil society representative proper and the representative of the unions).¹⁷⁸ The NEITI Act does not set requirements for the types of CSO representatives that may sit on the NSWG aside from the requirement that one represent civil society and another represent trade unions (and the aforementioned eligibility criteria for all NSWG members).¹⁷⁹

Civil society appears operationally and in policy terms independent of companies and government (see Requirement 1.3 above). MSI Integrity's 2015 report Protecting the Cornerstone raised concerns over the potential lack of independence of labour union representatives on the NSWG as civil society

¹⁷¹ <https://www.facebook.com/cislacnigeria/posts/1173339626010106:0>. CISLAC is a civil society organisation that has served on the Steering Committee of PWYP Nigeria and has been actively involved in the work of the EITI since the beginning of the process in Nigeria.

¹⁷² https://groups.google.com/forum/#!topic/afritax/hEffKUONU_A.

¹⁷³ https://groups.google.com/forum/#!topic/afritax/hEffKUONU_A.

¹⁷⁴ The MoU signed between civil society and the NSWG includes a commitment on the part of civil society to "ensure that civil society representation on the NEITI Board and CSOs Steering Committee shall be based on election from identified constituencies or thematic areas relevant to NEITI process" but the procedures through which this shall be ensured are not detailed any further.

¹⁷⁵ PWYP counted 66 member NGOs in July 2016 according to the PWYP international website (<http://www.publishwhatyoupay.org/members/nigeria-2/>) and over 100 civil society members according to PWYP's 2016 press releases. See for example PWYP (26 May 2016), Press release on 2013 Solid Minerals NEITI Report.

¹⁷⁶ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁷⁷ See Article 3.2.2 in the Board Charter.

¹⁷⁸ See NSWG membership 2008-2012, <http://www.neiti.org.ng/sites/default/files/page/uploads/neiti-nswgmembers-230910.pdf> and NSWG membership 2012-2015, http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEW%20NEITI%20NSWG%20MEMBERS.pdf.

¹⁷⁹ "By this context, the Civil Society includes but is not limited to groupings such as independent media, professional associations, labour unions, student unions, citizens' advocacy organisations, non-governmental organisations, religious groups, and community and town unions. Operators or participants with licenses in the mining, oil and gas sector do not qualify as civil society organisations...".

representatives.¹⁸⁰ There is no indication that these concerns were echoed by local civil society. It is clear from the definition of civil society in the memorandum of understanding that labour unions are considered representatives of civil society in the Nigerian context.¹⁸¹

Possible conflicts of interest are treated in detail in section 6.3 of the NSWG Board Charter for all NSWG members. Section 2.2 of the Charter also includes provisions for members' general conduct, including a requirement for disclosure of any conflict of interest. NSWG members' qualification criteria also require them to be able to "contribute an independent view".¹⁸² There do not appear to be publicly voiced concerns that the civil society representative on the NSWG or the other representatives on the Civil Society Steering Committee may not be independent or have any potential conflicts of interest.¹⁸³

Industry representation: As with civil society, there are no provisions in the NEITI Act or the NSWG Board Charter related to the specific number of NSWG seats allocated to industry representation.¹⁸⁴ While Article 5.2 of the NEITI Act requires that industry representatives on the NSWG be selected from the extractive industries, there is no specific provision for NSWG industry members to represent the diversity of commodities produced in Nigeria.¹⁸⁵ Rather, as discussed in 1.2 above, the rotating Chair of the OPTS has been consistently appointed to represent all of the private sector. Meanwhile the mining perspective has been represented through the personal experience of individual NSWG members or through the industry experts but not, strictly, through representatives of the constituency as such. To the extent that the Chair of the main representative organisation for the sector can be said to represent its members, this arguably changed with the appointment of the Chair of the Miners' Association of Nigeria to the NSWG in 2016.

The right of industry to appoint its own officials and representatives is recognised in the draft memorandum of understanding between companies and the NSWG, however this right is limited to the newly created Company Forum. The memorandum recognises "the desirability of pluralistic and diverse representation" among its members (article 3.1b). The members of the Forum's executive committees are appointed following nomination by their respective trade associations, of which there are four.¹⁸⁶ Companies that are not affiliated with the four constituent industry associations are able to join the forum upon request,¹⁸⁷ but cannot, under article 2.2.1 of the draft memorandum, form part of the

¹⁸⁰ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁸¹ Civil society is broadly defined in the MoU between the NSWG and civil society as "intermediary institutions committed to bringing issues of public interest to the public domain through advocacy."

¹⁸² MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁸³ At its 12 December 2013 meeting, the NSWG agreed penalties for the leaking of information from NSWG meetings to CSOs by a NEITI Secretariat staff, identified as a 'director' at the secretariat, deemed confidential according to the NEITI Code of Conduct. The NSWG's Ethics Committee presented two disciplinary cases against Mr Tariye George, technical director at the NEITI Secretariat, for breach of confidentiality of information and falsifying official documents in relation to training from Chevron in the US at its 25 June 2014 meeting. Mr George passed away on 1 February 2015, with condolences paid at the NSWG's 12 March 2015 meeting.

¹⁸⁴ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁸⁵ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁸⁶ Article 2.2.1.

¹⁸⁷ Article 7.1: "Any extractive industries company, which is not member of an ASSOCIATION to this MoU as at the Effective Date, shall become a party to this MOU subsequently by signing a counterpart hereof and delivering same to the Secretariat PROVIDED however that the company is within the scope of the NEITI audits and the EITI process."

executive committee of the Forum.¹⁸⁸

The Board Charter establishes the creation of an Extractive Industry Committee (EIC) to, among other things, “facilitate interface between the extractive industry and the NSWG”. It is not clear whether this Committee was ever actually established, or its relationship to the Technical Committee whose responsibilities it appears to overlap. It is also not clear whether the Forum is meant to take over the role of the EIC or if the two will coexist.

Government representation: The NEITI Act does not specifically require the appointment of senior government officials to the NSWG. As mentioned in 1.1 above, senior government officials are currently represented in the NSWG, including its current Chair Minister Fayemi.

Article 6.2 requires the appointment of one representative from each of the six geopolitical zones. The representatives of the geopolitical zones are political appointees and are not accountable to, or report to, any particular constituency or government body. Their appointment does not appear to follow any publicly available process of nomination.¹⁸⁹ As all members of the NSWG, representatives from geopolitical zones must comply with the selection criteria in the aforementioned article 2.2 of the Board Charter.

Terms of reference: As discussed above, two documents form the basis for the Terms of Reference (ToR) of the NSWG. The NEITI Act, passed in May 2007,¹⁹⁰ establishes the NEITI as an autonomous self-accounting body that reports to the President and the National Assembly (Article 2). The NSWG Board Charter, passed in January 2011,¹⁹¹ provides more guidance on the NSWG’s internal governance, including clauses on conflict of interest, the establishment of subcommittee structures (in Section 85) and a clear delineation of NSWG Board members’ roles and responsibilities.¹⁹² Together, these documents form one of the most comprehensive frameworks for EITI implementation globally, according to research

¹⁸⁸ “The executive committee of the FORUM shall consist of the Chairperson, the Vice-Chairperson, the Secretary, the Assistant Secretary from the Oil Producers Trader Section (OPTS) of the Lagos Chamber of Commerce, the representative from the Independent Petroleum Producers Group (IPPG), the representative from Miners Association and the representative from Nigeria Association of Indigenous Petroleum Explorers and Producers (NAIPEC).”

¹⁸⁹ MSI Integrity (February 2015), ‘Nigeria spreadsheet’, <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁹⁰ Federal Republic of Nigeria (2007), ‘NEITI Act 2007’, <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiact.pdf>.

¹⁹¹ NEITI (January 2011), ‘NSWG Board Charter’, <http://www.neiti.org.ng/sites/default/files/documents/uploads/neitiboardcharter-010211.pdf>. The first section of the Charter describes the NSWG’s mandate and role, including its responsibility to set the strategic direction of NEITI (including going beyond the minimum EITI Requirements), defining materiality, overseeing budget matters, formulating annual workplans and budgets, as well as periodically reporting to the FGN President and the National Assembly. Operational management and administration of NEITI is delegated by the NSWG to the Executive Secretary in this section. The Charter’s second section defines the composition of the NSWG, the third section covers the role of the NSWG Chair, the fourth and fifth sections define the role of the Executive Secretary, the sixth section lists NSWG members’ duties, the seventh section defines NSWG meeting procedures, the eighth section provides for subcommittees, the ninth section covers new NSWG members’ induction, the tenth section describes annual performance appraisals of all NSWG members and the Executive secretary. Finally, the eleventh section describes financial and administrative arrangements, the thirteenth, fourteenth and fifteenth sections cover use of bank accounts, signatories, external and industry audits, the sixteenth section provides a mapping of relevant stakeholders, and the seventeenth section covers powers delegated by the NSWG to the Executive Secretary. While there are provisions for reviewing the NSWG’s Board Charter, under Section 18, no mandatory timeframe is specified for such reviews. Under Section 11 of the Charter however it is required that NEITI financial and administrative guidelines be reviewed annually or upon NSWG request.

¹⁹² Myanmar EITI (October 2013), ‘EITI in Myanmar: Institutional options’, <http://myanmareiti.org/download/file/334>.

undertaken by international civil society.¹⁹³

There are also a number of terms of reference and memorandum of understandings between stakeholders and the NSWG that form part of the governance structure of NEITI. The Board Charter created six standing committees and three constituency committees, all of which have terms of reference, members' lists and minutes. In establishing stakeholder-specific subcommittees (in Section 85), the Charter requires that each committee facilitate the interface between the stakeholder group and the NSWG, advise the NSWG on stakeholder-related matters and support EITI implementation within the specific constituency. The Civil Society Steering Committee has a further three sub-committees which in turn have their own terms of reference, members' lists and minutes. As discussed in greater detail above, both civil society and more recently industry have signed or are in the process of signing memorandums of understanding that govern their relationship with the NSWG.¹⁹⁴ A Draft Operational Manual was also developed in December 2014 to guide the work of the secretariat (discussed in further detail below), but it is not clear what is the current status of this document.

Representation: As discussed in greater detail above, appointments to the NSWG are the responsibility of the FGN President (Article 6.1 of the Act) and are made for a non-renewable four-year term (Article 7 of the Act). While the FGN President is responsible for appointing all NSWG members, appointments are supposed to reflect diverse opinions on matters under NSWG consideration. The NSWG is meant to review its own composition in order to ensure "that the NSWG collectively contains the skills, experience, diversity (including ensuring gender and geographical considerations) and mix of personalities appropriate to the strategic direction of NEITI and necessary to secure its sound performance."¹⁹⁵ Further details for each constituency and for the six geopolitical zones are developed in greater detail above.

Internal governance and procedures: Section 6 of the NSWG Board Charter sets out the duties and expected conduct of NSWG members, including fiduciary responsibilities and conflicts of interest.¹⁹⁶ Section 7 of the Charter provides detail on internal governance and procedures, including frequency of meetings, rules for quorum, provisions for voting and advance notice of meetings.¹⁹⁷ Sections 13-15 describe NEITI's funding structure and the use of NEITI bank accounts.

While neither the NEITI Act nor the NSWG Board Charter include provisions allowing any member to table issues for discussion, all NSWG members are granted direct access to the NEITI Executive Secretary under Section 5.1 of the Charter. Given that the Executive Secretary is charged with preparing NSWG meeting

¹⁹³ MSI Integrity (February 2015), 'Protecting the cornerstone: assessing the governance of EITI MSGs', http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/MSI_EITI-report_download-2c.pdf.

¹⁹⁴ All of the terms of reference and memorandums of understanding available to the Secretariat are annexed.

¹⁹⁵ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

¹⁹⁶ Members are required to disclose any conflict of interest under Section 6.3 of the Charter. Section 6.1.1 requires NSWG members to respect the confidentiality of information received in their NEITI capacity.

¹⁹⁷ Section 7.3 of the Charter outlines NSWG members' rights to send proxies (or alternates) to meetings on their behalf, based on advanced notice and the requirement for members to attend a minimum of one quarter of all NSWG meetings per year. Attendance at NSWG meetings by non-members and observers is provided for under Section 7.3 of the Charter, although they are not allowed to vote (Section 7.3.1), as is attendance by NEITI Secretariat staff with the same provisions (Section 7.3.2). Article 9.1 of the Act requires that NSWG meetings be held at least once a quarter. Section 7.2.2 of the Charter requires that the timing of quarterly NSWG meetings be set at the start of each year and confirmed at each preceding meeting. NSWG members are required to be notified at least 14 days before each NSWG meeting, in line with Section 2-1 of the Act. Section 7.5.2.2 of the Charter requires that the documents and agenda be circulated at least seven days prior to the NSWG meeting.

agendas, this effectively ensures that all NSWG members are able to add items to meeting agendas.

Decision-making: Article 9.3 of the NEITI Act defines the procedures for decision-making, by simple-majority voting of members present. These are developed in the Charter.¹⁹⁸ Section 3.2.1 of the Charter notes that the NSWG Chair is responsible for ensuring that no member or participant dominates NSWG discussions. Analysis of meeting minutes reveals that motions on key scoping decisions tend to be tabled by CSOs or an industry expert and passed by a majority.¹⁹⁹ The meeting minutes do not reflect any instances of an actual vote having ever taken place.

Record-keeping: Section 7.6.2 of the Charter requires that NSWG meeting minutes contain the main points of discussion, any material or departing views of individual NSWG members and the outcomes of discussions. Section 6 of the Charter requires that draft meeting minutes be circulated to all NSWG members within seven days of the meeting's conclusion and that a final agreed version be circulated within two weeks of the meeting date once NSWG have confirmed the accuracy of the minutes. While all NSWG decisions are required to be made public under Section 7.6.5 of the NSWG Board Charter, section 7.6.4 of the Charter declares NSWG meeting minutes confidential unless parties can show an (undefined) "legitimate interest".²⁰⁰ The Charter does not detail procedures through which a stakeholder outside the NSWG could request access to NSWG meeting minutes. There was a change to the meeting minute template since 2015, with minutes of the new NSWG's meeting (on 11 March 2016²⁰¹) clearly highlighting action points.

Capacity of the NSWG: The NSWG Board Charter includes provisions for ensuring NSWG members' adequate capacity to fulfil their responsibilities. As discussed above, section 2.4 of the Charter defines the NSWG's responsibilities to advise the FGN President on strategies to ensure a seamless transition between NSWGs and preservation of institutional memory, including inductions. Annual EITI workplans have also included activities related to capacity building for specific stakeholder groups and the NSWG.²⁰² The induction for the current NSWG took place in April 2016, and the agenda is provided in the annex.

Per diems: The NSWG's per diem policy is described in Section 11.7 of the NSWG Board Charter. Per diems are set as a "daily subsistence allowance associated with being away from home on a NEITI related trip/assignment". For NEITI-related travel, NSWG members are provided with a daily subsistence allowance "at the rate recommended in NEITI's policies and procedures", as well as two additional days' per diems to cover the duration of travel.

¹⁹⁸ Section 7.1.4 of the Charter notes that NSWG decisions are taken by simple majority voting of all attending members (with provisions for voting by proxy), but the Charter does not provide additional descriptions of the decision-making process such as concerns for inclusivity, partnership or equal treatment in the decision-making process. In cases of a split vote, the NSWG Chair holds the deciding vote. Exception is made in the Charter for decisions related to amendments to operating procedures, policies or the Board Charter itself, which require a two-thirds majority and may require unanimity if required by the NSWG. Section 7 of the Charter provides for the possibility of the Chair asking NSWG members to vote without meeting, with votes recorded in the form of NSWG meeting minutes.

¹⁹⁹ For instance at its 18 October 2012 meeting the materiality thresholds for both the oil and gas as well as mining reports were passed by motions moved by by Bassey Ekefre and supported by Faith Nwadiashi, while at its 17 January 2013 meeting a motion to approve the 2009-2011 Oil and Gas EITI Report was moved by the same members.

²⁰⁰ MSI Integrity (February 2015), 'Protecting the cornerstone: assessing the governance of EITI MSGs', http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/MSI_EITI-report_download-2c.pdf.

²⁰¹ See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

²⁰² See Target 4 in 2009 and 2010 NEITI workplans, Task 31 in 2011 NEITI workplan, Task 4 in 2012 NEITI workplan, Activities 2.13, 2.25, 2.53, 3.13 and 3.20-3.28 in 2013 NEITI workplan, Activities 3.04, 4.12 and Goal 3 in 2014 NEITI workplan, and Activity 2.22 and Goal 3 of 2015 NEITI workplan.

The February 2015 MSI Integrity report noted that NSWG members receive an allowance as well as reimbursement (at fixed rates) for travel (in business class), subsistence (meals and incidentals), and accommodation based on receipts for expenses or a flat rate. For events held outside Abuja, the NEITI Secretariat arranges accommodation and pays for it directly to the service provider. The report also relates the NEITI Secretariat's note that NSWG members were paid a higher per diem rate than members of the Civil Society Steering Committee. CSSC members receive an annual allowance of approximately USD 480 for sitting allowance and USD 600 for conducting consultations before meetings.²⁰³

The NSWG appears to discuss its per diem practices at the majority of its meetings.²⁰⁴ The 2016 costed workplan allocates NGN 92.5 million to honorariums and allowances to NSWG members. This amount constituted the highest non-reporting budget line in the workplan.

Attendance: NSWG members regularly attend meetings of the NSWG.²⁰⁵ The NSWG has consistently set the four regular NSWG meeting dates ahead of the start of the year,²⁰⁶ Only 2 meetings were held in 2015 due to the dissolution of the NSWG. Besides the four annual meetings, NSWG members and others participate regularly in meetings of the 6 standing committees and the constituency-specific committees.

National secretariat: The NEITI Executive Secretary, who also sits on the NSWG, is appointed for a non-renewable five-year term, under Article 6.3 of the NEITI Act. A list of secretariat staff as of 22 January 2016 is available on NEITI's website.²⁰⁷

The procedure by which the current Executive Secretary was directly appointed by the President was criticised in the press by civil society representatives who argued that proper procedure would have required the NSWG to first recommend someone to the President for nomination.²⁰⁸ At the inaugural meeting of the new NSWG on 11 March 2016, the incoming NSWG Chair, Minister Kayode Fayemi, noted that Sections 6(1) and 12(2) of the NEITI Act included an apparent contradiction in conferring absolute power to the President to appoint an NSWG including an Executive Secretary, while also requiring the

²⁰³ MSI Integrity (February 2015), 'Protecting the cornerstone: assessing the governance of EITI MSGs', http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/MSI_EITI-report_download-2c.pdf.

²⁰⁴ According to meeting minutes, at its 20 June 2013 meeting, the NSWG discussed interpretations of Section 13(2)(b) of the NEITI Act and agreed that part-time NSWG members were not entitled to salaries and that any per diem was subject to approval by the Revenue Mobilisation Fiscal Allocation Commission (RMAFC) under Section 8 of the NEITI Act and subject to provision of specific funds from the FGN. It also agreed to providing per diems to NSWG members ahead of meetings, offsetting payments to non-attendees against future per diems, and specified the exact level of allowances. The NSWG members was informed of the Secretary General of the Federation's approval of their allowances at their 19 September 2013 meeting. The 11 December 2013 meeting confirmed members' entitlement to 12 sitting allowances a month but that domestic travel allowance would only be paid for attending actual meetings. It also agreed to clear a backlog of NGN 80 million in unpaid allowances dating from the start of the current NSWG's tenure in August 2012. At its 27 March 2014 meeting the NSWG agreed to distribute half of the sitting allowances and all of the outstanding transport and subsistence payments, with the balance of sitting payments to be cleared upon availability of funds. At its inaugural meeting on 11 March 2016, the incoming NSWG agreed to categorise allowances to NSWG members under "special category".

²⁰⁵ MSI Integrity (February 2015), 'Protecting the cornerstone: assessing the governance of EITI MSGs', http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/MSI_EITI-report_download-2c.pdf.

²⁰⁶ According to meeting minutes, the dates of 2013 meetings were agreed at its 23 November 2012 meeting, the dates for its 2014 meetings at its 12 December 2013 meeting and the dates for its 2015 meetings at its 16 December 2014 meeting. The second NSWG meeting of 2015 was moved up by a week to 16 June 2015, given "the urgent need to provide the new Federal Government with findings of the NEITI reports to help fashion its reform agenda."

²⁰⁷ <http://www.neiti.org.ng/sites/default/files/documents/uploads/neiti-staff-list-updated-220116.pdf>.

²⁰⁸ <http://leadership.ng/business/504607/neiti-act-breached-adios-appointment-process-pwyp>. The MoU between civil society and the NSWG "guarantees the participation of the CSSC members though without voting rights in the selection of an Executive Secretary for NEITI by the Board". NSWG commitment VII, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-CSO-MOU-040714.pdf.

President to appoint the Executive Secretary on the NSWG's recommendation. It was resolved that the NSWG write to the President recommending the appointment of Waziri Adio, who attended the 11 March meeting as Executive Secretary.²⁰⁹

The NSWG Board Charter (Section 3) provides a clear distinction between the leadership of the NSWG, for which the NSWG Chair is responsible,²¹⁰ and executive responsibilities including daily operational oversight of NEITI, for which the Executive Secretary is responsible.²¹¹

The NEITI Secretariat undertakes annual audits, overseen by the NSWG's Audit and Risk Committee,²¹² and NEITI has from time to time conducted reviews of its internal systems.²¹³ At its 27 March 2014 meeting the NSWG considered an update to its organisational restructuring, with the proposal to expand NEITI Secretariat staffing from 54 to 63 over three years, although the NSWG emphasised the reorganisation was still under consideration.²¹⁴ At the same time there is also evidence that some government stakeholders have recommended a reduction in NEITI Secretariat staff numbers alongside a reduction of broader NSWG expenses, for instance by DG Budget in December 2013.²¹⁵

Stakeholder views

There is ample evidence in the minutes of NSWG meetings of frequent consideration of NEITI's internal governance documents.²¹⁶ A private member's bill before the Senate for amendment to the NEITI Act

²⁰⁹ See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

²¹⁰ The NSWG Chair's detailed responsibilities focus on supporting a "balanced, informed and ethical NSWG." Myanmar EITI (October 2013), 'EITI in Myanmar: Institutional options', <http://myanmareiti.org/download/file/fid/334>.

²¹¹ Section 3.3 of the Charter clarifies the relationship between the NSWG and the NEITI secretariat, while Section 3.4 defines the relationship between the NSWG and the NSWG Secretary, who is also Executive Secretary of the NEITI. Section 4.2 of the Charter outlines the roles and duties of the Executive Secretariat, carried out by the national secretariat.

²¹² See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

²¹³ A draft operational manual for a "Business Process Re-engineering of the NEITI Audit Reporting Cycle" dated December 2014 was commissioned with funding from the World Bank to "optimise the institutional effectiveness of NEITI" and bring NEITI procedures in line with the reporting cycle of the EITI. NEITI/KPMG (December 2014), 'Business Process Re-engineering of the NEITI Audit Reporting Cycle Draft – Operational Manual', unpublished, provided by NEITI Secretariat. A consultant from the Workforce Institute was also contracted to undertake a review of the NEITI organisational structure and suggest improvements. The findings included: "The need for greater confidentiality in matters affecting staff; NEITI is seen externally by some, as being over bloated, resulting in high staff cost; NEITI should seek to become efficient with improved competencies; Outreach can be improved through partnerships instead of zonal offices; Professionalism should be entrenched; NEITI's self-accounting status should be pursued as much as possible; Opportunity to employ does not mean employment has to be made; Identify staff to be retrained to fill required capacity; NSWG should be cautious as the National Assembly (NASS) is already aware that NEITI may be in the process of recruiting new staff; NEITI current data gathering efforts and the new EITI standards have added more responsibilities which support the case for additional competencies; NEITI overall strategic goals and the delivery of its full core mandate must not be compromised."

²¹⁴ According to meeting minutes provided by the NEITI Secretariat, at its 20 June 2013 meeting, the NSWG agreed that a new external auditor would be recruited for the 2012 NEITI financial audit given that the previous auditor had served its tenure limit of two consecutive years of audit, as stipulated under the Auditor General's Guidelines. The NSWG also approved the NEITI 2013 financial statements as amended by its Audit and Risk Committee at the 20 June 2013 meeting, which would indicate that there is a roughly one-year time-lag between the NSWG's approval of its annual accounts and the start of the audit process. The audit of NEITI's 2013 financial statements started in Q2-2014, undertaken by Tajudeen Badejo & Co, whose contract was renewed to audit NEITI's 2014 accounts at the NSWG's 16 December 2014 meeting.

²¹⁵ See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

²¹⁶ For instance at its 23 November 2012 meeting the NSWG considered possible conflicts of interest between the ToR for the NSWG's Audit & Risks Committee and the Technical Committees under the NSWG Board Charter of 2011. At its 17 January 2013 meeting, the NSWG discussed the need to preserve NEITI's independence from government at all times and agreed not to align the NEITI's mandate with any political sensitivity. At its 21 March 2013 meeting, the NSWG formed a five-member task team to discuss proposals for amending the 2007 NEITI Act. However, as of 20 June 2013, the task team had yet to meet and the NSWG decided to expand its membership to include members of OPTS, NNPC and the Miners Association of Nigeria (MAN) at its 20

underwent its first reading in 2014. The NSWG resolved at the time to focus its recommendations on the review of the NEITI Act on issues of funding, sanctions for non-reporting and the role of IMTT.²¹⁷

At a meeting with the International Secretariat on 26 July 2016, a group of civil society organisations including PWYP and CISLAC presented a joint statement concerning stakeholder engagement in NEITI and civil society participation in particular. According to the statement, “the structure and processes necessary for the EITI in Nigeria are in existence” and “the necessary governance structures have been regularly constituted and are active”. The statement continues, “the process of guaranteeing the independent participation of stakeholders is however constrained to a substantial extent by the provisions in the NEITI Law of 2007, which is at variance with the NEITI Board Charter, EITI Civil Society protocols and standards. This variance... is at the root of many of the challenges that Nigeria... has with respect to the stakeholders’ participation in the EITI process... and makes it seemingly entirely subject to the whims and caprices of the Government/Presidency.” The statement concludes, “these have resulted in the weak implementation of the EITI process in Nigeria”. The main issue that the statement was meant to address was the process through which the civil society representative had been appointed by the President.

According to a former Chair of the NSWG, the process by which NSWG representatives were appointed was not clear and too political. A former member of the NSWG who said he had played an active role in assisting the President in the appointment of the current NSWG explained that a first list had been drafted by the secretariat focusing on the functions that needed to be covered. The only names on this list had been the representatives of the geopolitical zones, which were political appointees and were consequently preselected, the Chair of the NSWG and the Executive Secretary of NEITI. With the exception of the civil society representative, which would be appointed by the constituency, the remaining appointees were appointed on the basis of their positions, including the Chair of the OPTS, the President of the Union of Oil Workers and the President of the Miners Association of Nigeria. The former member of the NSWG had been asked to provide comments and had suggested a change to the name of the Executive Secretary. This suggestion had been followed and the final list of appointees had been published.

The representative from civil society had not been included in the original list of appointees, as he or she was to be nominated by the constituency. There is no evidence that civil society conducted outreach activities, stakeholder mappings or other attempts to engage a diverse range of stakeholders in the EITI process prior to the nomination of their representative. Members of the secretariat and of the civil society constituency noted that the process leading to the nomination of Mr. Banwo as the civil society representative differed from the process followed in the previous nomination process, when according to the secretariat, civil society had suggested three possible candidates and the President, advised by the secretariat, had appointed the head of PWYP Nigeria as civil society’s representative. According to the secretariat and to civil society representatives consulted in Nigeria and abroad, the general expectation this time was that the leadership of PWYP Nigeria would continue to represent civil society. Since PWYP Nigeria had been unable to call a General Assembly to elect new leaders in years and as there was a concern that the NSWG remained incomplete, the secretariat organised a meeting of civil society where it

June 2013 meeting. The task team first met in September 2013 and agreed the methodology for preparing a position paper on revising the NEITI Act to the NSWG as well as drafting letters to relevant stakeholders (OPTS, NNPC and MAN). The NSWG reviewed a draft of proposed regulations and asked for its redrafting at its 11 December 2013 meeting.

²¹⁷ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

was agreed that Mr. Banwo would coordinate the process forward. According to some stakeholders, CISLAC understood this to mean that Mr. Banwo would be civil society's representative and addressed a letter to the President to this effect. This understanding was contested by other stakeholders, who argued that CISLAC acted unilaterally.

According to participants in the meeting held between the Secretariat and civil society representatives in PWYP Nigeria on 26 July 2016, the root of the problem lay in the NEITI Act, which grants the President the power to appoint civil society's representatives to the NSWG. Outside PWYP Nigeria, other stakeholders noted that civil society had been free to nominate its own representatives for appointment by the President and made reference to the original list of appointees, which left it up to civil society to appoint its representative. As mentioned in the previous section, these stakeholders considered Mr. Banwo's unorthodox nomination to be the consequence of PWYP Nigeria's inability to carry out a General Assembly and refresh its leadership.

The political nature of the NSWG under the NEITI Act was praised and criticised by stakeholders from all constituencies as both the guarantor of a vibrant NEITI and the reason for its governance challenges. Among the challenges raised by civil society and others was the fact that the NSWG had been dismantled and reconstituted by the new government in power. According to two former Chairs, previous administrations had allowed the statutory tenure of members to elapse before new appointments were made. The same former Chairs noted however that the NEITI Act was useful in providing the NSWG with the political backing to move beyond the minimum requirements of the EITI. A number of stakeholders suggested that the NEITI Act should be amended to incorporate new provisions of the Standard. Others, including in the secretariat, argued that changing a law was a cumbersome process and suggested that the same purpose could be achieved by modifying NEITI's regulations, including the NSWG Board Charter. The February 2015 MSI Integrity report noted that given that the NEITI Act was passed by government, the original internal governance rules were not agreed by the NSWG but rather "decreed" by government.²¹⁸ This view was not shared by stakeholders consulted, who considered that the Board Charter and other internal governance rules had been agreed by stakeholders.

A representative from the Ikeyi and Arifayan law firm that briefed the new NSWG at its April 2016 induction identified a number of drawbacks in the NEITI Act.²¹⁹ Among other things, the law firm noted that the mode of appointment of representatives of CSOs and companies to the NSWG did not guarantee independence of the appointees and effective representation. Furthermore, the provision for one representative for the companies did not take into account the existence of two main constituencies i.e. (i) oil and gas companies and (ii) solid minerals companies. None of the stakeholders seemed to have concerns about being inadequately represented however, except for the aforementioned challenges concerning civil society's appointments, and even there the concerns were for the process rather than for the appointee.

None of the stakeholders consulted seemed to know under what criteria the representatives of the geopolitical zones were selected or the process followed for their appointment. One such representative said that the first notice they had had of their appointment had been upon hearing their name on the radio. Stakeholders consulted did not seem to consider this a problem, arguing that the federal nature of

²¹⁸ MSI Integrity (February 2015), 'Nigeria spreadsheet', <http://www.msi-integrity.org/wp-content/uploads/2015/02/Nigeria.xlsx>.

²¹⁹ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

the government made such an arrangement inevitable. Members of the secretariat added that the composition of this group was conceived to guarantee that the NSWG had the necessary diversity in terms of gender, geography and capabilities.

PWYP noted in a January 2012 statement that NSWG meeting minutes had initially been publicly accessible, but that the practice stopped and the last publicly available meeting minutes dated from 10 April 2015.²²⁰ Former NSWG Chair Prof. Assisi Asobie noted in a presentation to the new NSWG at its April 2016 induction retreat that the NSWG should revert to the old practice of publishing meeting minutes on the NEITI website.²²¹ None of the stakeholders consulted saw any reason why minutes should not be published online.

The February 2015 MSI Integrity report notes that the per diem rates in Nigeria are proportionate to the cost of participation, in line with per diems in other EITI implementing countries such as Senegal, the United States and Yemen. While the report did not consider them as a potential conflict of interest, it did raise concerns regarding the lack of clarity on the exact per diem rates provided.²²² More than one member of the secretariat and a former Chair of the NSWG suggested that the decision not to publish minutes online could have been due to the fact that per diem discussions dominated by discussions on per diems.

PWYP's January 2012 statement noted that, despite provisions in the NEITI Act that the NSWG present its annual financial expenditure to the FGN President and the National Assembly by 30 September each year, NEITI financial statements had never been presented in this way since the Act was passed in 2007.²²³ There seemed to be differing understandings of what had actually been some Members of the secretariat confirmed that this continued to be the case in 2016.

Some former NSWG members noted that the relationship between the national secretariat and the NSWG has at times been difficult.²²⁴ When asked about the relation of power between NEITI and the NSWG, industry representatives in particular expressed regret that they were unable to address what they perceived as factual mistakes in NEITI's advocacy campaigns, which they did not consider were carried out in the spirit of multi-stakeholderism. When asked whether companies should have a voice in determining what NEITI's information campaigns should focus on, stakeholders and secretariat staff said this could affect the independence of NEITI although some industry representatives added that this could be very useful in order to solve issues that were of particular importance to them. When asked whether industry's representative on the NSWG could stop a NEITI campaign if he or she considered that it was factually incorrect or that it ran contrary to the constituency's interests, representatives from the secretariat responded that industry had only one vote and would therefore not be able to stop the

²²⁰ PWYP Nigeria (January 2012), 'Overview of the Nigeria Extractive Industries Transparency Initiative as the National Stakeholders working group holds their validator board meeting today', https://xa.yimg.com/kq/groups/22303365/708498385/name/PWYP_Nigeria+Statement+on+NEITI_Jan_2012.pdf.

²²¹ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

²²² MSI Integrity (February 2015), 'Protecting the cornerstone: assessing the governance of EITI MSGs', http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/MSI_EITI-report_download-2c.pdf.

²²³ PWYP Nigeria (January 2012), 'Overview of the Nigeria Extractive Industries Transparency Initiative as the National Stakeholders working group holds their validator board meeting today', https://xa.yimg.com/kq/groups/22303365/708498385/name/PWYP_Nigeria+Statement+on+NEITI_Jan_2012.pdf.

²²⁴ Tensions are also reflected in the minutes of NSWG meetings. For example, in the minutes of its 11 December 2013 meeting, the NSWG and Secretariat agreed to work to improve relations, with plans for a detailed 2014 activities plan in line with the workplan, regular newsletters from the secretariat and the establishment of a clear communication protocol between the NSWG and secretariat staff through the Executive Secretary.

campaign. This was echoed by other stakeholders, including in the industry constituency.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement.

The dual nature of NEITI as both an “autonomous self-accounting body that reports to the President and the National Assembly” under the 2007 NEITI Act and as a secretariat supporting implementation of the EITI Standard poses a number of existential questions. On the one hand NEITI's broad mandate under the Act to “eliminate all forms of corrupt practices” concerning government revenues from the sector has empowered NEITI to break new ground and in the process contributed to the international development of the EITI. Section seven below provides further details. On the other hand, stakeholder consultations show that NEITI is seen first and foremost as a quasi-independent government audit and not as a multi-stakeholder initiative. Industry in particular does not currently see itself as a stakeholder in Nigeria's EITI process. Instead, representatives from all constituencies and from the secretariat questioned whether deeper engagement from companies was desirable at all or whether it would affect the independence of NEITI as an audit agency.

As mentioned in the previous sections, the general impression is that NEITI brings in stakeholders as and when their input could be relevant – industry for questions concerning reporting templates, civil society for dissemination activities, ministries for remediation, etc. This is reflected in the internal structure of NEITI, where among other things responsibility for civil society is housed within the Communications Department. The NSWG formally approves workplans, terms of reference for the independent administrator and annual progress reports. Although there is evidence that these are shared with NSWG representatives for comments, stakeholder consultations show that they are not in turn shared with the broader constituency. There is evidence that discussions do take place with stakeholders on the reporting templates, however these appear to be limited to issues of layout and adaptation to companies' existing reporting practices. Stakeholders cannot be said to be equal partners in the NSWG.

The impression that the NSWG is a consultative Federal Board rather than a representative decision-making group is reinforced by its composition and process for nominations. Eight of the fifteen NSWG members are not accountable to any constituency – their appointments are purely political and their accountability is to the President. Of the remaining seven members, all but one – civil society – are selected on the basis of the position they hold and the need for a well-balanced group in terms of geography, gender and expertise. Only four of the members – the representative for civil society organisations, the representative for trade unions and the two representatives of the trade associations (hydrocarbons and mining) – can be said to represent constituencies in their own right. Only one of these, the representative of civil society organisations, is nominated in any way by a constituency. It could be argued that industry has a process for selecting its representative, but insofar as this is tied to the Chair of the OPTS indigenous oil companies are excluded from representing their peers. This is equally the case for the mining companies, whose representative is the President of the Mining Association of Nigeria. The NSWG also runs the risk of being dismantled and reconstituted every time there is a change in government.

It should be noted that notwithstanding the challenges surrounding the 2016 nomination of the civil society representative to the NSWG, stakeholders did not, as a general rule, consider the existing arrangement to be problematic. Although civil society is only formally represented by two

representatives, the Civil Society Steering Committee ensures that the constituency has a formal platform for broader engagement and participation in the EITI. Likewise, although broadly considered a welcome development by companies, the creation of a Company Forum in December 2015 did not respond to a perceived need for additional engagement within the constituency. The regular dismantlement of the NSWG was seen by civil society as a problem, but other stakeholders did not think this was avoidable.

The Secretariat's mandate is to follow the Validation Guide. There is no evidence that the broader constituencies were able to participate in the establishment of the MSG, 8 of 15 representatives on the MSG are political appointees who do not represent a constituency and civil society has raised concerns about the way in which their representative was nominated. It is furthermore difficult to see the industry constituency as a partner in the process, nor do most industry representatives see their role as more than providers of information for a yearly audit. At the same time, it is clear that NEITI and the NSWG have taken their internal governance seriously and have sought to find a form of organisation that helps them address their priorities under the EITI and the NEITI Act. As a result, the Secretariat's initial assessment is that Nigeria is making meaningful progress in fulfilling this requirement.

As a matter of priority, industry and civil society should agree constituency guidelines that explain the process by which they will nominate their representatives to the MSG in the future. Representatives from both constituencies should build on existing structures to ensure a two-way communication with their broader constituencies. Industry in particular should use the newly-created Company Forum to reorient its role within the EITI. Whereas it may be politically implausible to do away with the politically-appointed geopolitical representatives, the Board Charter could be modified to require a certain degree of accountability to the constituency they are supposed to be representing.

NEITI has developed an impressive number of governing documents, including the NEITI Act, the Board Charter, terms of reference for six standing committees and three sub-committees, at least three memorandums of understanding and a draft operation manual. Some, like the operation manual, do not seem to be followed, while discussions around the appointment of the Executive Secretary in 2016 suggest that there are also overlaps and contradictions. Moving forward, NEITI may wish to consider bringing all of these documents into one set of Terms of Reference that resolves any issues in the current structure.

Workplan (#1.5)

Documentation of progress

NEITI has not updated its objectives since 2013 and only approved its 2016 workplan on 12 July 2016.²²⁵

Publicly accessible workplan: NEITI's workplans are usually updated during the second half of the previous year and are published on the NEITI website.²²⁶ Due to the dissolution of the NSWG in July 2015, the 2016 workplan was not approved in 2015. Email evidence shows that a draft of the workplan was sent to NSWG representatives by the national secretariat on 2 February 2016 with a request for inputs. A non-costed draft version of the 2016 workplan was available on NEITI's website at the commencement of Validation.

²²⁵ See draft minutes of NSWG meeting, 12 July 2016, (No Ref), unpublished, provided by NEITI Secretariat.

²²⁶ <http://neiti.org.ng/index.php?q=publications/annual-workplans>.

Objective for implementation. NEITI's annual workplans detailed the steps that NEITI would take to carry out the objectives of the four-year strategic workplan (2013-2016)²²⁷. This plan set out the vision, goals, objectives and main activities of the EITI in Nigeria.²²⁸ The strategic plan identified three main goals: "Achieve operational excellence in regulation and enforcement across the extractive industries; attain optimum stakeholder development in extractive industries transparency and accountability; and NEITI capacity building". Analysis of NSWG meeting minutes shows that the input of CSOs was sought and became the driving force in shaping the strategic workplan.²²⁹ Since April 2016, the new NSWG has started work on reviewing the 2012-2016 Strategic Plan and on drafting a second Strategic Plan covering 2017-2021.²³⁰ The current draft workplan sets September 2016 as the timeframe for this process.²³¹

The objectives of the annual workplans have not changed over the last four years and are consequently the same as they were under the EITI Rules.²³² There is no evidence that key stakeholders have been consulted on the objectives for implementation since 2012. Emails do show, however, that representatives for civil society organisations and industry (oil and gas) were regularly requested to circulate the draft workplan to their constituencies for comments ahead of approval by the NSWG.²³³ The NSWG's Financial and General Purpose committee leads reviews on behalf of the NSWG.²³⁴

Measurable and time-bound activities. The 2016 draft workplan shows that activities identified are both measurable and time-bound. Each activity listed includes the following information: Outputs expected, unit cost (in Naira), quantity of output, total cost of outputs (in Naira), Timeline, source of funding (FGN or donors), shortfall, department in charge, key performance indicator and expected outcome.

Activities aimed at addressing any capacity constraints. Capacity building is one of the three key priorities in the workplans for the period 2013-2016. Whereas the two other goals are explicitly reflected in the 2016 workplan however, capacity building is not. The 2016 draft workplan nevertheless includes the following budget lines concerning broad capacity-building activities: "Providing training (local, international and MCPE)", "Media conferences and sensitisation on NEITI Industry Audit Reports" and "engagement /sensitisation of national and sub-national CSOs on the new EITI Standard". Together these budget lines account for approximately 4.6% of the total budget for 2016.

Activities related to the scope of EITI reporting. The 2016 draft workplan includes the development of 4 reports: the Oil and Gas Audit 2014/2015, the Solid Minerals Audit 2014/2015, a Value for Money Audit

²²⁷ NEITI (2013), 'NEITI Strategic plan (2013-2016)', <http://www.neiti.org.ng/sites/default/files/page/uploads/neiti-4-year-strategic-plan.pdf>.

²²⁸ Minutes provided by NEITI Secretariat show that the NSWG provided input to the development of the strategic plan at several meetings, including on 18 October 2012 and on 17 January 2013.

²²⁹ See minutes of NSWG meeting, 18 October 2012, Ref: NSWG/2012/4, unpublished, provided by NEITI Secretariat.

²³⁰ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

²³¹ http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-2016-Narative-Workplan-230716.pdf.

²³² According to a narrative version of the 2016 workplan posted online after 1 July 2016, "the work-plan will target the following national core priorities and objectives: Regular reporting on the extractive sector in line with the NEITI Act and EITI standards; adequate corporate governance of NEITI; broadened and effective stakeholder engagement; efficient and timely dissemination of reports; enforcement and regulation of NEITI Act 2007; comprehensive Remediation (implementation of findings and recommendations of NEITI Reports); efficient management of available resources and timely response to EITI and global obligations." http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-2016-Workplan-Narative-250716.pdf.

²³³ A version of the 2016 workplan put online after 1 July notes that "The 2016 Work-plan was developed through multi-stakeholders consultations and inputs. It reflected the inputs of representatives of government, civil society and companies". http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-2016-Workplan-Narative-250716.pdf.

²³⁴ See minutes of NSWG meeting, 19 September 2013, unpublished, provided by NEITI Secretariat.

Scoping Study and a Fiscal Allocation and Statutory Disbursement (FASD) Audit 2012/2014. The workplan also includes budget lines for reports on Audit Progress Monitoring and Audit Progress Evaluation. There is no evidence in the workplan that the MSG has considered extending the detail and scope of EITI reporting to address issues such as transportation payments, discretionary social expenditures, beneficial ownership and contracts when reviewing the workplan, even as beneficial ownership disclosure is elsewhere identified as a priority.²³⁵

Activities aimed at addressing any legal or regulatory obstacles identified. The 2016 draft workplan includes activities specifically aimed at addressing legal or regulatory obstacles, including undertaking a review of the NEITI Act and developing “a comprehensive framework for the Implementation and enforcement compliance with NEITI related laws and EITI Standards”.

Plans for implementing the recommendations from Validation and EITI reporting. The 2016 draft workplan includes activities specifically aimed at implementing the recommendations from earlier reports. This includes entries on “Monitoring & Evaluation of Projects, Activities & Reviews”, “Metering infrastructure in the Oil & Gas Sector” and a “Roundtable with Government Agencies on remedial issues”.

Costings and funding sources, including domestic and external sources of funding and technical assistance. NEITI workplans available online are always costed and specify whether the funding comes from the Federal Budget or the World Bank or African Development Bank. They also include a column specifying any expected or actual shortfalls. The draft available online as of 1 July 2016 did not include costs or sources of funding.

The NSWG has had to face consistent shortfalls in FGN funding relative to activities planned in the annual workplan. The new Executive Secretary, Waziri Adio, noted that the lack of funding had affected NEITI’s ability to carry out its mandate effectively at the NSWG’s 11 March 2016 meeting.²³⁶ Shortfalls in funding had meant that payment had not yet been made for 2016 office rent or for the final payment for the 2013 Oil and Gas EITI Report, while work on the next Fiscal Allocation and Statutory Disbursement report and the first Value-for-Money report had not yet started.²³⁷ Previous Executive Secretaries noted that funding constraints continued to be a challenge for implementing the EITI workplan at the NSWG’s meetings on 16 June 2015,²³⁸ 12 March 2015²³⁹ and 20 November 2014.²⁴⁰ The impact of funding constraints on implementation of the 2015 workplan was highlighted in NEITI’s 2015 annual activity report (pp.44-45), noting that EITI implementation was dependent on donor support and on the level of political will/support.

Stakeholder views

The representatives of civil society and the oil companies on the NSWG said that they had reviewed drafts of the 2016 workplan and found that it aligned with the NSWG’s strategic plan. They also said they welcomed the emphasis on capacity building and improvements to data collection. None of the stakeholders consulted outside the NSWG had seen the draft workplan, although some knew that a copy was available online. The secretariat provided documentary evidence that the workplan had been

²³⁵ <http://www.neiti.org.ng/index.php?q=news/2016/09/05/team-beneficial-ownership-set-0>.

²³⁶ See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

²³⁷ The NSWG agreed to call a donor conference and explore cost cutting methods such as finding alternative office space. See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

²³⁸ See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

²³⁹ See minutes of NSWG meeting, 12 March 2015, unpublished, provided by NEITI Secretariat.

²⁴⁰ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

circulated to the constituency representatives and requested that it be shared for comments with the constituencies.

Members of the secretariat explained that although a draft of the workplan had been completed before the dissolution of the NSWG in 2015, it had not been formally adopted. The new NSWG had been informed about the content of the workplan but had not been asked to formally adopt it as it was the product of the last NSWG. Instead, the new NSWG would in 2016 agree a new strategic plan that would determine the workplans for the coming period.

The subject of funding was raised by a number of stakeholders and government officials. According to NEITI's assessment of progress against the workplan, as of July 2016 a number of activities had not been initiated²⁴¹ and a shortfall of roughly NGN 1.7 billion was expected from an NGN 2.4 billion budget. The Secretary to the Government of the Federation stressed that funding constraints are affecting the whole of the government and called for external support to cover some of the deficit. All stakeholders consulted regretted that budgetary constraints had stopped NEITI from carrying out new audits of the fiscal allocations and statutory disbursements, as the first audit – covering 2007-2011 – had been particularly useful. When asked whether annual workplans could be modified to include include fiscal allocations and statutory disbursements in regular NEITI reports, a number of stakeholders argued that this required a separate audit because the NEITI Act differentiates between the two. Stakeholders from all constituencies took it for granted that the FGN's budgetary constraints would have an impact on the implementation of the workplan.

Although the workplan's goals do not explicitly link to national priorities, the Executive Secretary explained that the workplan and the Board Charter gave NEITI a high level of autonomy in ensuring that the work of the NSWG did in fact address these, as section 7 describes in greater detail. A development partner who had worked closely with NEITI in developing targeted information strategies explained that as long as these did not have budgetary implications, NEITI was relatively free to carry out information campaigns and develop policy as it saw fit. This explanation was tempered somewhat by the Executive Secretary, who said that the final strategy would anyway have to be approved by the NSWG before being implemented. When stakeholders were asked whether for example industry would be able to block such a strategy if it considered that it ran contrary to the constituency's interests, they generally responded that it wouldn't "because they are only one vote".

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement.

Although workplans are generally costed and readily available on NEITI's homepage, the NSWG only approved a new workplan for 2016 after the start of Nigeria's Validation. The current workplan, like its predecessors, does not update the objectives of the NSWG, which have remained the same since the four-year strategic workplan was drafted in 2012. As a result, the workplan maintains the same structure

²⁴¹ These included printing of copies of the Comprehensive Oil & Gas audit reports 2013; printing of copies of Comprehensive Solid Minerals reports 2013; printing of IEC materials; printing of Open Audit Magazine; zonal outreach on the issues in NEITI Industry Audit Reports of Oil, Gas, Solid Minerals and FASD 2013; round table meetings on compliance with covered entities; development of a comprehensive framework for the Implementation and enforcement compliance with NEITI related laws and EITI Standards; development of Risk Management Profile; sensitization workshop on internal audit process & procedures and development of a Procurement Manual.

and objectives as it did under the EITI Rules. Whereas these were ambitious at the time, extending the scope of EITI reporting to things like the FASD Audit and a so-called Value for Money Audit, some of the challenges identified in section two of this initial assessment can be linked to the fact that the workplan continues to focus on the publication of annual audits. At the same time, it is clear that the NSWG does use the annual progress report, the communications strategy and other mechanisms to link its activities to national priorities throughout the year.

To address the challenges identified here, the NSWG will need to make progress on the new strategic workplan and link its objectives to national priorities under the wider mandate of the EITI Standard. In developing the strategic workplan, the NSWG will wish to consult a wide range of stakeholders and may wish to use the newly created Company Forum and the Civil Society Steering Committee to this purpose.

Table 1 – Summary initial assessment table: MSG oversight

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Government oversight of the EITI process (#1.1)	There are regular, public statements of support from the government. A senior individual has been appointed to lead on the implementation of the EITI, and senior government officials are represented on the MSG. The NEITI Act is a powerful tool to empower the NSWG and resolve bottlenecks as well as secure the continuity of the process.	Satisfactory progress
Company engagement (#1.2)	There are no barriers to companies' EITI disclosures and there appears to be an enabling environment for EITI reporting. Companies are actively and effectively engaged in the EITI process, but only as providers of information. However, the broader constituency was otherwise not engaged in deciding questions of scope, workplans or other decisions by the MSG. The newly-created Company Forum should help address these challenges and explains the Secretariat's positive initial assessment.	Satisfactory progress
Civil society engagement (#1.3)	Civil society in Nigeria is able to engage in public debate without restraint, coercion or reprisal, and its representatives are able to	Meaningful progress

	<p>operate freely in relation to the EITI process. If these requirements were only intended to address structural barriers to stakeholder engagement, the Secretariat's initial assessment would have been that Nigeria has made satisfactory progress. However, civil society on the MSG does not appear to function as an effective link between the EITI and the broader constituency, except as concerns dissemination. Civil society's internal challenges effectively hamper the participation of the broader constituency in the EITI process. Despite civil society's platform for stakeholder engagement, there is no evidence that the broader constituency is consulted or otherwise engaged in the design, implementation, monitoring or evaluation of the EITI process.</p>	
MSG governance and functioning (#1.4)	<p>The dual nature of NEITI as a government agency and a multi-stakeholder initiative poses existential questions. Whereas it has empowered NEITI to break new ground, this appears to have come at the cost of meaningful stakeholder oversight of the EITI process. The NSWG acts more as a consultative Federal Board than a representative decision-making body. Of the 15-member NSWG, only one representative is nominated by a constituency and 8 are political appointees who do not respond to a constituency. There is no evidence that the wider constituencies were able to participate in the establishment of the MSG and it is difficult to say that stakeholders are equal partners in the NSWG.</p>	Meaningful progress
Work plan (#1.5)	<p>The NSWG only approved a 2016 workplan after the start of Nigeria's Validation due to its dissolution in 2015. The workplan's</p>	Meaningful progress

	<p>broad objectives have not changed since 2012, nor have stakeholders been consulted in their development since then. Although the objectives are linked to national priorities insofar as they reflect the mandate of the NEITI Act, these have not been updated since the Standard was introduced.</p>	
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> 1. As a matter of priority, the NSWG should agree a workplan that is linked to national priorities and that is the product of wide consultation with stakeholders. In so doing, the NSWG should make use of the existing stakeholder platforms for industry and civil society (the Company Forum and the Civil Society Steering Committee). 2. The NSWG should agree a process to ensure greater accountability of NSWG representatives to the constituencies. This should include changes to the governing documents, potentially including the NEITI Act but certainly the NEITI Board Charter, to ensure that industry is able to nominate its representatives on the same line as civil society currently does and to ensure that the mining sector is secured representation. Moving forward, the NSWG may wish to consider bringing all of its governance documents into one set of Terms of Reference that resolves any issues in the current structure. 3. As civil society's internal challenges effectively hamper the participation of the broader constituency in the EITI process, Nigeria will need to take steps to enable full civil society participation in EITI implementation. This could be achieved by encouraging civil society to develop and agree on constituency guidelines that effectively set out the process by which representatives in the NSWG will be selected and held accountable. 4. For the Company Forum to effectively address the challenges of the industry constituency, it will need to be used to give the constituency a voice in the development of the EITI in Nigeria and avoid becoming exclusively a mechanism for dissemination of NEITI's activities to its members. 5. The FGN is encouraged to reconstitute and empower the IMTT to address the challenges identified through NEITI Reports. 		

Part II – EITI Disclosures

2. Award of contracts and licenses

2.1 Overview

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state participation.

2.2 Assessment

Legal framework (#2.1)

Oil and gas

Documentation of progress

Legal framework: The 2013 Oil and Gas (O&G) EITI Report included a description of the legal framework. A review of relevant legislation was provided in Sections 2.3 (pp.28-29) and 8.6.6 (pp.299-301).²⁴² The licensing framework was described in Sections 8.6.6 (pp.299-301) and 8.7.5 (p.319), while the different types of commercial arrangements for oil and gas exploration and production were detailed in Section 8.16 (pp.383-390). The 2013 EITI Report also described the National Policy on Petroleum Exploration and Development in Section 8.7.4 (p.319) and the Gas Master Plan (albeit in general terms) in Section 8.1.1 (p.191).

The 2012 EITI Report also described relevant laws and regulations governing the oil and gas sector.

Government agencies' roles: Detailed descriptions of the roles and responsibilities of relevant government agencies with oil and gas sector oversight were provided in Sections 2.3 (p.29) and 8.9-8.12 (pp.325-338).²⁴³ The roles and responsibilities of only certain relevant government entities were described in the 2012 EITI Report.

Fiscal regime: The EITI report included a description of the fiscal regimes of Joint Ventures, Modified Carry Arrangements and other commercial activity in the sector.

Fiscal terms for Joint Ventures (JV) were described in Section 8.16 (pp.385-386). A letter announcing the termination of the 2000 MoU for JV fiscal terms and the establishment of a new pricing regime for JVs was provided in Appendix 3.4.5.1B (pp.100-102). A detailed description of cash calls (including request, budgeting and approval process) under JVs was provided in Sections 6.6.2 (p.133) and 6.6.1 (p.132-133).²⁴⁴ The structure of the JV arrangements between IOCs and NNPC and their participating interests was shown in table 6.6.1 (p.132).

Fiscal terms for Modified Carry Arrangements (MCA) were described in Section 8.16 (pp.386-387). A description of the evolution of Carry Arrangements and MCAs was provided in Section 4.3 (p.114).²⁴⁵ The

²⁴² This included the Constitution, the 2004 Petroleum Act Cap P10 LFN (the Petroleum Act), the 2004 Nigerian National Petroleum Corporation Act Cap N123 LFN (the NNPC Act), the 2004 Associated Gas Reinjection Act and the 2004 Associated Gas Re-injection (Amendment Act) (the Associated Gas Acts), the 2004 Petroleum Profits Tax Act Cap P13 LFN (the PPTA), the 2010 Nigerian Oil & Gas Industry Content Development Act (the NCDA), the 1995 Oil Pipelines Act, the 1968 Oil in Navigable Waters Act, the 1979 Associated Gas Reinjection Act, the 1958 Petroleum Profits Tax Act and the 1992 Environmental Impact Assessment Act

²⁴³ This covered the Federal Ministry of Petroleum Resources (FMPR), the Department for Petroleum Resources (DPR), the Petroleum Products Pricing Regulatory Agency (PPPRA), the Federal Ministry of Environment (FME), the Housing and Urban Development, the Nigerian Content Development and Monitoring Board (NCDMB), the Joint Development Authority (JDA) and the NNPC.

²⁴⁴ Based on Annual Work Programme of each JV, covering OPEX, cash calls are initiated monthly by the JV Operator and served on NNPC and other Partners early to enable them to transfer their share of cash calls into the JV's Dollar and Naira Cash Call Bank Accounts before 1st day of the month.

²⁴⁵ This section described the evolution from the late 1980s/early 1990s practice of crude swap arrangements (whereby the operator funded NNPC's share of cash call and was reimbursed by lifting NNPC's share of production from the related field) to

structure of Carry Arrangements²⁴⁶ and the transition to MCAs²⁴⁷ was also described in Section 4.3.6 (p.118), with further details on MCAs provided in Section 4.3.7 (p.119).²⁴⁸ The details of active MCAs contracts were listed in Table 4.3.7 (p.120) based on NNPC-COMD data.²⁴⁹ A comprehensive review of the MCA transactions in 2013 was provided in Section 4.3.8 (pp.120-121).²⁵⁰

Fiscal terms of all types of commercial arrangements (joint ventures, production-sharing contracts, sole risk, marginal fields and service contracts) were described in Sections 4.2 (pp.109-110) and 8.16 (pp.387-389). A description of taxes and applicable rates under these arrangements was provided in Sections 8.9.2-6 (pp.327-329), with further details provided for certain revenue streams elsewhere in the report.²⁵¹

The 2013 EITI Report provided general information on fiscal incentives in the oil and gas sector. Although it referred to special incentives for investors under the “pioneer status” in inland basins (Chad, Benue, Bida, Sokoto, Anambra, etc.) in Section 8.7.6 (p.320), the types of incentives available and the companies to which they had been granted were not listed or described. The 2013 EITI Report raises concerns over such “pioneer status” incentives from Nigerian Investment Promotion Council (NIPC) under the Companies Income Act (CITA) in Section 3.4.6.2 (pp.99-100).²⁵²

The 2012 Report only provided a partial explanation of the fiscal regime for upstream oil and gas, although Appendix 3.3 had provided an overview of key taxes and fees.

Degree of fiscal devolution: The 2013 EITI Report described the degree of fiscal devolution, with the 2004 Revenue Allocation Act described in Section 2.8 (pp.36-37)²⁵³ and a diagram of the Federation revenue vertical sharing model in Table 2.8A (p.37). However, while the 2013 Report alludes to additional subnational transfers in the form of Amnesty payments by the Federal Ministry of Niger Delta and the

Third Party Financing, Carry Agreements and, currently, MCAs.

²⁴⁶ The CA arrangements did not have dedicated bank accounts for handling proceeds of NNPC’s share and their reimbursement of the cash call pre-pay.

²⁴⁷ The MCA arrangements had dedicated accounts, so reimbursement of cash call pre-pays is not in kind, but from the proceeds of the sale of NNPC’s share of in-kind revenue.

²⁴⁸ Under MCAs, NNPC is responsible for lifting and marketing Carry Oil and Share Oil before paying off the cash call pre-pay (as well as the Carry Capital Cost, calculated for a financial internal rate of return of 8%) with the sales proceeds that are in an escrow account. The recovery of the full capital cost is made through tax offsets (Carry Tax Relief) and the balance of the carry cost (Carry Oil) is lifted by NNPC, with cash remitted to the Carrying Parties’ account. The recovery of the Carry Capital Cost and Compensation through tax offsets is also described (85% of the Carry Capital Cost recovered through tax offsets, by transferring NNPC’s tax benefits to the Carrying Party and the 15% Carry Capital Cost balance is recovered from NNPC’s equity production).

²⁴⁹ There were 13 active MCAs, all involving IOCs, although only 9 of these contracts were producing in 2013.

²⁵⁰ This review included verification of crude oil and gas lifted in 2013 under each of MCA project, tracking of government take from the MCA and payment of MCA Royalty Oil and PPT Oil to the respective DPR and FIRS accounts.

²⁵¹ Further details were provided for: Petroleum Profits Tax (PPT) in Sections 3.4.5.1 (p.89), 3.4.5.2 (p.90) and 8.6.8 (pp.301-302) as well as Appendix 3.4.5.1A (pp.94-99); Royalties in Sections 3.4.5.1 (p.89) and 3.4.5.3 (pp.92-93) as well as Appendix 3.4.5.1A (pp.94-99); License fees and concession rentals in Section 6.4 (p.130); Gas Flaring Penalty in Section 6.7 (pp.142-143); Education Tax in Section 6.8 (pp.144-145) and Appendix 3.4.5.1A (pp.94-99); NDDC 3% Contribution Levy in Section 6.9 (pp.145-146); Nigerian Content Development and Monitoring Board (NCDMB) levy in Section 6.10 (pp.146-147); Value Added Tax (VAT) in Section 6.11 (pp.147-149); Nigerian Maritime Administration and Safety Agency (NIMASA) levies in Section 6.15 (pp.163-164); National Inland Waterways Authority (NIWA) levies in Section 6.16 (p.165); Nigeria Export Supervision Scheme (NESS) Fee in Section 6.17 (pp.165-167).

²⁵² The 2013 EITI Report’s main argument was that oil and gas companies were taxed under the Petroleum Act, which did not fall under CITA. In total some USD 1,172,800,956.38 was waived for all affected companies (including non-oil and gas) under the pioneer status between 2009 and 2014, with 18 marginal field operators in the pioneer status in 2013.

²⁵³ Including its provisions for an earmark of 13% of extractive industry revenues to the Federation Account to be transferred to the nine oil and gas producing state governments.

Presidency's Amnesty Programme to former Niger Delta militants in Section 2.8 (p.37), these do not appear to represent subnational transfers but rather earmarked Federal Government cash transfers.

Reforms: The 2013 Report described some of the major reforms in the oil and gas sector, albeit in general terms. The draft Petroleum Industry Bill (PIB) was described generally in Section 2.3.1 (p.29), alongside a link to the 2012 NEITI PIB position paper²⁵⁴, while provisions in its Section 190 subsection 6 requiring NEITI to monitor block bidding rounds was noted in Section 8.6.14 (p.307). The 2013 EITI Report also recommended the introduction of a new pricing framework in the PIB in Section 3.4.5.3 (pp.92-93). While not providing an update on the PIB's progress, the 2013 EITI Report only noted that the FGN was seeking to restructure NNPC as part of the PIB in Section 2.6 (pp.34-35).

The DPR's reforms on crude oil sales pricing, effective from 1 January 2013, were described in Sections 3.4.5.1 (p.89) and 3.4.5.3 (pp.92-93).²⁵⁵ The DPR's July 2013 introduction of receipts for payments in all revenue streams collected by DPR was noted in Section 8.6.13 (p.306).²⁵⁶

The 2012 Report provided a similar overview of reforms, including reference to the PIB and the planned privatisation of refineries (p.34).

Recommendations: The 2013 EITI Report included several recommendations for legal and fiscal reforms, including the establishment of an enabling environment for natural gas investments in Section 8.1.6 (p. 203)²⁵⁷, swift privatisation of underperforming refineries in Section 8.5.2.1 (p.264), enabling legislation to curb oil theft and sabotage in Section 8.5.10 (p.293), a policy on gas utilization in Section 8.6.14 (p.307) and the unbundling of NNPC in Section 8.14.1.1.3 (p.344).

Stakeholder views

All stakeholders consulted from the three constituencies either considered the overview of the legal environment and fiscal framework in the 2013 O&G EITI Report to be sufficiently comprehensive or did not express any particular views on the topic.

The Senate President highlighted the inefficiencies in the current system of JV cash calls and explained that he saw the NEITI as a means of highlighting these challenges, which would provide further evidence for the need to reform the legal environment for oil and gas through the new Petroleum Industry Governance Bill (PIGB). The Nigeria National Resource Charter (NNRC), a think tank specialising on natural resource governance, has raised concerns over the outdated nature of sector legislation. It has noted that at the time of signing the 1993 PSCs, which account for most offshore PSCs currently in production, industry costs were significantly lower than at present but that investment tax credits of 50% had been

²⁵⁴ www.neiti.org.ng/index.php?q=press-releases/neiti-and-debate-petroleum-industry-bill-pib.

²⁵⁵ To resolve the lingering price dispute between the FGN and OPTS, the DPR resolved in 2013 (in consultation with NNPC-COMD and FIRS) that the Realizable Price should be set at the price for calculating relevant taxes from January 2008 to June 2010 and that the Official Sales Price (OSP) be used as the relevant price from July 2010 to December 2012. Likewise, the formula for calculating the OSP was set according to a weighting ratio of 50% Platts, 30% Argos and 20% LOR for the first two years, revised to 40% Platts, 40% Argos and 20% LOR thereafter. However, pending resolution of court cases between IOCs and the government on the appropriate sales price, the Report notes the FIRS' communication of a 2015 court ruling that all parties to the crude oil pricing mechanism dispute continue to use RP instead of OSP pending resolution of the case.

²⁵⁶ The DPR's new system of receipts replaced the former system whereby the Accountant General's Office issued receipts for DPR revenue streams.

²⁵⁷ The 2013 EITI Report recommends an enabling environment for investments in natural gas by ensuring the competitive pricing of gas, attractive fiscal regimes and provision of adequate security for gas infrastructures to prevent vandalism and sabotage, including by passing the PIB.

locked in. The NNRC has noted that other elements²⁵⁸ of the prevailing fiscal system for PSCs have made the system difficult for the FIRS to effectively administer.²⁵⁹

Solid minerals

Documentation of progress

Legal framework: The 2013 Solid Minerals (SM) EITI Report provided a more succinct overview of the main laws and regulations applicable to the solid minerals sector than for oil and gas, in Section 3.1.3 (pp.17-18). The 2012 EITI Report provided a similar overview of the legal framework.

Government agencies' roles: The 2013 EITI Report provided an overview and description of the main government entities responsible for overseeing the solid minerals sector in Section 3.1.3 (pp.17-18), including the National Environmental Standards and Regulations Enforcement Agency (NESREA); the Nigerian Investment Promotion Council (NIPC); the Ministry of Mines and Steel Development (MMSD); the Mines Inspectorate Department (MID) of MMSD; the Mines Environment and Compliance (MEC) Department of MMSD; the Mining Cadastre Office (MCO) of MMSD; the Artisanal and small-scale Mining (ASM) Department of MMSD; and the Nigerian Geological Survey Agency (NGSA). The roles and responsibilities of these entities were described in the 2012 Report (pp.18, 20, 21).

Fiscal regime: The fiscal regime was described in Section 3.1.5 (pp.20-21) of the 2013 EITI Report.²⁶⁰ All payment streams associated with solid minerals were described in Section 4.3.1 (pp.41-44), including tax rates where applicable, while royalty rates were provided per mineral in Annex 7 (p.102). The 2012 Report provided a similar overview and description of the fiscal framework for solid minerals.

Degree of fiscal devolution: The 2013 EITI Report provided an overview of the degree of fiscal devolution, with subnational transfers described in Sections 3.2.3 (p.27) and 6.4 (p.69).²⁶¹ Section 7.1.9 (p.74) clarified that subnational transfers were not effective in the solid minerals sector in 2013, although the formula for calculating subnational transfers was provided in Section 6.4 (p.69). The 2012 Report also described the degree of fiscal devolution in the solid minerals sector.

Reforms: The 2013 EITI Report provided a brief overview of significant reforms in the solid minerals sector in Section 3.1.6 (p.21)²⁶². Section 3.2.2.iii (p.27) clarified that while the Solid Minerals Development Fund was established in 2013, it remained non-operational in 2013 due to its lack of a budget. Section 7.1.7 (p.73) noted the lack of clear definitions of the legal and taxation environment for solid minerals.²⁶³ The

²⁵⁸ These other factors included k-factor computations in the MoUs between NNPC and its partners.

²⁵⁹ Nigeria Natural Resource Charter and Center for Public Policy Alternatives (December 2014), http://nigerianrc.org/sites/default/files/NNRC_2014BenchmarkingExercise_Summary.pdf.

²⁶⁰ This included provisions of the Mining Act, the Corporate Income Tax Act, Education tax, Value Added tax, Capital gains tax, Customs duties on plant and accessories, Waived Customs duties on other products, Withholding Tax on dividends and rent, Withholding Tax on qualifying vendor transactions as well as an overview of statutory requirements.

²⁶¹ These sections described the provision of 13% of revenue accruing from extractive industries to the relevant State government where resources are located. The lack of clarity on the mechanism for subnational transfers related to solid minerals (as distinct from the clarity for oil and gas related subnational transfers) was also noted.

²⁶² The overview of reforms included the government's 2014 review of the solid mineral sector's fiscal regime and the 2015 establishment of an inter-Ministerial task team to lead a new Mining Income Tax Bill.

²⁶³ Reporting payments of taxes and other revenues of the government was undertaken in a decentralized way, with agencies like FIRS unable to confirm several payments related to solid minerals. The lack of coordination between headquarters and state-level officers in the tracking and control of revenues was highlighted and the 2013 EITI Report strongly recommended a review of the tax reporting system in Nigeria. The lack of a Tax ID Number used by all government entities was also highlighted as a challenge.

rebasings of GDP figures, where the baseline for calculating GDP was updated from 1990 to 2010 and Nigeria's GDP rose by three quarters, and its impact on the value of the solid minerals sector was noted in Section 3.1.4.i (p.19).

The 2012 Report noted that there were no on-going reforms in the solid minerals sector and recommended a formalisation of the process for transferring solid minerals revenues to the government.

Stakeholder views

Stakeholders from all constituencies noted the accrued importance of the mining sector for the government's recent focus on diversification and highlighted the lack of a clear fiscal and legal framework as an important challenge for further development. MID representative confirmed that the major focus of ongoing legal reforms, including in 2013, related to the development of a Mining Income Tax Act in collaboration with the MoF. This was seen as particularly important given the existence of multiple agencies overseeing the solid minerals sector. Overlaps in regulatory functions, such as that between the Ministry of Environment and the Ministry of Mines and Steel Development for instance, created disincentives for investment, which was a priority for the current government's efforts to diversify the economy away from oil and gas. Industry representatives consulted also highlighted overlaps in regulatory powers across different government entities, using the example of the lack of clarity in ownership of river-basin sand, which was claimed by both NIWA and MMSD. Industry representatives further noted that where laws were in place these were seldom enforced except for the larger players in the sector. There was a unanimous perception that this was changing as mining inspectors were increasingly dispatched under the current government.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in describing the legal environment and fiscal framework for both solid minerals as well as oil and gas. The main laws in both sectors are described in general terms, the main taxes are listed, the degree of fiscal devolution is clearly defined and the main on-going or planned reforms are noted. The NSWG may wish to consider using future EITI Reports to track progress in implementing legal and fiscal reforms, particularly related to progress in passing the Petroleum Industry Governance Bill and the planned Mining Income Tax Bill. Industry representatives from both sectors expressed surprise to learn that they could actively use the EITI reporting process to clarify regulatory ambiguities and expressed an interest in learning examples from other countries.

License allocations (#2.2)

Oil and Gas

Documentation of progress

There are two types of oil and gas licenses in Nigeria: Oil Prospecting Licenses (OPLs) for exploration and Oil Mining Licenses (OML) for production. While Oil Exploration Licenses (OELs) existed in the past, these have all been converted into OPLs several decades ago. Nigeria also maintains a Joint Development Zone (JDZ) with São Tomé and Príncipe, managed by a supranational Joint Development Authority.

Awards/transfers: The 2013 Report stated that there were no new oil and gas licensing rounds since

2007 in Sections 2.9 (p.41), 3.4.1 (p.85), 8.7.1 (p.311) and 8.6.14 (p.306). However, it did not explicitly state whether there were any new license awards in the JDZ in 2013. The 2013 EITI Report noted that oil and gas licenses had been issued or re-issued since 2007, although it did not clearly state whether any licenses were awarded or transferred outside bidding rounds in 2013. Section 8.7.1 (p.311) noted that a USD 12.5 million signature bonus paid by Sigmund Oilfields Ltd in 2013 related to the award of an oil and gas block in 2012, but the 2012 EITI Report stated that there were no license awards in 2012. The 2012 did not refer to the transfer of operatorship in oil licenses from NNPC to NPDC either.

Award/transfer process: While no new license was awarded in the year under review, the 2013 EITI Report provided a general overview of the competitive license bidding process in Sections 8.7.1.1 (pp.312-313), 8.9 (pp.325-330), 8.7.2 (pp.313-314), 8.2.2 (p.314) and 8.9.7 (p.330). However, while Section 8.6.14 (p.307) noted that the Minister of Petroleum Resources had powers for discretionary allocation of oil blocks under the Petroleum Act, it did not describe the process for discretionary license awards. The government's right to grant participatory rights to contractors to conduct sole risk petroleum operations on oil mining licenses (OMLs) held by NNPC was noted in Section 8.6.6 (pp.299-301). The general process for transferring licenses was referred to in general terms in Section 8.17.1 (p.391), which provided an overview of procedures for asset divestments.²⁶⁴ The 2012 Report provided only a cursory overview of the license allocation process (pp.38-39).

Technical and financial criteria: The 2013 Report did not provide details of any technical and financial criteria used for assessing license awards outside of the formal bidding process. Section 8.17.1 (p.391) provided factors required for ministerial consent of license transfers and asset divestments, including the proposed assignee's good reputation; the proposed assignee's technical knowledge, experience and financial resources; and the proposed assignee's acceptability to government "in all other respects".

License awardee information: There were no new oil and gas license awards in 2013. Although the 2013 EITI Report referred to license renewals, it did not provide details on these.

Non-trivial deviations: Section 8.6.14 (p.306) noted the lack of transparency in the discretionary allocation of oil and gas licenses, highlighting the resulting potential reduction in revenue accruable to government.²⁶⁵ However this referred to the transfer of NNPC equity in JVs to NPDC following divestments by Shell, Total, Eni and Chevron rather than a transfer of licenses, which are held by the JVs [see below on state participation].

Comprehensiveness: The 2013 Report provided information on all OMLs and OPLs active in 2013, including those held by material companies and those awarded prior to 2013.

Bidding process: Although no oil and gas licenses were awarded through competitive bidding in the year under review, the 2013 EITI Report provided a detailed description of the statutory competitive bidding process in Section 8.7.3 (pp.314-315)²⁶⁶, although it did not provide the weighting of technical and

²⁶⁴ Section 8.17.9 described the Petroleum Act (section 14, 35 (2c)) clause that a lease- or licence-holder is prohibited from transferring such licence or lease without the consent of the Minister of Petroleum Resources and the payment of the prescribed fee or premium. License transfers attract payment of stamp duty, based on the amount of consideration involved, payable directly to FIRS, but there is no capital gains tax on the transfer. There is no requirement for ministerial consent under Petroleum Act for changes of control of a holder of an interest in a licence or lease, but it is noted that an applicable PSC or JV agreement may set out requirements for consents.

²⁶⁵ Annual or bi-annual bidding exercises are recommended to ensure that blocks are awarded only to suitable operators.

²⁶⁶ The bidding process was described including advertising (Section 8.7.3.3, p.315), a general description of the issuance of bid

financial criteria during the assessment of bids.

Commentary on efficiency: Section 8.7.7 (p.320) provided general commentary on the efficiency of license allocation procedures: “*though there is a robust established licensing system, the system however, cannot be said to be efficient and effective.*” Reference was also made to the significant deviations from statutory license transfer procedures in the NNPC’s transfer of its equity stakes in certain OMLs to NPDC.

Stakeholder views

Representatives from DPR and from a major investment bank’s extractives research department confirmed there had been no new oil and gas license allocations in 2013. Secretariat technical staff also noted that they did not see any evidence of any oil and gas license awards in 2013, based on examination of the DPR’s license cadastre. However, an international oil and gas research analyst noted that a list of marginal fields open for bidding outside of bidding rounds had been circulated on several occasions, which implied that awards were a possibility. Staff in the NEITI Secretariat’s technical department confirmed there had been no new license awards in the Joint Development Zone since 2004.

NEITI Secretariat technical staff noted the uncertainty related to the timing of the license award for which Sigmund Oilfield Ltd paid a signature bonus in 2013, given the lack of clarity over whether the license was awarded in 2012 or in a previous year. They had been unable to find evidence of such a license allocation in 2012 and thus presumed the signature bonus related to an earlier period. Representatives from DPR noted that the signature bonus paid by Sigmund Oilfields Ltd in January 2013 related to OPL 2012 awarded to Grasso Nigeria Ltd as part of the 2007 block bidding round. According to these representatives, given that Grasso Nigeria Ltd had no financial capacity to develop the license, it had appealed to the government to restructure the signature bonus payment into tranches and subsequently assigned interests in the license to Sigmund Oilfields Ltd, which completed payment of the signature bonus in January 2013. However this appeared inconsistent with the explanation offered by several DPR representatives that regulations were revised ahead of the 2007 block bidding round to ensure that blocks were only awarded to successful bidders that completed full payment of the required signature bonus. An international CSO considered that the EITI Report should have provided more explanation on this signature bonus payment and the terms of the underlying deal.

DPR representatives noted that marginal field operators such as Britannia-U, Energia, Frontier Oil, Movido E&P, Waltersmith Petroman and Excel E&P had had their licenses extended in 2013 and referred to the list of license transfers publicly available in the DPR’s annual statistical bulletins. While NEITI Secretariat technical staff noted they had sourced information on revenues collected by the Joint Development Authority in 2013 for the STP 2003-2013 EITI Report, which consisted mainly of license fees, this information only allowed them to identify new license awards but not license renewals, which they admitted may have taken place during 2013. Several industry representatives noted that there had been a number of JV license renewals by IOCs such as ExxonMobil and Shell in recent years, although these had

guidelines by DPR (Section 8.7.3.4, p.315), bid application and application fees (Section 8.7.3.5, p.315), bid processing and processing fees (Section 8.7.3.6, p.315), data acquisition fees (Section 8.7.3.7, p.315). Approval of the Minister of Petroleum Resources was required for granting an Oil Prospecting License (OPL) through bidding, as described in Section 8.7.3.2 (p.315). Block bidding round pre-qualification requirements were described in Section 8.7.3.8 (pp.315-316). The technical evaluation of bids, including technical criteria, were described in Section 8.7.3.9.1 (p.317). The criteria assessed during the commercial evaluation were described in Section 8.7.3.9.3 (pp.317-318), including the relevant weightings of the four commercial bid components. Descriptions were provided of the bidding conference in Section 8.7.3.10 (p.318), the announcement of the bid winner and closing of the bid round in Section 8.7.3.11 (p.318) and the payment of the signature bonus in Section 8.7.3.12 (p.319).

not taken place in 2013.

Several IOC representatives and international oil and gas research analysts expressed their view that there was no single government agency in charge of license allocations, with responsibility split between DPR, the Ministry of Petroleum Resources and NNPC. The Nigeria Natural Resource Charter noted in a December 2014 report that the role of the Ministry of Petroleum Resources was either not explicitly known or so fluid that the same function could cut across several agencies, giving rise to confusion and conflict of interests. It noted that the DPR was not effectively independent in its monitoring and regulation of the industry, nor empowered to execute its oversight functions, and that its decisions often conflicted with NNPC's interests, particularly given NNPC's dual regulatory and commercial roles.²⁶⁷

DPR representatives stated that there had not been any discretionary license allocations since 2000, and NEITI Secretariat technical staff stated that the DPR did not have guidelines for license awards outside of block bidding rounds. However, the IA for the 2013 O&G Report noted that there were provisions for discretionary license allocations by the Minister of Petroleum Resources in the Petroleum Act. The IA also confirmed that the license allocation procedures were the same for marginal fields and sole risk arrangements. Several CSOs consulted raised concerns over deviations from statutory license allocation procedures in practice and argued that there had been discretionary block allocations since the last block bidding round in 2007. A Civil Society Steering Committee press release on 12 June 2015 called on the FGN to halt the "opaque and discretionary process of awarding oil blocks" outside of the normal bidding process, with the last successful bidding round dating back to 2007.²⁶⁸

Several DPR representatives noted that there were technical and financial criteria for the Minister's approval of license transfers, which were broadly defined in the Petroleum Act, although the weightings of the various criteria were not public. Industry and government stakeholders confirmed that OELs had all been converted to OPLs several decades ago and there were thus no license allocation procedures for OELs.

Several DPR representatives noted that they were in the process of upgrading to an online platform to conduct future oil block bidding rounds.

Solid Minerals

Documentation of progress

Awards/transfers: Section 3.1.7.i (p.22) of the 2013 SM EITI Report clearly stated that no solid mineral license bidding process was launched in 2013. However, it is apparent from the license information provided in Section 3.1.7.ii (.22) that the number of active mining licenses increased by 283 licenses to 2394 licenses between 2012 and 2013, while the number of license-holding companies rose by 195 to 881 companies in the same span. However, the 2013 EITI Report did not clearly state how many licenses were awarded or transferred in 2013. Analysis of information provided on licenses held by 56 of the 65 material

²⁶⁷ Nigeria Natural Resource Charter and Center for Public Policy Alternatives (December 2014), http://nigerianrc.org/sites/default/files/NNRC_2014BenchmarkingExercise_Summary.pdf.

²⁶⁸ NEITI Civil Society Steering Committee (12 June 2015), Communique issued at the end of a five-day capacity-building workshop on oil and gas sector governance by the Civil Society Steering Committee (CSSC) of NEITI, held from 8-12 June 2015, <http://www.neiti.org.ng/index.php?q=news/2015/06/12/communique-issued-end-five-day-capacity-building-workshop-oil-and-gas-sector-governance>.

companies in Annex 12 (pp.176-182) indicates that at least five new licenses were awarded to reporting companies in 2013.

Award/transfer process: The general statutory license allocation process is described in Section 3.1.7.i (pp.21-22): the MCO can grant licenses on a first-come-first-served basis (also confirmed in Section 3.1.8 (p.23)) unless applications are for areas reserved for competitive bidding. A link is provided to the MCO's Mineral Titles Guidelines webpage²⁶⁹. The five types of mining licenses are described in Section 3.1.7.ii (pp.22-23). However, the 2013 EITI Report did not describe the actual process for awarding licenses that were allocated outside of bidding rounds in 2013.

The statutory process of transferring licenses is described in general terms in Section 13.1.7.iii (p.23), noting that all mineral licenses aside from Reconnaissance Permits are transferrable under the Mining Act. It is only noted that MCO's approval is not required for assignment to an affiliate, where the obligations of the affiliate are guaranteed by the assignor or by a parent company. However, the 2013 EITI Report did not describe the actual practice of transferring licenses transferred in 2013.

The 2012 Report provided a similar general description of the license award process.

Technical and financial criteria: The 2013 Report did not describe the technical and financial criteria used for assessing license award or transfer applications, but provided a link to mineral titles guidelines on the general MCO website²⁷⁰ in Section 13.1.7.i-iii (pp.21-23). While the guidelines on the MCO website include the general technical and financial evidence required to support applications for license awards and transfers, the weightings of the different criteria in the MCO's assessment of applications are not provided.

License awardee information: The names of only some of the holders of licenses awarded in 2013 that were in the scope of reconciliation were provided, but given that nine of the 65 material companies did not report it is unclear whether information on new licenses awarded to material companies in 2013 was comprehensive. No information was provided on the full list of 283 licenses awarded in the year under review in the 2013 EITI Report.

Non-trivial deviations: The 2013 Report did not clearly identify the solid mineral licenses that were awarded or transferred in 2013 and did not provide a description of the actual process. It thus did not disclose any non-trivial deviations in the award or transfer of solid mineral licenses in 2013.

Comprehensiveness: The EITI Report did not include information on the process for awarding or transferring any licenses that were awarded or transferred prior to 2013.

Bidding process: Section 3.1.7.i (p.22) of the 2013 Report clearly stated that no bid process was launched in 2013. However, Section 3.1.7.i (pp.21-22) provided a description of the statutory process for competitive bidding, although only general bid criteria were described.

Commentary on efficiency: The 2013 Report did not provide any commentary on the efficiency of license allocations or transfers.

Stakeholder views

Technical staff at the NEITI Secretariat explained that the IA had consulted the MCO about the detail of

²⁶⁹ <http://www.miningcadastre.gov.ng/>.

²⁷⁰ <http://www.miningcadastre.gov.ng/>.

license allocations in preparing the 2013 EITI Report. There was a significant amount of speculative license applications under Nigeria's first-come-first-served license allocation regime according to these technical staff, where applicants with insufficient financial capacity secured licenses to attempt to farm them out to larger companies with the capacity to develop them, which explained the apparently high number of licenses awarded in 2013.

A former NSWG Chair highlighted important reforms in the solid minerals sector in 2007, with discretionary license allocations replaced by a modern mining cadastre. While a MCO representative noted there were no deviations in practice from the statutory license allocation process, all solid mineral company representatives consulted noted significant deviations in practice. Significant practical deviations included exceeding the maximum 28 days for the license award process, with the length of the process dependent on applicants' ability to "follow up". Industry representatives also noted that it was in practice not possible to apply for new licenses online despite the MCO's claims. While these representatives noted some improvements over the past year, they noted the persistence of significant deviations from the statutory procedures. Secretariat staff and the IA noted that they had adopted a sampling approach to assessing practical deviations from statutory license allocation and transfer procedures. The representatives noted they considered this approach to be in line with international best practice. The IA stated that it had visited the MCO and reviewed the license allocation process step by step, and that it had concluded that the process was automated and transparent, although this was not explicitly stated in the EITI Report.

A MCO representative noted that the process for transferring licenses, known as license modification, was governed by a clear process where the MCO assessed the technical and financial capacity of the company acquiring the license to confirm its ability to carry out work. Representatives from both the MCO and industry agreed that there were no deviations from statutory license transfer procedures in practice. The IA noted that it had not undertaken any test on license transfer procedures in practice as only one company (Triacta) had reported payments under "Application for transfer mining titles fees" in June 2013.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement.

In oil and gas, the 2013 O&G EITI Report states that no new licenses were awarded in the year under review but does not clarify the number of licenses that were renewed or transferred. We note for instance that a number of marginal field operators' licenses were renewed in 2013, while in the Joint Development Zone there is public evidence that Total relinquished OPL 221 to the JDA in November 2013.²⁷¹ While the 2013 EITI Report describes the statutory license allocation and transfer procedures, it does not clarify the practice of license transfers in 2013. Meanwhile, insofar as discretionary license allocations are still technically legal, their technical and financial criteria remain unclear.

In solid minerals, the 2013 SM EITI Report does not clarify the number of licenses awarded or transferred to material companies in the year under review, nor does it describe the actual practice of these license

²⁷¹ P.4, Total (2015), 2015 Financial Transparency, Example of Total in Nigeria (2014 data), http://www.total.com/sites/default/files/atoms/files/2014_nigeria_transparency_en.pdf and Economist Intelligence Unit (16 September 2013), Total abandons JDZ Block 1, <http://country.eiu.com/article.aspx?articleid=1700959354&Country=S%20C3%A3o%20Tom%20C3%A9%20and%20Pr%20C3%ADncipe&topic=Economy&subtopic=Forecast&subsubtopic=Economic+growth&u=1&pid=1534409737&oid=1534409737&uid=1>.

allocations and transfers. While a link is provided to the MCO's statutory license allocation and transfer procedures, the 2013 EITI Report does not provide the weightings allocated to technical and financial criteria, nor does it refer to any non-trivial deviations from statutory procedures in practice, despite industry's views on the existence of such deviations.

In preparation for the next EITI Reports, the NSWG should clearly define the number of licenses awarded and transferred in the year(s) under review, describe the actual process and highlight any non-trivial deviations in practice. The NSWG should also liaise with the Nigeria-Sao Tome and Principe Joint Development Authority to include any license awards or transfers in the scope of Nigeria's O&G EITI Report. Finally, the NSWG should also clarify the technical and financial criteria used for assessing license allocations and transfers, including weighting, both for discretionary oil and gas licenses and for solid mineral licenses. In addition, the NSWG may wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations, in line with industry's calls for improvements in the investment environment.

License registers (#2.3)

Oil and Gas

Documentation of progress

Licenses held by material companies: Details of marginal fields were provided in Appendix 8.16.1.1 (pp.35-37 and p.275) of the 2013 O&G EITI Report, including name of company, equity interest, field name, OML number and type of terrain (swamp, onshore or offshore) for all 37 marginal field operators. However, license coordinates, dates of application, award and expiry were not provided.

Details of OML licenses provided by DPR were included in Appendix 2.9 (pp.50-56) for all 99 OMLs active in 2013, including OML number, previous OPL number, field name, area (in sq. km), field depth (for royalty purposes), type of commercial arrangement (JV, PSC, etc.), details of equity-holders as of 1 January 2013 (including date of change, name of equity holder and equity stake) and details of equity-holders as of 31 December 2013 (with the same information provided). However, the license coordinates, date of application and date of expiry were not provided. Legal contract data for OMLs disaggregated by field were also provided in Appendix 2.11 (pp.70-83), sourced from reporting companies' disclosures, including OML number, individual field name, whether the field was unitised, whether the field produced in 2013, name of license-holder company, equity stake and notes of any changes in ownership in 2013. The information was provided by 29 of the 41 companies that held OMLs in 2013. A list of all OMLs managed in each JV arrangement was provided in Appendix 6.6.1A (pp.173-177), including operator name, OML number and field name, disaggregated by field.

Details of OPL licenses and contracts provided by DPR were included in Appendix 2.9 (pp.57-61) for a total of 66 OPLs, including OPL number, type (deep offshore, shallow, onshore), area (in sq km), type of commercial arrangement (JV, PSC, etc.), information on initial equity-holder (date granted, name of license holder, equity ownership stake), information on equity-holders at 1 January 2013 (including the same information and date of change of ownership) and information on equity-holders at 31 December 2013 (including the same information and date of change of ownership). However, the license coordinates, date of application and date of expiry were not provided. Legal contract data for OPLs disaggregated by license was provided in Appendix 2.11 (pp.84-88) sourced from 10 of the 41 material

companies' disclosures, including OPL number, type of commercial arrangement, name of license-holder company, equity stake and notes of any changes in ownership in 2013.

License-holder names: The names of license-holders were provided for marginal fields in Appendix 8.16.1.1 (p.275), for the 99 active OMLs in Appendices 2.9 (pp.50-56) and 2.11 (pp.70-83) and for the 66 active OPLs in Appendices 2.9 (pp.57-61) and 2.11 (pp.84-88). The names of operators and their partners were provided for all PSCs active in 2013 in Table 4.2 (p.110) and for all JVs in Appendix 6.6.1A (pp.173-177). The 2012 EITI Report provided information on the names of license-holders for those licenses held by material companies.

License coordinates: The 2013 EITI Report did not provide coordinates for any of the licenses covered in the report, nor any indication on how these might be accessed. The 2012 EITI Report did not provide license coordinates information either.

Dates: The dates of award were provided for OMLs in Appendix 2.9 (pp.50-56) and for OPLs in Appendix 2.9 (pp.57-61). However, the dates of application and expiry are not provided for any of the licenses (OML, OPL or OEL). Although material companies were requested to disclose the date of transfer/change of ownership in their reporting of field legal contract information, the 29 of the 41 material companies that disclosed this information reported no change of ownership in 2013, as noted in Section 2.11 (p.42). The 2012 Report provided information on the general duration of licenses held by material companies.

Commodity: While the 2013 EITI Report did not explicitly state that OPLs and OMLs covered both oil and gas, the overview of licensing in Section 2.9 (pp.40-41) clearly stated that all three types of licenses cover "petroleum (including natural gas)."

Licenses held by non-material companies: The 2013 EITI Report provided information on licenses held by non-material companies. Information on marginal fields covered all marginal field arrangements that were active in 2013, including those held by companies that were not producing in 2013 (and thus were not material), in Appendix 8.16.1.1 (p.275). Information on OML licenses covered all 99 OML licenses that were active in 2013 in Appendix 2.9 (pp.50-56). Information on current OPL licenses covers all 66 OPL licenses that were active in 2013, including those held by non-material companies, in Appendix 2.9 (pp.57-61).

Public cadastre/register: The 2013 EITI Report did not explicitly refer to the DPR's oil and gas license register but provided a link to the DPR's general website. While the specific link to the DPR's restricted-access license register²⁷² was not provided, it is possible to navigate to the page from the DPR website link provided. The 2013 EITI Report does not clarify the procedures to follow or documents required to gain access to the DPR's restricted license cadastre, nor whether registration is free of charge.

Stakeholder views

While NEITI Secretariat staff and research analysts at investment banks were unsure about the status of Oil Exploration Licenses (OELs) despite the mention of OELs in the 2013 EITI Report's overview of the oil and gas legal framework, DPR representatives consulted explained that OELs had initially been defined in the 1968 Petroleum Act but had all subsequently been converted into OPLs since the late 1970s.

DPR representatives consulted noted that they had the dates of application for oil and gas licenses, although these were not available to the public. They noted that third-parties could acquire license

²⁷² <https://ogisp.dpr.gov.ng/Login>.

information including license coordinates, but that this was contingent on the approval of the license-holder. Several industry representatives consulted noted they would have no objections to license information on OPLs and OMLs being publicly disclosed as this was not perceived as commercially sensitive information. An international oil and gas research analyst noted that they sourced license information from oil companies themselves and that DPR did not tend to disclose this information. Representatives from DPR noted that oil and gas concession maps were available for sale to the public. It was noted that DPR had started publishing annual statistical bulletins in 2014 for the first time since the 1980s, in order to improve the public's understanding of DPR's operations. These new disclosures, usually produced within six months from the end of the year under review, included lists of license-holders, concessions held, contract type, expiry date and geological location. A research analyst from a major investment bank noted that the public did not have access to the DPR's oil and gas license register, but noted the existence of the www.geoinfoweb.com website maintained by the FGN, which provided a database of Nigerian oil wells with a Google Maps front-end application where users could purchase well log data. Several CSOs noted that information on oil and gas licenses (both OPLs and OMLs) was publicly available on the Gas Flare Tracker website²⁷³ developed by the London-based NGO Stakeholder Democracy Network with support from DFID's FOSTER programme and launched in November 2014. The website includes area size, terrain, basin name, operational status, operator name, license type, date of award, license number and rights, superimposed over a concession map.

Solid Minerals

Documentation of progress

Licenses held by material companies: The 2013 Report provided information on solid mineral licenses held by some material companies included in the scope of reconciliation, but not all. Annex 12 (pp.176-182) provided details of 186 licenses held by 56 of the 65 material companies, but nine companies did not report information on their licenses. While Section 7.1.1 (p.70) noted that "several" material companies did not report information on their licenses, the exact number of licenses held by non-reporting companies in 2013 was not provided. Meanwhile, while the company Magcober Nigeria Ltd (n.65 on the list in Annex 12) was listed as having communicated information on its licenses, no active licenses are listed for this company in the 2013 EITI Report.

License-holder names: The names of license-holders were provided for licenses held by 56 of the 65 material companies in Annex 12.

License coordinates: License coordinates were not included in the 2013 EITI Report. Annex 12 provided license references as well as mine locality and state, which could have allowed readers to find additional information on the licenses through the mining cadastre. However, Section 3.1.7.ii (p.23) noted that the mining cadastre was not made public during the EITI reconciliation although a link to MCO's online cadastre was provided.²⁷⁴

Dates: Annex 12 provided dates of award and expiry of licenses held by 56 of the 65 material companies, but does not provide dates of application. Based on the reporting templates agreed in the 2012-2013 Inception Report (Annex 2, p.43), material companies were not requested to disclose the date of

²⁷³ <http://gasflaretracker.ng/index.html>.

²⁷⁴ <http://server.miningcadastre.gov.ng/>.

application for each of their licenses.

Commodity: Annex 12 provides the commodity covered for licenses held by 56 of the 65 material companies.

Licenses held by non-material companies: The information provided on solid mineral licenses encompasses only licenses held by 56 of the 65 material companies covered in the 2013 EITI Report. Barriers to including this information for all companies and plans for overcoming those barriers are not described in the 2013 Report, beyond reference to the fact that the mining cadastre was not made public during the EITI reconciliation in Section 3.1.7.ii (p.23).

Public cadastre/register: Section 3.1.7.ii (p.23) noted that the mining cadastre was not made public during the EITI reconciliation. A reference to MCO's online cadastre was provided²⁷⁵, although it was highlighted that details on license-holder names, dates of award, application and commodity produced were not provided in the mining cadastre. The MCO webpage indicated that the mining cadastre was open to the public during normal business hours.

The 2012 Report provided a link to the MCO's license register but this redirected to a page under construction, with no information on solid mineral licenses.

Stakeholder views

A past IA noted that it was possible for the public to request details of license areas open for application from the MCO, but not for licenses already awarded, and confirmed that the MCO's cadastre was not public. A MCO representative considered the license register to be publicly accessible through the MCO website since it listed maps of licenses in PDF format. All industry representatives consulted confirmed the existence of a mining cadastre and expressed strong support for making it available to the public or online. The MCO representative noted that it was possible for citizens to request some information on awarded licenses from the MCO in person but questioned the use of making this information public to all. Several CSOs noted they would consider public access to the mining cadastre of use for their monitoring and advocacy activities.

The MCO representative noted plans to upgrade the MCO's cadastre system with support from the World Bank in order to process license applications online, but also noted concerns over license information being publicly available on the website given the perceived possibility that users may be able to tamper with the information. All industry representatives consulted stated they would be in favour of public disclosure of license information and would support such a reform. It was important for the government to understand that a modern public mining cadastre was essential to attracting investment, according to these representatives, whereas its absence encouraged the solicitation of facilitation payments by government officials.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement.

In oil and gas, although the 2013 EITI Report's overview of the legal framework refers to the existence of Oil Exploration Licenses (OELs), we understand that OELs have not been in use since the 1970s. The 2013

²⁷⁵ <http://server.miningcadastre.gov.ng/>.

EITI Report provided some of the information mandated under Requirement 2.3, although license coordinates and dates of application, award and expiry were not included. While the Gas Flare Tracker website²⁷⁶ provides additional information such as dates of award, the dates of application and expiry are still unavailable. While the specific license coordinates are not provided, the map of blocks in the Gas Flare Tracker website provides high-definition views of the blocks (down to 50 meters). Despite the lack of clarity on the commodities covered, we understand that all licenses cover both crude oil and natural gas. The Nigerian Oil Spill Monitor²⁷⁷ provides similar details on all OPLs and OMLs in Nigeria. The DPR 2014 annual report²⁷⁸ provided the status of 93 oil and gas concessions (in Section 4.1.1, pp.7-13), name of company, type of contract and expiration date, although not the dates of application or award or license coordinates. The NSWG should ensure that dates of application and expiry are included for all oil and gas licenses held by material companies in the next EITI O&G Report and provide a link to a website providing license information in the absence of a publicly available DPR license register. The NSWG may also wish to work with the DPR to disclose this information through the DPR cadastre and provide free access to this register online.

In solid minerals, the 2013 EITI Report provided some information under Requirement 2.3, including dates of award and expiry, commodity covered and license-holder name, but not dates of application or license coordinates. In addition, license information is provided for only 56 of the 65 material companies, given that nine companies did not report. No information on licenses held by non-material companies is provided, although this is not required. It is also concerning that one of the companies included in the scope of reconciliation, Magcober Nigeria Ltd, did not disclose any licenses despite having made royalty payments of more than USD 2 million in 2013, which would indicate that companies' reporting of their license information may not be comprehensive. In preparing its next SM EITI Report, the NSWG should work with the MCO to ensure that information is provided for all licenses held by material companies, including dates of application and license coordinates. The NSWG may also wish to work with the MCO to ensure that this information is disclosed for all active solid mineral licenses through an online mining license cadastre, particularly given industry's strong support and the linkages to the government's aims of attracting investment to solid minerals as a means of diversifying the economy.

Contract disclosures (#2.4)

Oil and Gas

Documentation of progress

Government policy: The 2013 EITI Report defined the five types of contractual agreements in upstream oil and gas, including JVs, PSCs, Service Contracts (SCs), farm-out agreements (marginal fields/sole risk) and JV Modified Carry Agreements (MCAs). However, the 2013 EITI Report did not clearly define government policy on oil and gas contract disclosure, with Section 2.11 (p.42) only noting that "*Information relating to oil and gas exploitation contracts [is] not freely available in the public domain.*" The 2013 EITI Report did

²⁷⁶ <http://gasflaretracker.ng/index.html>.

²⁷⁷ <https://oilspillmonitor.ng/>.

²⁷⁸ DPR (2014), 2014 oil and gas industry annual report, <https://dpr.gov.ng/index/wp-content/uploads/2016/01/2014-Oil-Gas-Industry-Annual-Report-1.pdf>.

not refer to any on-going or planned legal reforms related to contract disclosure. The 2012 Report did not clarify the government's policy on contract disclosure or any related reforms either.

The NSWG has discussed government and industry policies on contract disclosure at several meetings. At its 17 January 2013 meeting, the Executive Secretary asked for the opinions of NSWG members on whether entire contracts should be published on their organisations' respective websites.²⁷⁹ At its 21 March 2013 meeting, the NSWG received a position paper from the NEITI Secretariat on contract disclosure practices in other EITI implementing countries. However, it does not appear from meeting minutes that the NSWG reached any type of agreement about contract disclosure.

Actual practice: Section 2.11 (p.42) noted that standard-format contracts and the complete listings of licenses and type of contract arrangements were available from the DPR, while NNPC, which usually signed the contracts on behalf of the FGN, also held copies of these contracts. However, the 2013 EITI Report did not clearly state whether full copies of all contracts were freely available from either NNPC or DPR. The 2013 EITI Report did not comment on any contracts disclosed and publicly accessible in practice.

Accessibility: Section 2.11 (p.42) described the IA's request for completion of contract data templates and the full text of actual contract documents as part of the reporting templates. However, while 29 of the 41 material companies completed the field legal contract templates showing type of commercial arrangements, shareholding structure between companies in the arrangement, OPL/OML number and date granted, none provided the full-text of their contracts. The 2013 EITI Report did not provide an overview of contracts that have been published.

In the 2012 EITI Report, only 18 material companies completed the field legal contract section of the reporting templates (which did not include fiscal terms). The 2012 Report did not comment on actual contract disclosure practice nor any details on how to access publicly-available contracts.

Stakeholder views

See below (combined for both sectors).

Solid Minerals

Documentation of progress

Government policy: The 2013 EITI Report did not define government policy on contract disclosure in the solid minerals sector. Section 3.1.8 (p.23) noted that the solid minerals legislation did not contain any express restrictions on public disclosure of minerals contracts and licenses, although according to MCO there were no contracts governing solid minerals exploitation. The 2012 EITI Report did not provide a description of government policy either.

Actual practice: Neither the 2012 nor the 2013 EITI Reports commented on actual contract disclosure practice in the solid minerals sector.

Accessibility: The 2012 and 2013 EITI Reports did not provide any information on where any contracts that had been published were accessible to the general public.

Stakeholder views

²⁷⁹ See minutes of NSWG meeting, 17 January 2013, unpublished, provided by NEITI Secretariat.

All government, industry and CSO representatives consulted noted the government policy on contract disclosure was unclear. Representatives from DPR stated there was currently no government policy on contract disclosure. President Buhari announced the government's commitment to "work towards full implementation of the Open Contracting Data Standard", applying the standard to a number of priority projects, including development of refineries in the oil sector, at the UK Anti-Corruption Summit on 12 May 2016.²⁸⁰ Several CSOs were enthusiastic about President Buhari's open contracting commitments, although they and most other stakeholders noted that this did not yet constitute official government policy. The exception was the Senior Advisor to the President on Economic Matters, who explained that President Buhari's pronouncements in international fora like the UK Anti-Corruption Summit represented official government policy but that it could take some time for this to be understood at all levels of government.

Several DPR representatives consulted noted that under the Freedom of Information Act, citizens could request information as long as no confidentiality clauses hindered the disclosure of the requested information. Several industry representatives noted that confidentiality clauses in PSCs related to the entire contract, rather than specific clauses. The more commercially sensitive information in PSCs related to the split in Profit Oil between the operator and NNPC and details of work programme obligations according to these industry representatives, while the fiscal terms in PSC were public and in line with the legislation. Members of the Companies Forum and NNPC representatives noted that the confidentiality clauses in JV Joint Operating Agreements (JOA) covered the whole JOA agreement rather than specific clauses. NNPC representatives consulted confirmed that all operating contracts such as PSCs or JOAs were confidential. One CSO consulted noted that they considered it within the power of the government to break confidentiality provisions of oil and gas contracts.

An international oil and gas research analyst noted the existence, in the case of at least one major operator in Nigeria, of a side letter with bespoke fiscal terms that superseded the fiscal terms in the company's original contract fiscal terms. While contract disclosure would be a significant improvement for transparency in Nigeria's oil and gas industry, the analyst noted that such side letters would also need to be disclosed to have an accurate view of fiscal terms.

Members of the Companies Forum said that some Joint Operating Agreements were in the public domain. OpenOil's oil and gas contracts database²⁸¹ notes that 31 oil and gas contracts of different types (JOAs, JVAs, asset divestments, etc.) are in the public domain. Several NNPC representatives noted that while the draft Petroleum Industry Governance Bill (PIGB) provided for contracts to be made "as open as possible", it was difficult for the government or NNPC to break the confidentiality provisions of the contracts given the potential impact on investment sentiment.

All stakeholders consulted confirmed that there were no operating contracts in the solid minerals sector. Representatives from the MCO, industry, CSOs and a past IA noted that the full-text of solid minerals license agreements was not available to the public. However, the IA for the 2013 EITI Report noted that any person interested in mining activities could visit the MCO office and request all available information and documentation on active licenses. While the MCO representative noted that license agreements could be requested under the Freedom of Information Act, licenses were only disclosed following written

²⁸⁰ FGN (12 May 2016), Country statement from Nigeria, London Anti-Corruption Summit, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf.

²⁸¹ <http://repository.openoil.net/wiki/Nigeria>.

requests demonstrating legitimate interest, which this representative defined as criminal investigations. While there were no confidentiality clauses in the full-text of licenses, the MCO representative argued that there was no need to disclose the licenses. None of the industry representatives consulted had any objection to the publication of the full-text of their licenses, stating that these did not contain any commercially-sensitive information nor any confidentiality clauses.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made inadequate progress towards meeting this requirement.

In both solid minerals as well as oil and gas, the 2013 EITI Reports do not clarify government policy on contract disclosure, nor any planned or ongoing reforms in this area. They do not comment on actual contract disclosure practice, despite the fact that some 31 oil and gas contracts are in the public domain. In the next EITI Reports, the NSWG should clarify government policy on contract disclosure, note any planned or ongoing reforms, clarify the actual practice of publishing contracts and provide advice to readers on how to access any published contracts. The NSWG may also wish to work with government to ensure that NEITI work on contract disclosure is linked to Nigeria's efforts to implement open contracting standards.

Beneficial ownership disclosure (#2.5)

Oil and Gas

Documentation of progress

The NSWG has discussed beneficial ownership (BO) disclosure on several occasions, as early as 12 December 2013 when it held a technical committee meeting with OpenOil to discuss BO thresholds ("generally 5-15% stakes").²⁸² More recently at its April 2016 induction retreat, the new NSWG discussed the development of a three-year roadmap in line with Requirement 2.5 of the EITI Standard, noting that the Department of Petroleum Resources should be encouraged to maintain a license register for all the assets in the sector.²⁸³

The NEITI Secretariat issued an eight-page Policy Brief in May 2016 on the importance for Nigeria of new BO requirements of the EITI Standard.²⁸⁴

Government policy: The 2013 EITI Report did not define government policy on beneficial ownership disclosure for oil and gas companies. Section 2.10 (p.41) only noted that there were no laws in Nigeria compelling companies to disclose their beneficial ownership. The government's policy on beneficial ownership disclosure was also left unclear in the 2012 EITI Report.

Actual practice: The 2013 EITI Report provided only a general description of actual practice of beneficial ownership disclosure, stating that information on the beneficial owners of oil and gas entities was available to the public on application to the Corporate Affairs Commission (CAC) by a registered legal

²⁸² See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

²⁸³ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

²⁸⁴ NEITI (9 May 2016), Anonymous companies, threat to Nigeria's economy and security, <http://www.neiti.org.ng/index.php?q=news/2016/05/09/anonymous-companies-threat-nigeria-s-economy-and-security-neiti>.

practitioner or chartered accountant. No additional information on beneficial ownership of material oil and gas companies was provided.

Legal owners of material companies: The 2013 EITI Report included an attempt to disclose the beneficial ownership of all material companies, but only the legal owners of some of the material companies were disclosed. Section 2.10 (p.41) noted that the 2013 EITI Report “was able to obtain names of the natural person(s) who directly or indirectly (through another company) ultimately controls the corporate entity except for publicly listed companies and wholly owned subsidiaries.” This information was then checked against records obtained from the CAC. However, information disclosed related to legal owners only.

The beneficial owners details of companies that reported in the 2013 EITI Report were supposedly disclosed in Appendix 2.10 (pp.63-69), including full legal company name, registration (RC) number, company contact address, “name of beneficial owner(s)/shareholder” and their equity stake in the company, stock exchange listing of the company (only yes/no, not of its mother holding group), name, position and contact details (email and telephone) as well as type of agreement (although not for all companies). Information on a total of 40 companies was listed. However, the information provided relates to legal owners of companies, rather than beneficial owners. In addition, only 29 of the 41 material companies provided name of declarant, which would indicate that only 29 of the 40 companies for whom information was provided actually filled out the beneficial ownership reporting template, although this was not explicitly stated. The equity structure of JVs (including MCAs) and PSCs was provided in Tables 8.16.1 (pp.383-384) and 8.16.1.1 (pp.385-386). The equity structure of material companies operating under marginal field / sole risk or service contract arrangements was not provided.

The 2012 Report also claimed to disclose beneficial ownership information on 42 of the 44 material companies. The information actually provided concerned the legal owners of these companies.²⁸⁵ The 2012 O&G EITI Report stated that “the beneficial owners of companies operating in the Nigerian oil and gas Industry as defined within the scope of the EITI requirement 3 are the natural person(s) who directly or indirectly (through another company) ultimately controls the corporate entity except for publicly listed companies and wholly owned subsidiaries” (p.37). Of the 66 companies included in the 2012 EITI Report, 28 companies either fully disclosed the name of their beneficial owners, the level of ownership and the nationality of their beneficial owners, or indicated that they were publicly listed. 21 companies provided partial disclosures, i.e. a mix of names of shareholding companies and beneficial owners. 17 companies did not provide any information.

Stakeholder views

See below (combined for both sectors).

Solid Minerals

Documentation of progress

Nigeria participated in the EITI BO pilot for its solid minerals sector.

Government policy: The 2013 EITI Report did not clearly define the government’s policy on beneficial

²⁸⁵ 26 of the companies were publicly-listed and 21 disclosed companies rather than individuals as their “beneficial owners” (p.46).

ownership disclosure of companies in the solid minerals sector. Section 3.3.1 (pp.27-28) provided an overview of legislation related to beneficial ownership disclosure, which included a description of Section 83 of the Companies and Allied Matters Act (CAMA), and its provision that every company is required to maintain a register of its “members”.²⁸⁶ The EITI Standard’s definition of BO was provided in Section 3.3.2 (p.28). The 2013 EITI Report questioned the focus on equity (p.28) and recommended that contractual and informal arrangements also be taken into account in determining beneficial ownership. Provisions for asset declarations by government employees were described (p.28), including disclosures of money, property, assets and liabilities of the person and their respective families. The frequency of such asset disclosures was not clarified.

Actual practice: The 2013 EITI Report did not disclose the actual practices of beneficial ownership disclosure, nor did it refer to any attempted, on-going or planned reforms.

Legal owners of material companies: The 2013 EITI Report provided details of the legal ownership of some material companies, but not all. Annex 4 (pp.88-92) provided details of 45 of the 65 material companies’ reporting of their legal ownership (company name) and 42 companies’ reporting of the nationality of their legal owners. Of the 65 material companies, five were publicly listed on the Nigerian Stock Exchange. No beneficial ownership details are provided in companies’ disclosures in Annex 4 (pp.88-92).

The 2012 SM EITI Report did not provide a definition of BO. While Nigeria’s 2012 SM EITI Report disclosed individuals described as owners, it is not clear if the individuals listed are proxies or ultimate beneficial owners.²⁸⁷

Stakeholder views

President Buhari announced Nigeria’s commitment to establish a public central register of beneficial ownership information at the UK Anti-Corruption Summit on 12 May 2016, noting its intention to expand ongoing BO work through the NEITI to other sectors such as public procurement and real estate.²⁸⁸

President Buhari also announced the government’s “commitment to implementing bilateral arrangements for ensuring law enforcement in one partner country “has full and effective access” to beneficial ownership information of companies incorporated in the other partner country.” Nigeria’s intention to implement the automatic exchange of BO information was also announced, pronouncements

²⁸⁶ Information on company members required under the Companies and Allied Matters Act includes the names and addresses of the members, and in the case of a company having a share capital, a statement of the shares and class of shares, if any, held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member; the date on which each person was registered as a member; and the date on which any person ceased to be a member. The register and index of members’ names is required to be open during business hours for inspection by any company member free of charge and, with permission from a company member, any other person subject to NGN 1 payment. The notion of control or beneficial ownership has not been treated by the Companies Legislation and there is no requirement to disclose information about the ultimate beneficial owners.

²⁸⁷ The Secretariat is expecting further clarifications from NEITI. Following Nigeria’s participation in the beneficial ownership pilot in 2015 covering the solid minerals sector, NEITI’s self-evaluation stated that the MSG agreed that “since BO disclosure is a novelty, the expressed definition in the EITI Standard was best suited for present purposes so as to give its implementation global outlook that would be acceptable to Nigerians. However the NSWG also agreed that it would visit the definition as the implementation of the BO progresses, if need be... the definition should be of a general application in the extractive industry i.e. for both Oil & Gas and Solid Minerals BO disclosure in Nigeria” (p.4).

²⁸⁸ FGN (12 May 2016), Country statement from Nigeria, London Anti-Corruption Summit, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf.

that were welcomed by NEITI.²⁸⁹

While government, industry and CSO representatives consulted did not consider President Buhari's commitment at the May 2016 UK Anti-Corruption Summit to represent official government policy, the Senior Advisor to the President on Economic Matters explained that President Buhari's statements in such international fora did represent official government policy in line with the principles of international law. Despite this, a CAC representative noted that government policy on beneficial ownership disclosure remained unclear given that the current legal framework did not require such disclosures.

Representatives from the MCO, MID and FIRS noted their agencies did not collect or require BO information, noting that no legal provisions required the reporting of beneficial ownership information. The CAC representative confirmed that it did not collect beneficial ownership information during company registration. Under Nigerian law, it was a requirement for an individual holding shares in trust for another person to disclose the identity of the real owner. The CAC representative noted that in practice it was possible for individuals to simply not disclose such ownership structures since CAC did not have the power to perform due diligence as it was not an enforcement agency. An amendment to the Companies and Allied Matters Act had been proposed to require disclosure of the beneficial owners during company incorporation. The CAC was developing an online company registration platform and would be in a position to establish a central electronic beneficial ownership register.

The solid minerals IA noted that it considered the first set of BO reporting templates used by the NEITI Secretariat during data collection for the 2013 EITI Report to be incomplete, given that only disclosures of shareholding stakes and names of directors had been requested. Having agreed with the NSWG to use the 2013 EITI Report to assess the situation related to BO disclosures and reporting companies' responsiveness in order to improve the collection process for the 2014 EITI Report, the IA had sent an additional "complimentary" template to material companies requesting disclosure of all owners' names, level of ownership, nationality and stock exchange listing.

Representatives from an IOC noted that companies normally did not fill out the NEITI's BO templates, given that they had been designed on the basis of JVs' reporting and had not received input from industry at the design stage. They noted that given that JVs were not incorporated, it was not possible for the operator of a JV to report the beneficial ownership of their JV partners. They noted it would be more feasible to complete BO reporting templates if they were addressed to JV partners individually. A former NSWG Chair noted that there were no practically feasible means of reporting on beneficial ownership in Nigeria, other than legal ownership. While most people knew who owned companies in Nigeria, there was no objective way of reporting their beneficial ownership according to this former Chair. This echoed concerns from stakeholders from all constituencies who said it would be impossible to guarantee the veracity of BO disclosure. The former NSWG Chair expressed his view that the EITI Requirement on BO disclosure may have to take local circumstances into consideration in appropriate cases.

Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement does not yet have any implications for a country's EITI status. The EITI Reports do not clarify

²⁸⁹ NEITI (13 May 2016), NEITI applauds President Buhari's pronouncements on beneficial ownership at the London summit, <http://www.neiti.org.ng/index.php?q=news/2016/05/13/neiti-applauds-president-buhari-s-pronouncements-beneficial-ownership-london-summit>

government policy on BO disclosure nor any ongoing or planned reforms, but Nigeria participated in the BO pilot in 2015 for its solid minerals sector. The NSWG has made some attempt at disclosing the legal owners of material companies in solid minerals as well as oil and gas, although there appears to be confusion over the distinction between legal and beneficial ownership. The NSWG should clarify the government's policy on BO disclosure in its next EITI Reports and provide the legal ownership structure of all material companies. The NSWG may also wish to work with the government to use EITI reporting to help developing Nigeria's public beneficial ownership register in line with President Buhari's May 2016 commitment. Here it may be pertinent for the NSWG to work with the CAC as it establishes an online company registration platform.

State participation (#2.6)

Oil and gas

Documentation of progress

According to NEITI oil and gas reports, the state plays a significant role in the oil and gas sector through state-owned NNPC, which holds equity stakes in JVs and participates in PSCs, collecting in-kind Profit Oil, Petroleum Profit Tax and Royalties on behalf of the FGN. In onshore and shallow waters, oil companies form JVs with NNPC, which holds majority stakes on behalf of the government in 55:45 and 60:40 splits depending on the arrangement. Offshore, NNPC concludes PSCs with private companies. Section 162 of Nigeria's 1999 Constitution requires all government-collected revenues to be transferred to the Federation Account, while Section 7 of the 1977 NNPC Act broadly allows NNPC to withhold funds independently to finance its operations.²⁹⁰ Without sufficient funding for its operations, NNPC has had to conclude new arrangements and been allocated by FGN a share of crude oil export revenues to cover its share of costs associated with JVs.

Several IOCs including Shell, Total, Eni and Chevron have sold stakes in a total of 24 oil blocks between 2010 and 2015. These IOC divestments did not affect NNPC's 55% equity stake in the joint-venture, given that private companies acquired the IOCs' divested stakes but they created new JV cash call structures. However, NNPC chose to exercise its operatorship rights over a total of seven of those blocks and transferred its equity stakes to its subsidiary NPDC. In light of capacity constraints, NPDC entered into strategic alliance agreements (SAAs) with two companies, where the companies funded NPDC's share of cash calls and operated these seven blocks (Atlantic Energy for OMLs 26, 30, 34 and 42 and Seplat for OMLs 4, 38 and 41) before recovering costs and profit from NPDC's share of in-kind revenue.

Materiality: Section 2.6 (pp.34-35) of the 2013 EITI Report clarified that state participation in the oil and gas sector gave rise to material revenue flows, including dividends and in-kind revenues. Section 8.7.5 (p.319) noted that the state had the right to participate in any block's operations and determine the type of contractual arrangements between companies and government. The 2012 EITI Report also described the FGN's material revenues from its participation across the oil and gas sector value chain.

Financial relationship with government: The 2013 EITI Report provided an overview of the rules and practices related to the financial relationship between SOEs in the oil and gas sector (NNPC and its

²⁹⁰ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

subsidiaries) and the government. However, it did not refer to apparent ambiguities related to the rules governing the financial relations between NNPC and the FGN between the 1999 Constitution and the 1977 NNPC Act.

For JVs, the 2013 EITI Report described the normal rules for equity-holders' funding of capital expenditure and operating expenditure ('cash calls'). Section 6.6.1 (p.132-133) provided a general overview of cash calls for NNPC's six JVs. Each JV operates its own bank account for cash calls at the Central Bank of Nigeria (CBN). Rules for third party financing of NNPC's share of JVs' cash calls through Modified Carry Arrangements (MCAs) were described in Sections 3.2.1 (p.50), 4.3 (p.114) and 8.2.1 (p.204).²⁹¹ Details on the operations of the 13 MCAs active in 2013 were provided in Sections 4.3.7 (p.120) and 4.3.8 (pp.120-121).

The roles and responsibilities of the NAPIMS, NNPC's Corporate Services Unit and Exploration and Production Directorate, were described in Section 8.10 (pp.330-331). Responsible for managing the government's investment in upstream oil and gas, NAPIMS processes requests for NNPC's share of JV cash calls, based on annual work programmes for each JV, as described in Section 8.10.1 (pp.331-333).²⁹² A summary flow chart of the cash call process was provided in Figure 8.10.1A (p.332), while Figure 8.10.1B (p.333) provided a flow chart of the cash call budgeting process and Figure 8.10.1C (p.333) included a flow chart of the cash call disbursement process. Section 6.6.2 (p.133) noted that NNPC had "observing" and audit rights over all JV cash call bank accounts, although the operators held custody and transactional authority over these joint operating bank accounts.

The 2013 EITI Report also noted significant deviations from established procedures related to the financial relations between NNPC and the state. Section 8.14.1.1.3 (p.344) highlighted a conflict of interest within NNPC, which acted as an agent selling crude oil on behalf of the Federation and as a customer of Nigerian crude oil sales for domestic refining through its subsidiaries PPMC.²⁹³ Section 3.3.21 (p.83) notes irregularities in revenue classifications by NNPC under the category "other miscellaneous receipt", totalling USD 622.733 million.

The 2013 EITI report also describes deviations in practice in the non-remittal by NNPC of dividends from NLNG. Section 3.4.3 (p.86) noted that the receipt of Nigeria LNG (NLNG) payments of 2013 dividends, loan and interest repayments totalling USD 1.29 billion by NNPC was confirmed, but the proceeds could not be traced to the Federation Account. The cumulative NLNG proceeds unremitted by NNPC to the Federation Account by the end of 2013 were USD 12.92 billion, with the aggregate dividends and loan repayments by NLNG to NNPC for 2009-2013 provided in Table 3.1.1 (p.47). The gas supply arrangements for NLNG and the Nigerian Gas Co. (NGC) are described in Section 8.1.3 (pp.192-193). The 2009-2011 O&G EITI Report had already noted the need to confirm the ownership of the 49% investments in NLNG, questioning

²⁹¹ Under MCAs, the private JV operator funds NNPC's share of the monthly cash call. The proceeds of the sale of the government's share of in-kind revenue from the license under MCA are then deposited in an escrow account, as described in Section 4.3.6 (p.118). The operator is then reimbursed in cash from the proceeds of the sales, covering the value of the original loan along with a 'capital carry cost', calculated to ensure a financial internal rate of return of 8%, as noted in Section 4.3.7 (p.119). Of the total capital carry cost due, the operator is entitled to recover 85% of this amount through tax offsets (transferring NNPC's tax benefits to the operator) and 15% from NNPC's equity share of production.

²⁹² Based on the annual budget allocated for JV operations as approved by the government and communicated to NNPC by the Budget Office of the Federation, a portion of revenue realized from the sale of crude oil and gas is set aside for the payment of cash calls by NAPIMS. The flows of revenues from distinct activities (sale of crude oil, of gas and feedstock) to distinct NNPC accounts at the CBN are described, as well as the system of NNPC JV Cash Call accounts at the CBN.

²⁹³ It was noted this allowed NNPC undue discretion in selecting pricing options and NNPC's consistent delays in paying for crude lifting within the stipulated 90 days (against 30 days for other off-takers).

whether it was held for the benefit of the Federation, the Federal Government or NNPC itself (p.19), concluding that the Federation should be the rightful owner of equity in NLNG (p.325).

The 2013 EITI Report also described significant deviations in practice from statutory rules governing the financial relations between NNPC and the state in the transfer of equity in JVs from which IOCs divested themselves to its subsidiary NPDC without adequate compensation for this transfer [*see below on changes in government ownership*].

The 2012 EITI Report described the FGN's role in the oil and gas industry, including its subsidiaries NPDC, PPMC, NAPIMS, an overview of the production entitlements under JVs and revenue flows. However the 2012 Report included only limited information on MCAs, in Section 9.5.5.1, and remained silent on the broader financial relations between the FGN and NNPC (including its subsidiaries). The 2012 Report also reported cumulative revenue of USD 11.6 billion in dividends from Nigerian LNG (NLNG) to NNPC that was unaccounted for in 2012, as reported in Section 2.2 (p.28) of the 2013 Report.

Government ownership: The 2013 Report discloses information on some of NNPC's subsidiaries and equity stakes in oil and gas projects it is involved in directly, but does not consistently disclose the level of state ownership in each. It is also unclear whether this represents a complete list of all extractives companies in which the state holds a majority stake, given that NPDC subsidiaries and equity stakes are not provided.

Section 2.6 (pp.34-35) lists 13 of NNPC's subsidiaries but does not disclose the level of state ownership in each. NNPC's exploration and production subsidiary NPDC is described as 100% state-owned in Section 8.14.2.3 (p.362). The report only describes NPDC's general ownership stakes in JVs but does not specify NPDC's equity stake in each. Only NNPC's equity blocks assigned to NPDC between 2010 and 2011 are described in Section 8.14.2.5 (p.364), including specific equity stakes. NNPC's equity participating interests in each JV arrangements are shown in Table 6.6.1 (p.132) and Table 8.16.1.1 (pp.385-386). The details of active MCAs contracts are listed in Table 4.3.7 (p.120). While a list of the nine PSCs is provided in Table 8.14.2.2 (p.362), the level of NNPC's stake in PSCs in which it holds a stake is not provided.

NNPC's stake in ExxonMobil's two natural gas liquids projects (NGL1 and NGL2) are described in Section 4.3.3.1 (pp.116-117), where the EITI Report raises questions about why the equity split in the NGL2 project was 51% (MPN/Exxon): 49% (NNPC) while NNPC held a 60% share in the MPN JV.

The terms associated with state equity in each subsidiary and project are not described, aside from state participation in the NGL2 project and the process for funding NNPC cash calls described above (See Requirement 2.1).

The 2012 EITI Report also described the level of NNPC's ownership in JVs in 2012 (pp.102-103), but it did not disclose a comprehensive list of NNPC subsidiaries, equity stakes and terms associated with each.

Ownership changes: Since 2011, NNPC has transferred certain equity stakes in onshore and shallow-water JVs to its exploration and production subsidiary, NPDC. The 2013 EITI Report noted conflicting evidence of the timing of certain transfers, valuations of the blocks and actual payments from NPDC to NNPC.

Section 6.6.1 (p.133) highlighted non-trivial deviations in the transfer of operatorship of several oil and gas licenses from NNPC to its exploration and production subsidiary NPDC, although these transfers did not take place in 2013. The blocks concerned are OMLs 13 and 20 (held by a JV of NNPC/Shell/TEPNG/NAOC), OMLs 49 and 51 (held by a JV of NNPC/Chevron), OMLs 60, 61, 62 and 63 (held by a JV of NNPC/NAOC/Oando).

The effective transfer dates and terms for most OML transfers appear contested between the Ministry

of Petroleum Resources, DPR and NNPC. While Section 6.6.1 (p.133) notes that only the operatorship of OMLs 13, 20, 49 and 51 was transferred from NNPC to NPDC, not the ownership or participating interest, Section 3.3.4 (pp.58-59) notes that OMLs 49, 51, 60-63 were transferred to NPDC by a DPR letter of deed on 15 November 2015. Section 3.3.4 (p.59) notes the lack of any justification from NNPC for the assignment of Federation equity in these licenses. Section 3.3.4 (pp.58-59) noted that OMLs 49 and 51 were transferred by DPR letter of deed on 19 March 2013.

There is also a lack of clarity regarding the timing of transfers of OMLs 60-63: while Section 3.3.4 (pp.58-59) states that OMLs 60-63 were transferred to NPDC by a DPR letter of deed on 15 November 2015, Section 6.6.7 (p.139) notes that the transfer of these blocks took place in December 2012.²⁹⁴ It is noted in Section 3.3.4 (p.59) that no payment was made in relation to the transfer of OMLs 60-63. Section 3.3.4 also notes (p.59) a lack of justification from NNPC regarding the assignment of Federation equity in these blocks. Section 3.3.4 (pp.58-59) reports that proceeds of oil sales from these blocks was deposited in NPDC's accounts in 2013, although it also includes NNPC's response that this was legitimate in light of the DPR's November 2015 letter of deed. Section 6.6.7 (p.139) also notes that NAPIMS paid a total of USD 536.922 million in cash calls for OMLs 60-63 in 2013, but that the oil sales proceeds from these blocks were transferred to NPDC's account. NAO's response is also noted in Section 6.6.7 (p.139), noting that it had *"not signed or endorsed any novation agreement from NNPC/NAPIMS to NPDC and had never interfaced with NPDC as partner in OMLs 60,61, 62 63, even though it continuously shared communication or obligations only with NNPC/NAPIMS under the terms of the JOA."* NAPIMS provided evidence of a USD 389.057 million refund (in 2014) on the cash calls it funded in 2013 by NPDC, leaving a balance of USD 147.864 million outstanding.

Sections 3.3.4 (pp.59-60) and 10.2.5 (pp.395-396) noted the lack of payment from NPDC to NNPC or the government for the December 2012 transfer of OMLs 13 and 20. The court litigation surrounding DPR's right to offer OML 13 and OML 16 was noted in Section 10.1.6 (p.393), describing the reaching of a settlement on OMLs 13 and 16, which were subsequently transferred back to the government, although the date of transfer was not provided. Following ministerial approval, the award process for OPLs 2001 – 2003 (former OML 13) and OPL 2004 (former OML 16) was launched.

A DPR letter dated 19 March 2013 assigning NNPC's equity stake in OMLs 49 and 51 to NPDC was provided in Section 3.3.4 (pp.58-59), but Sections 3.3.4 (pp.59-60) and 10.2.5 (pp.395-396) note that only USD 100 million of the USD 1.8 billion due for the transfer of OMLs 49 and 51 was actually paid by NPDC to NNPC. Section 3.3.4 (p.59) notes that the assignment of OMLs 49 and 51 was not an arms' length commercial transaction.

While Section 6.6.1 clearly stated that these transfers of operatorship did not constitute a change of ownership or of participating interest, Section 3.3.4 (pp.59-60) noted that, according to PwC's 2015 forensic audit of NNPC, NPDC had enjoyed full rights on these assets insofar as all oil and gas revenues from the assigned fields were paid to NPDC's account and NNPC did not declare any surplus from the operation of these fields to the government. Section 3.3.4 (p.59) noted that NPDC *"continuously enjoyed full rights and benefits accruing from the assets transferred as dictated by the terms of the deed of*

²⁹⁴ Evidence of the assigning of the Federation equity in OML 60, 61, 62 and 63 to NPDC in December 2012 is provided in Appendix 6.6.1C (pp.179-185) of the 2013 NEITI Oil and Gas Report: a letter from the DPR to the NAPIMS general manager on 28 January 2015 referring to a decision taken by the Minister of Petroleum Resources on 11 December 2012; the 15 November 2012 letter from the Minister of Petroleum to the NNPC group managing director indicating the Minister's approval to transfer OMLs 60-63 from NNPC-NAPIMS to NPDC; and the 11 December 2012 deed of assignment for the blocks between NNPC and NPDC.

assignment i.e. oil and gas revenue from the assigned fields have been paid to NPDC's account" and that NNPC did not report any surplus to the Federation Account from the operations of the blocks as they were assigned to its subsidiary. Section 3.3.4 (p.59) further notes that DPR's computation of the value of these blocks' transfer from NNPC to NPDC as USD 1.8 billion, although only USD 100 million was paid by NNPC to NPDC in April 2014. It concludes: "The assignments of the OMLs were not arm's length transactions and were also undervalued." However, Section 6.6.7 (p.139) notes that the cash calls for these blocks continued to be paid by NAPIMS, although small amounts were refunded by NPDC.²⁹⁵

The 2013 EITI Report also provided some information on NPDC's "strategic alliance agreements" (SAAs) on seven oil blocks with two private companies. Section 8.14.2.5 (p.364) noted that, for operational and financial reasons, NPDC had signed a SAA with Atlantic Energy in 2011 to provide funding and technical support for the development of OML 26, 30, 34 and 42. The NEITI auditors requested to review revenue generated by NPDC through NNPC-COMD (marketing arm of NNPC) compared to the sale of the NPDC production allocation from its different OMLs, in order to ultimately assess the SAAs. However, this proved unsuccessful and the 2013 EITI Report recommended a review of the propriety of the sale of the OMLs to NPDC.

The 2012 EITI Report described the SPDC divestments from OMLs 4, 38, 41, 26, 30, 34, 40 and 42 in 2010 and 2011 in Section 7.5.1.1.III (p.102). A list of six private companies with which NPDC held SAAs in 2011 and 2012 is also provided in Section 7.5.1.1.III (p.102).

Loans and guarantees: The 2013 EITI Report disclosed information about loans contracted by various SOEs from third-party private parties (see "financial relations" above for reference to third-party financing of JVs through MCAs) as well as three upstream and midstream projects. However, the 2013 EITI Report did not refer to any loans or loan guarantees extended by the FGN or NNPC (or any other SOE) to companies operating in the oil and gas sector.

Section 4.3.2 (pp.115-116) provided details of the loans backing the NGL1 and NGL2 projects by NNPC and MPNU (49:51), including the value of loans, but not the maturity/length, interest rate or other information. Table 4.3.2B (p.116) provided a summary of the NGL 2 loan profile as at 31 December 2013, including the principal advanced, the principal repayment, the interest payment, the outstanding principle and NNPC's equity costs in the NGL 2 project. Section 4.3.3.1 (pp.116-117) noted that the NGL 2 third-party financing arrangement did not confer commercial fairness to the Federation given its 49% split of the NGL project but its 60% stake in the MPB JV operating it. It noted there is no evidence to suggest that MPNU is bearing additional costs to warrant a change from the original JV participation ratio, although NNPC noted in response that the 51:49 structure was required by the loan deal guarantor, the Overseas Private Investment Corporation (OPIC).

Section 4.3.4 (p.117) provided details of the loan backing the Satellite Field Development Project, a JV between NNPC and MPNU established to fund development on up to 22 undeveloped oil and gas fields.²⁹⁶ Table 4.3.4 (p.117) provided a summary of the Satellite Field Project revenue flows in 2013, although it

²⁹⁵ USD 35.127 million was refunded by NPDC into JPMorgan Cash Call Dollar Account in July 2013, related to cash calls paid for the period April to November 2011 on OML 42. Outstanding refund request by NAPIMS of USD 414,000 and NGN 249,272,000 on OML 26 and NGN 2,171,235,000 on OML 42 for the period April-November 2011, according to NAPIMS documents. Section 6.6.7 (p.139) of the 2013 NEITI Oil and Gas Report.

²⁹⁶ Under the financing structure for the Satellite Field Development Project, proceeds from lifting are deposited in an offshore account and used for periodic debt services after which the balance is transferred to the JV Partners' designated accounts after meeting necessary conditions.

does not provide the value and terms (maturity/length, interest rate, etc.) of the loans, nor the names of the financing banks.

Section 4.3.5 (pp.117-118) described the financing structure for the Reserve Development Project (RDP), established to build and drill 27 oil wells in 10 JV assets between NNPC and MPNU. The RDP's total cost was USD1.5 billion, sourced as loans from (un-named) private Nigerian and international commercial banks. However, the value and terms (maturity/length, interest rate, etc.) of the loans were not disclosed. Table 4.3.5 (p.118) provided the reconciled²⁹⁷ crude oil liftings from the RDP, disaggregated by month, while proceeds of the sales were reported from the CBN/NNPC JP Morgan Crude Oil and Gas (Dollar) Revenue Account.

The 2012 EITI Report described the alternative funding structure for JVs in general terms and listed the projects (NGL2, SFDP, and RDP) but did not disclose any further information, in Table 9.1.1.14 (p.152). No information was provided on loans from the FGN or NNPC (or its subsidiaries) to oil and gas companies.

Stakeholder views

All stakeholders consulted stated that they considered the 2013 EITI Report's description of material revenue streams collected by NNPC comprehensive.

Different stakeholders held contrasting views about the rules governing NNPC's financial relations with the government. While the Federal Constitution requires all government revenues to be centralised, the 1977 NNPC Act of the National Assembly allowed for the SOE to retain some funds and only remit dividends to the Federal Government. Technical staff from the NEITI Secretariat noted that in the case of any inconsistencies between a National Assembly Act and the Constitution, the consensus was that the Constitution took precedence. NNPC representatives consulted did not identify any inconsistencies between the NNPC Act and the Constitution, given that the latter took precedence and all oil and gas revenues were thus required to flow to the Federation Account. However, as a limited liability corporation, only dividends from NNPC were required to be swept into the Treasury Single Account, not all revenue streams collected by NNPC. NRGi has highlighted significant deviations from the statutory rules governing financial relations between NNPC and the FGN: while NNPC and its subsidiaries draw up annual budgets, using "mostly" export proceeds to fund its share of cash calls (determined by oil companies and NAPIMS annually), certain budgeted spending was usually not completed and funds were re-routed to cover costs not described in the annual budgets. NRGi has also reported that some revenue-generating NNPC subsidiaries retained some of their earnings.²⁹⁸ NRGi has raised concerns over corporate governance, oversight and transparency within NNPC operations, highlighting the weaknesses in NNPC's reporting of its oil sales to other government agencies and the poor internal recordkeeping systems within NNPC. In particular, NRGi's August 2015 report noted the absence of published NNPC annual reports, weak audit functions and a board chaired by the Minister of Petroleum. The NRGi report highlighted discretionary spending by NNPC across its upstream operations, with off-budget spending from its JV accounts and domestic crude allocation earnings, linking the practices to a history of

²⁹⁷ Between NNPC-COMD schedules of crude oil liftings and NNPC-COMD records of monthly allocation (between NNPC and partners) of crude oil liftings.

²⁹⁸ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

questionable “special” or “priority” projects.²⁹⁹ The PwC report on NNPC in 2015 stated in its audit of NNPC’s unremitted revenues found that NNPC had a “blank cheque to spend money without limit or control.”³⁰⁰

Technical staff at the NEITI Secretariat noted NPDC’s argument that it was not an SOE, but rather a commercial entity that was wholly-owned by NNPC and that NAPIMS had paid cash calls on behalf of NPDC erroneously. However, technical staff noted that only a share of these cash calls had been refunded by NPDC to NAPIMS, leaving an outstanding balance of cash calls paid by NAPIMS. Representatives from NNPC consulted confirmed they considered NPDC to be an SOE. Several DPR representatives explained that NAPIMS remained statutorily responsible for cash calls for NPDC, given that NNPC had not yet unbundled its operations. However, secretariat staff disputed NRG’s calculations that all crude oil revenues lifted by NPDC should have accrued to the Federation given that dividends from NPDC would first be transferred to NNPC and that only in cases of payments of dividends by NNPC to NPDC would any of these revenues accrue to the Federation Account. These representatives noted that NNPC had run a consistent annual loss in recent years and thus would not have paid dividends to the Federation.

Stakeholders consulted stated that there were more than six JVs in operation in 2013. All Companies Forum members consulted noted that the number of JVs had increased since the IOC divestments in 2010-2012 since each divestment had created a new JV structure involving a new indigenous oil company. Representatives from the Companies Forum, one development partner and one international CSO estimated that there were at least 14 JV structures in operation in 2013. NNPC representatives stated that the IOCs’ divestments had created only four new JV structures (involving Aiteo, Newcross Petroleum, Eroton and First E&P). The IA stated that it had referred to the creation of new JV cash calls as a consequence of the IOCs’ divestments, but that it had not considered describing the level of state equity in each new JV.

NRGI has also described the existence of five NNPC trading subsidiaries established in the 1980s³⁰¹, which are also evident from various corporate filings and corporate communications:

- Duke Oil Company Inc. (Panama) (100%-owned by NNPC), not listed on the NNPC website³⁰²;
- Duke Oil Services Ltd. (UK) (100%-owned by NNPC), listed on the NNPC website³⁰³;
- Calson Ltd. (Bermuda) (51%-owned by NNPC in JV with Vitol), listed on the website of Vitol³⁰⁴ but not NNPC;
- Hyson Ltd. (Nigeria) (60%-owned by NNPC in JV with Vitol), listed on the NNPC website³⁰⁵;
- Napoil Company Ltd. (Bermuda) (51%-owned by NNPC in JV with Trafigura), listed in Trafigura’s

²⁹⁹ Natural Resource Governance Institute (August 2015), ‘Inside NNPC Oil sales: a case for reform in Nigeria’, http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

³⁰⁰ P.16, PwC (February 2015), ‘Auditor-General for the Federation: Investigative forensic audit into the allegations of unremitted funds into the Federation Accounts by the NNPC’,

http://cloudflare.qurium.info/premiumtimesng.com/docs_download/Full%20report--20billion%20dollars%20missing%20oil%20money.pdf.?cf=1.

³⁰¹ Natural Resource Governance Institute (August 2015), ‘Inside NNPC Oil sales: a case for reform in Nigeria’, http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

³⁰² <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=260372590>.

³⁰³ <http://www.nnpcgroup.com/NNPCBusiness/Subsidiaries/DukeOil.aspx>.

³⁰⁴ <http://www.vitol.com/contact-locations/bermuda/>.

³⁰⁵ <http://www.nnpcgroup.com/NNPCBusiness/Subsidiaries/Hyson.aspx>.

annual reports³⁰⁶ but not on the NNPC website.

Technical staff from the NEITI Secretariat noted that the five NNPC trading subsidiaries had not been included in the 2013 EITI Report because they considered that the scope of the EITI Report did not include operations offshore Nigeria. They also noted the significant resistance they encountered from material entities when it was perceived that the NEITI was going beyond their mandate. The IA noted he did not consider it a requirement to include an exhaustive list of all SOE subsidiaries and that offshore NNPC subsidiaries would have been beyond the scope of the 2013 EITI Report.

Several CSO representatives consulted noted the lack of clarity surrounding the rules and practices relating to the financial relations between NNPC and its five trading subsidiaries. NRGi has quoted a 2012 presidential task force describing the trading subsidiaries as “operational and financial black boxes”³⁰⁷ and reports that “most” of their earnings appeared to be kept in offshore accounts. It found that NNPC had not publicly explained how these subsidiaries accounted to the group. The Berne Declaration has also highlighted the opaque management of NNPC subsidiaries such as Hyson (Nigeria) Ltd and Calson (Bermuda) Ltd, created in August 1988 as joint ventures between NNPC and Chevron, who sold to Vitol in 1994.³⁰⁸ NRGi and the Berne Declaration describe a system of crude contracts allocated by NNPC’s COMD to its subsidiaries for them to “flip” them to oil traders with the capacity to lift the crude oil. According to NNPC records quoted by NRGi, its subsidiary Calson was allocated roughly 9% of total NNPC exports in 2011, worth USD 2.2 billion, and “likely” received over USD 10 million in “commissions” from its swap deal with PPMC.³⁰⁹ NRGi refers to data from the PwC 2015 audit of NNPC³¹⁰ and NEITI³¹¹ about one cargo NNPC sold to Calson priced USD 430,090 below OSP in 2012. An investment bank research analyst covering oil and gas noted that NNPC did not hold any preferential shares in any company and that he was not aware of any preferential equity rights held by NNPC.

All stakeholders consulted noted they were not aware of any NSWG discussions around the definition of state-owned enterprises. The IA confirmed there had been no NSWG discussion of the definition of SOEs and that it had adopted what it considered as the EITI Standard’s definition, which consisted of companies in which the state held 51% equity. All Companies Forum members and NNPC representatives consulted stated they did not consider JVs to be SOEs despite NNPC’s majority equity stake given that the Joint Operating Agreements on which the JVs were based provided for equal participation in decision-making by all JV partners, while NNPC could not over-rule the operator’s decisions in areas such as hiring of staff. A former IA agreed that JVs were not SOEs: while NNPC held majority equity stakes in the JVs, the terms of the JOA stated that NNPC could not question the JV operator’s decisions; NNPC oversaw JV operations but could not over-rule the operator. The IA for the 2013 EITI Report stated it did not consider JVs to be

³⁰⁶ Trafigura, 2014 annual report, <http://www.trafigura.com/media/1990/2014-trafigura-annual-report.pdf> and 2015 annual report, <http://www.trafigura.com/media/3321/2015-trafigura-annual-report.pdf>.

³⁰⁷ p. 59, Federal Ministry of Petroleum Resources (Nuhu Ribadu chair), Report of the Petroleum Revenue Special Task Force (PRSTF Report), as cited in Natural Resource Governance Institute (August 2015), ‘Inside NNPC Oil sales: a case for reform in Nigeria’, http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

³⁰⁸ Berne Declaration (November 2013), ‘Swiss traders’ opaque deals in Nigeria’, <https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/BD-Nigeria-EN-20131101.pdf>.

³⁰⁹ Natural Resource Governance Institute (August 2015), ‘Inside NNPC Oil sales: a case for reform in Nigeria’, http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

³¹⁰ p.141, PwC (February 2015), ‘Auditor-General for the Federation: Investigative forensic audit into the allegations of unremitted funds into the Federation Accounts by the NNPC’, http://cloudflare.qurium.info/premiumtimesng.com/docs_download/Full%20report--20billion%20dollars%20missing%20oil%20money.pdf.?cf=1.

³¹¹ Appendix 9.3.4.3A, NEITI 2012 Oil and Gas Audit Report.

SOEs, even though NAPIMS had populated templates on quasi-fiscal expenditures on behalf of JVs. With regards to the transfer of NNPC equity in IOC-divested OMLs to NPDC, NEITI Secretariat technical staff stated that they considered the transfer of equity to have been effective from 2012, despite conflicting evidence of the dates of assignment. This was explained by the fact that NPDC started receiving the rights associated with equity ownership of these blocks (e.g. share of oil production) as soon as approval for the transfer was provided by the Minister of Petroleum Resources in 2012. An analyst at a major investment bank's extractives research department confirmed that he considered that the effective transfer took place in 2013, despite the uncertainty related to the timing of the transfer of NNPC equity in certain blocks to NPDC. Representatives from DPR were critical of NEITI's allegations that the DPR had under-assessed the value of transfers of JV equity from NNPC to NPDC, justifying the USD 1.8 billion calculation by explaining it was based on P1 reserves estimates (rather than P2 or P3) and that the licenses were due for renewal in 2019.

Regarding strategic alliance agreements (SAAs) concluded between NPDC and two private companies, the IA noted that the ToR for the 2013 EITI Report had not covered this type of arrangement and therefore they had not included more details on the terms of these agreements. The IA noted that the 2012 EITI Report had been the first to disclose the existence of SAAs but noted that the NSWG did not appear to understand SAAs. Under SAAs, the private contractor was expected to fund NPDC's share of JV cash calls but the IA had found that certain NPDC cash calls on these blocks had still been paid by NAPIMS. All NNPC representatives consulted stated that the two private companies involved in SAAs did not make payments to government other than corporate income tax on their profits, but rather pre-paid NPDC's share of cash calls and recovered their costs and profit from NPDC's share of in-kind revenues. Several IOC representatives and a past IA stated they considered SAAs a form of service contract, given that it did not include any transfer of equity and involved NNPC paying a company to produce oil on a block that it owned. An international CSO considered SAAs to be a form of third-party financing similar to the former Carry Agreements, given that the private partners recuperated revenues in-kind from NPDC's in-kind revenue. The Nigeria Natural Resource Charter has categorized the SAAs as "under the radar", noting the complexity of the SAAs that made it difficult to assess their legality and whether the selection process for SAA partners followed due process.³¹² We note that there was additional information on the structure of SAAs in the public domain prior to publication of the 2013 EITI Report in May 2016. The 2010 SAA between NPDC and Septa Energy Nigeria Ltd. covering OMLs 4, 38 and 41 was published on Septa's website³¹³ in January 2016.³¹⁴ According to regulatory disclosures and analyst research on Seven Energy, one of the companies involved in SAAs, companies engaged SAAs are reimbursed for the incurred running costs and capital costs when they lift crude oil from the field, but is only entitled to recover 20% of tangible capital expenditure every year. According to Exotix Partners' 13 July 2016 analyst note on Seven Energy³¹⁵, the majority of Seven Energy's capital expenditure to develop oil assets under SAAs took place in 2013 and 2014 and Seven Energy had thus amassed a "sizeable claim against future oil cash flows."

³¹² Nigeria Natural Resource Charter and Center for Public Policy Alternatives (December 2014), http://nigerianrc.org/sites/default/files/NNRC_2014BenchmarkingExercise_Summary.pdf.

³¹³ Strategic Alliance Agreement between NPDC and Septa Energy Nigeria Ltd, 2010, <http://www.sevenenergy.com/~media/Files/S/Seven-Energy/documents/npdc-saa.pdf>.

³¹⁴ According to the Internet Archive (a web crawler that indexes webpages), the PDF was published on the Septa website prior to 9 January 2016. See https://web.archive.org/web/*/http://www.sevenenergy.com/~media/Files/S/Seven-Energy/documents/npdc-saa.pdf.

³¹⁵ Exotix Partners (13 July 2016), Seven Energy, http://research.exotix.co.uk/files/amf_exotix/project_1/Seven_Energy_July_2016.pdf.

Stakeholders consulted held contrasting views on loans and loan guarantees extended by the FGN or SOEs to companies operating in the oil and gas sector. All NNPC representatives consulted stated categorically that NNPC did not benefit from an implicit sovereign guarantee from the FGN. An investment bank research analyst covering oil and gas noted that NNPC raised credit at the equivalent of a Nigerian AAA rating, which reflected the FGN's implicit sovereign guarantee to NNPC. According to the analyst, NNPC tended to pay around 13%-14% annual interest on USD-denominated lines of credit in 2016, compared to an average of 17% for blue-chip corporates like Dangote Group. While it was not possible for lenders to receive a Letter of Comfort or any assurance from the FGN regarding NNPC debt, lenders knew that NNPC would not default on its debt since it was assumed that the CBN would cover this debt in a worst-case scenario. A development partner considered that all SOEs in Nigeria benefitted from an implicit sovereign guarantee. None of the CSOs consulted had any views on the existence of an implicit sovereign guarantee. The IA stated that it had not considered that the ToR for the 2013 EITI Report mentioned loans or loan guarantees as part of the disclosure requirements, even though Section 1.VII of the ToR (p.24 of the appendix to the 2013 EITI Report) required disclosure of such loans. NRGi reported in August 2015 that the level of NNPC debt was currently unknown.³¹⁶

One international CSO noted the existence of loans extended by NNPC to other entities, including foreign governments, that had not been disclosed in EITI Reports but had been reported in the 2012 Presidential Petroleum Revenue Task Force report³¹⁷ and the 2014 PwC audit of NNPC oil sales.³¹⁸ These included a NGN 798.6 million loan to the Bureau of Public Enterprises and NGN 700.5 million loan to Sao Tome and Principe for instance.

There were also varying views on whether loans extended to oil and gas companies by commercial banks owned by the state-owned Asset Management Corporation of Nigeria (AMCON)³¹⁹ constituted SOE loans to oil and gas companies. Secretariat staff noted that NEITI did not have access to the loans to oil and gas companies that may have been extended by banks majority-owned by the government, through AMCON. It was noted that loans to oil and gas companies were typically syndicated loans and that AMCON-owned banks, which had been bailed out by the government, were unlikely to have the financial capacity to participate in syndicated project lending. Staff also expressed reservations about disclosing information on state-owned bank loans to oil and gas companies, which were likely to be under strain given current oil prices and the Nigerian macroeconomic environment, in light of current challenges for the Nigerian banking sector. However, an investment bank research analyst covering oil and gas noted that all Nigerian banks had some degree of exposure to loans to upstream oil and gas companies, including banks owned by AMCON such as Keystone Bank (formerly Bank PHB). The 2013 annual report of AMCON-owned banks

³¹⁶ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

³¹⁷

http://www.premiumtimesng.com/docs_download/Report_of_the_Ribadu_led_Petroleum%20Revenue%20Special%20Task%20Force%202012.pdf.

³¹⁸ PwC (February 2015), 'Auditor-General for the Federation: Investigative forensic audit into the allegations of unremitted funds into the Federation Accounts by the NNPC',

http://cloudflare.qurium.info/premiumtimesng.com/docs_download/Full%20report--20billion%20dollars%20missing%20oil%20money.pdf.?cf=1.

³¹⁹ The AMCON was established following the 2009 Nigerian banking crisis to bail out ten commercial banks and operates as state-owned agency that manages these banks' bad debt. See for instance <http://www.bloomberg.com/news/articles/2015-12-08/nigeria-s-amcon-struggles-to-recover-assets-amid-economic-slump>.

like Keystone Bank³²⁰ do not disaggregate the bank's active loan portfolio given that it is not a publicly-listed bank.

Recent reforms since President Buhari took office in May 2015 include NNPC's monthly publication of financial and operational reports since October 2015 and announcement of plans to reform NNPC and the legal framework governing the oil industry.³²¹ Several NNPC representatives consulted expressed desire for closer collaboration with NEITI to shape the structure of NNPC's monthly financial disclosures as a means of publishing information required under the EITI Standard as part of NNPC's routine disclosures.

Solid minerals

Documentation of progress

Materiality: The 2013 SM EITI Report listed 21 state-owned companies in the solid minerals sector, owned by five SOEs, in Section 3.4.3 (p.30). While these were all slated for privatisation, the BPE had only confirmed to the IA that no privatisations had taken place in 2013. Therefore, the commercial status of each of the 20 SOEs in 2013 was unclear, since the 2013 EITI Report only stated that one SOE in uranium mining was under liquidation. The list of material companies included in the scope of the 2013 EITI Report (pp.39-40) did not include the 20 SOE subsidiaries, which would seem to indicate that state participation in the solid minerals sector did not give rise to material revenues, although this was not explicitly stated in the 2013 EITI Report.

Financial relationship with government: The National Council on Privatisation (NCP) and the Bureau of Public Enterprises (BPE) were briefly described in Section 3.4 (p.29), although the description did not clarify the rules and practices governing financial relations between the government and these SOEs.

Government ownership: The government's plans for full- or part-commercialisation and/or privatisation of SOEs were described in Sections 3.4.1-2 (pp.29-30), with reference to the list of SOEs scheduled for commercialisation and privatisation in parts 1 and 2 of the 1999 BPE Privatisation Act and provisions for divestment to Nigerian nationals. Section 3.4.3 (p.30) described the privatisation of SOEs in the solid minerals sector, including the list of four SOEs to be partly-privatised under Section 2 of the 1999 BPE Act and planned ownership quotas post-privatisation. The 20 subsidiaries of these four SOEs were listed and a link to the BPE's webpage providing details of eight mining SOEs available for privatisation was provided.³²² The 2013 EITI Report did not comment on the terms associated with government equity in these SOEs.

Ownership changes: A 18 September 2014 letter from the BPE was referenced (p.30) noting that no privatisations were concluded in 2013 and that no proceeds of past privatisations were received in 2013. Details of material companies' reporting of their basic information (TIN, RC number, value of share capital) in Annex 3 (pp.85-87) revealed that 54 companies reported no government ownership and 11 companies did not report.

Loans and guarantees: The 2013 EITI Report did not refer to any loans or loan guarantee provided by the FGN or an SOE to any company in the solid minerals sector. There was no evidence from NSWG (or technical committee) meeting minutes of the NSWG's discussions around state participation in the solid

³²⁰ See Keystone Bank, 2013 Annual Report, <http://www.keystonebankng.com/aboutusde.php?p=57&mode=content>.

³²¹ IMF (April 2016), 'Nigeria 2016 Article IV Consultation', <https://www.imf.org/external/pubs/ft/scr/2016/cr16101.pdf>.

³²² <http://www.bpeng.org/sites/bpe/current%20transactions/Pages/default.aspx>.

minerals sector.

Stakeholder views

The IA stated that the solid minerals SOEs were old and non-operational in 2013. A MID representative confirmed that SOEs in the solid minerals sector were non-operational in 2013. The representative noted that while President Obasanjo had slated solid minerals SOEs' assets for privatisation in 2005, only some of these had been privatised at an unspecified date and no privatisation had taken place in 2013. Industry representatives consulted confirmed that solid minerals SOEs were inactive. None of the CSOs consulted expressed any particular views on whether SOEs in the solid minerals sector were active in 2013.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress in meeting this requirement. This requirement is likely not applicable in the solid minerals sector, although the NSWG should clearly state whether this was the case and whether any SOEs made any material payments to government in the year(s) under review in future EITI reporting.

In oil and gas, the NSWG has clearly undertaken significant efforts over the past ten years to disclose information on the operation of NNPC and its subsidiaries. The 2013 EITI Report clearly states that SOEs (NNPC Group and its subsidiaries) made material payments to government and provides information on some SOEs, the rules governing financial relations between the state and SOEs both statutorily and in practice, some information on changes in state ownership and on loans contracted by SOEs. The 2013 EITI Report provides significant information on significant practical deviations in the transfer of NNPC equity in JVs holding oil and gas licenses, although these appear to have been completed prior to 2013. However, the list of SOEs does not appear to be comprehensive given the existence of five NNPC trading subsidiaries and several new JVs established as a result of IOC divestments. We note that the divestments by four IOCs from their stakes in JVs may have created up to 14 new JV cash call structures, based on reports of indigenous companies' acquisitions.³²³ Finally, the 2013 EITI Report does not address any loans or loan guarantees extended by the FGN or SOEs to companies operating in the oil and gas sector. Given the NSWG's lack of a clear definition of SOEs and the IA's assumption that all companies in which the government or a SOE held the majority of equity, the loans extended by banks held by AMCON would appear to be de facto material. Aside from the loans extended by commercial banks owned by AMCON, we also note the CBN's 12 June 2015 payment of outstanding debt owed by electricity distribution companies to natural gas producers such as the NNPC-Chevron JV³²⁴ under the central bank's NGN 213 billion Nigeria Electricity Market Stabilization Facility (NEMSF) established in 2015. The NSWG should clearly establish its definition of SOEs to delineate the SOEs within the scope of EITI reporting. While the CBN fund mentioned above was not active in 2013, the NSWG should clarify the level of support through loans and loan guarantees to upstream oil and gas companies by the FGN or SOEs and include a comprehensive list of SOEs and their subsidiaries in the next EITI Report. The NSWG may wish to work closely with NNPC to shape the structure of NNPC's monthly disclosures as a means of publishing

³²³ We note that the following 14 indigenous operators acquired JV stakes divested by the four IOCs: Seplat, Afren, Shoreline, ND Western, Elcrest/Eland, West African E&P/Dangote, Eroton, New Cross, Aiteo, First E&P/Dangote, Amni, Belema, Belema/Seplat and Oando. See for instance The Guardian (4 August 2016), "Four international oil firms divest from 24 mining leases", <http://guardian.ng/news/four-international-oil-firms-divest-from-24-mining-leases/>.

³²⁴ See CBN (12 June 2015), "NEMSF: CBN disburses funds to Gas Suppliers", <https://www.cbn.gov.ng/FeaturedArticles/2015/articles/NEMSF%20-%20CBN%20disburses%20funds%20to%20Gas%20Suppliers.asp>.

information required under the EITI Standard on a more timely basis as part of NNPC's routine disclosures.

Table 2 - Summary initial assessment table: Award of contracts and licenses

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Legal framework (#2.1)	The 2013 EITI Reports describe main laws in both sectors, the main taxes, the degree of fiscal devolution and the main on-going and planned reforms.	Satisfactory progress.
License allocations (#2.2)	In oil and gas, the 2013 EITI Report clarifies that no new licenses were awarded in 2013, describes the statutory license allocation and transfer procedures and the criteria for block bidding rounds. However, it does not clarify whether any licenses were transferred or renewed in 2013 nor the procedures and criteria used (both statutorily and in practice) in the case of discretionary license allocations. License allocations and transfers in the JDZ are not covered. In solid minerals, the 2013 EITI Report provides a link to the MCO's statutory license allocation and award guidelines and states that no new competitive licensing round was held in 2013. However, it does not clarify the number of licenses awarded in 2013, deviations from the statutory license allocation and transfer procedures in practice, nor the weightings of technical and financial criteria assessed during license allocation or transfer procedures.	Meaningful progress.
License registers (#2.3)	In oil and gas, the 2013 EITI Report provides some information on all licenses held by material companies including license-holder name and type of commodity covered, but does not provide dates of application, award or expiry nor license coordinates (or guidance on how to access these). While the DPR	Meaningful progress.

	<p>license register is not accessible to the public, the publicly-accessible Gas Flare Tracker website provides dates of award and approximations of license coordinates. However, dates of application and expiry for licenses held by material companies are not publicly available.</p> <p>In solid minerals, the 2013 EITI Report provided some information on licenses held by some material companies, including dates of award and expiry, commodity covered and license-holder name for only 56 of the 65 material companies. However, dates of application and license coordinates were not disclosed and information was not provided on licenses held by nine material companies. It is also concerning that one material company did not disclose holding any licenses.</p>	
Contract disclosures (#2.4)	The 2013 EITI Reports do not clarify government policy on contract disclosure, nor any planned or ongoing reforms in this area, and does not comment on actual contract disclosure practice.	Inadequate progress.
Beneficial ownership disclosure (#2.5)	Nigeria participated in the BO pilot in 2015 and has made efforts to disclose legal information through its EITI reporting since reports covering. The EITI Reports do not clarify government policy on BO disclosure.	
State-participation (#2.6)	In oil and gas, the 2013 EITI Report clarifies that NNPC and its subsidiaries make material payments to government. It provides extensive information on the statutory rules related to the financial relations between NNPC and the state, and some significant deviations in practice. However, the NSWG has not clearly defined SOEs nor provided a comprehensive list of NNPC subsidiaries, nor of new JVs created by IOC divestments from oil blocks since 2010. Despite significant information on loans	Meaningful progress (not applicable in solid minerals).

	<p>contracted by NNPC from private third-parties, there is no information on any loans or guarantees extended by the FGN to companies operating in the oil and gas sector, such as NNPC. This provision does appear to be applicable in the Solid Mineral sector.</p>	
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> 1. The NSWG should ensure that all aspects of Requirement 2.6 are adequately addressed during the scoping for future EITI Reports. It should clearly establish its definition of SOEs to delineate the SOEs within the scope of EITI reporting and clarify the level of support through loans and loan guarantees to upstream oil and gas companies by the FGN or SOEs and include a comprehensive list of SOEs and their subsidiaries in the next EITI Report. The NSWG may wish to work closely with NNPC to shape the structure of NNPC's monthly disclosures as a means of publishing information required under the EITI Standard on a timelier basis as part of NNPC's routine disclosures. 2. The NSWG should ensure that future EITI Reports clearly define the number of licenses awarded and transferred in the year(s) under review in both solid minerals and oil and gas, describe the actual process and highlight any non-trivial deviations in practice. The NSWG should also work with the Nigeria-Sao Tome and Principe Joint Development Authority to include details on any license awards or transfers in the scope of Nigeria's O&G EITI Report. The NSWG should clarify the technical and financial criteria (and their weightings) used for assessing license allocations and transfers, both for discretionary oil and gas licenses and for solid mineral license awards and transfers. The NSWG may also wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations, in line with industry's calls for improvements in the investment environment. 3. The NSWG should ensure that future EITI Reports provide the dates of application and expiry for all oil and gas licenses held by material companies or provide a link to where such license information is available to the public. The NSWG may also wish to work with the DPR to disclose license information for all material companies through the DPR cadastre and provide free access to this register online. 4. The NSWG should also ensure that future EITI Reports work with the MCO to ensure that information is provided for all solid minerals licenses held by material companies, including dates of application and license coordinates. The NSWG may also wish to work with the MCO to ensure that this information is disclosed for all active solid mineral licenses through an online mining license cadastre, particularly given industry's strong support and the linkages to the government's aims of attracting investment to solid minerals as a means of diversifying the economy. 5. The NSWG should ensure that future EITI Reports clarify government policy on contract disclosure, note any planned or ongoing reforms, the actual practice of publishing contracts and provide advice to readers on how to access any published contracts. The NSWG may also wish to work with government to ensure that NEITI work on contract disclosure is linked to Nigeria's efforts to implement open contracting standards. 6. The NSWG should clarify the government's policy on BO disclosure in its next EITI Reports and provide the legal ownership structure of all material companies. The NSWG may wish to work with the government to use EITI reporting to help developing Nigeria's public beneficial ownership register in line with President Buhari's May 2016 commitment. 7. The NSWG may wish to consider using future EITI Reports to track progress in implementing legal and fiscal reforms, particularly related to progress in passing the Petroleum Industry Governance Bill and the planned Mining Income Tax Bill. 		

3. Monitoring and production

3.1 Overview

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

3.2 Assessment

Overview of the extractive sector, including exploration activities (#3.1)

Oil and gas

Documentation of progress

The 2013 Report provides an overview of the Nigerian oil and gas industry, including a history of exploration and production³²⁵, estimates of reserves³²⁶, crude oil characteristics³²⁷, location of reserves³²⁸, crude oil theft³²⁹, the natural gas industry³³⁰, main export markets³³¹, balance of trade³³², oil services contractors³³³, midstream activities (processing, transportation, refining, petrochemicals)³³⁴, downstream transport, sales and subsidies³³⁵. Section 5 (p.125) provided a brief description of the Joint Development Zone of São Tomé and Príncipe (STP) and Nigeria, including the resource sharing formula and a link to the 2003-2013 EITI Report for the JDZ³³⁶, which consists of an edited version of STP's first EITI Report.³³⁷

Exploration: Section 2.5 (p.33) provided a summary of exploration and production in 2013, ranging from NNPC's acquisition of 3D seismic data to number of drills operating, number of wells drilled and location of significant activities. The 2012 EITI Report provided an overview of the oil and gas sector since inception and provided an overview of the financing of the oil and gas sector in Section 9, but did not provide detail of any significant exploration activities in 2012.

Stakeholder views

Several industry representatives noted that the pace of oil and gas exploration activities had slowed considerably in recent years, given that new drilling was focused on increasing production from existing fields rather than greenfield projects. The stalled progress on passing the PIB had meant that IOCs, operating increasingly in the deep-water offshore, had faced delays in their license renewals. Meanwhile

³²⁵ Section 8.6.4 (pp.295-299)

³²⁶ Section 2.2 (pp.27-28), Section 8.6.4 (pp.295-299), Table 8.6.4 (p.298)

³²⁷ Section 8.6.4 (pp.295-299)

³²⁸ Sections 2.2 (pp.27-28) and 8.6.4 (pp.295-299) with a map of Nigerian sedimentary basins in Figure 8.6.4A (p.297) and a low-definition map of oil fields, blocks and main oil and gas basins in Figure 8.6.4B (p.297)

³²⁹ Section 8.5.9 (pp.281-287)

³³⁰ Sections 8.1 (p.191-195) and 8.6.12 (pp.305-306)

³³¹ Section 2.2 (pp.27-28)

³³² Section 2.2 (pp.27-28)

³³³ Section 8.6.11 (p.304)

³³⁴ Section 8.6.9 (p.302)

³³⁵ Section 2.2 (pp.27-28), Section 7.1 (pp.169-170), Sections 8.5.7 (pp.275-276) and 8.5.8 (pp.276-281), Section 8.6.10 (pp.302-303), Appendix 7.8 (pp.186-217)

³³⁶ [https://eiti.org/files/First%20Report%20%202003-2013%20\(Nigeria-Sao%20Tome%20and%20Principe\).pdf](https://eiti.org/files/First%20Report%20%202003-2013%20(Nigeria-Sao%20Tome%20and%20Principe).pdf).

³³⁷ https://eiti.org/files/First%20EITI%20Report%202003_2013.compressed.pdf.

indigenous companies were focused on maintaining production at existing facilities onshore and in shallow waters. The representatives noted that companies did not want to invest in new greenfield exploration without clarity on the new terms of the PIB. An international oil and gas research analyst confirmed that the lack of new block awards since 2007 had significantly held back exploration activity, with oil companies focusing on brownfield investments in the deep-water offshore, using technological advances to find new reserves at existing wells rather than drilling new wells. While the analyst understood the FGN's preference for indigenous oil companies, these companies often did not have the financial capacity to undertake greenfield exploration. With only half a dozen new wells drilled annually, the analyst expressed concerns over the implications on future oil production given the maturing profile of many fields.

Solid minerals

Documentation of progress

Section 3.1.1 (p.16) of the 2013 NEITI SM Report described the solid mineral sector, including the dominant role of artisanal and small-scale mining (ASM) in precious minerals while quarrying, which accounted for over 90% of solid minerals revenues, was dominated by construction companies mining stone aggregates and laterite and cement manufacturers mining limestone, coal and others. The geographic location of major deposits and range of types of minerals was provided. The main exploration activities were described in general terms in Section 3.1.2 (pp.16-17), with brief descriptions of iron, gold and limestone, and a list of 13 main mining projects (8 in exploration only, five in mining), sourced from MMSD. Information includes country of origin of companies. Solid mineral deposits are provided in Section 3.1.2 (p.17), including talc, gypsum, iron, lead/zinc, coal, bentonite and barite, bitumen, rock salt and kaolin (sourced from Nigerian Investment Promotion Council (NIPC)³³⁸). The 2012 Report provided an overview of the solid minerals sector, including its historical evolution, composition and exploration activities by commodity (pp.16-17).

Stakeholder views

A MID representative considered the description of exploration activities in the 2013 EITI Report to be accurate and comprehensive, explaining that MID typically provided this information to the IA. Industry representatives consulted noted that mining companies, largely based in northern Nigeria, had not undertaken significant exploration activity in recent years with most precious minerals mining dominated by small-scale, often informal, operators. A past IA noted that while unrest in northern Nigeria had affected solid minerals exploration activities at the height of the conflict in 2013, exploration activities had quickly resumed thereafter.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress towards meeting this requirement. The EITI Reports provide extensive information on the solid minerals, oil and gas sectors, including information on history, reserves, location, trade profile and significant exploration activities. The NSWG may wish to consider developing the extractive industries overview section of Nigeria's EITI reporting as an investment promotion tool by providing more analysis on market trends,

³³⁸ <http://nipc.gov.ng/index.php/opportunities-by-sectors/mining.html>.

which both industry and government appear to support.

Production data (#3.2)

Oil and gas

Documentation of progress

Nigerian oil production is processed at flow-stations connected to oil fields by flow lines, where crude is separated from impurities (water, sediment, etc.) and measured. The 1968 Petroleum Act, modelled on legislation in the US where oil is typically refined on site before being transported, requires oil companies to calculate production at well-head. In Nigeria, companies net-back processed oil production at flow-station to the original field as a means of complying with the law.

From its first report, NEITI has highlighted the fact that, since crude oil theft typically happened along flow-lines before arriving for processing at flow-stations, oil companies did not have the ability to quantify the actual amounts of crude oil theft. In its ten-year impact assessment, NEITI estimated that roughly 10% of volumes were either lost or stolen between well-head and terminals.³³⁹

Nigeria has used its EITI reporting to reconcile production figures at the point of crude oil storage depots, between the Department of Petroleum Resources (DPR), NNPC's Crude Oil Marketing Department (COMD), oil terminal operators and oil and gas companies' own disclosures. This EITI data draws on monthly reconciliation meetings that NNPC must hold with its JV and PSC partners to reconcile production volumes, upon which tax liabilities is calculated.

There have also been differences in the pricing of crude oil between companies, which have historically used the Realisable Price (RP) (i.e. the oil company's estimate of sales contract price) and the FGN, which uses the Official Selling Price (OSP) set by NNPC-COMD. With arbitration ongoing between the two parties in 2013, the court had ruled that companies were allowed to continue using RP as the basis for oil price calculations pending resolution of the case. As of mid-2016 all disputes had been resolved aside from the 2010-2012 period.

It is also noteworthy that Nigerian total oil production figures typically do not include production from the unitized Ekanga zone operated by Nigeria and Mobil Equatorial Guinea (the Zafiro crude blend³⁴⁰), which is blended into the Topacio production lifted through an FPSO in Equatorial Guinea. The NEITI reports provide figures both inclusive and exclusive of the Zafiro blend.³⁴¹

Oil production volumes: While the 2013 O&G EITI Report provides the two sets of production volumes (inc/exc. Zafiro), albeit with discrepancies between different figures quoted from the same source. The production measurement process is described in Section 8.2.4 (pp.211-212), while production metering infrastructure is described for various oil terminals in Sections 8.15.1-6 (pp.367-383). Excluding Ekanga/Zafiro crude, production volumes varied between:

³³⁹ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?',

<http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

³⁴⁰ <http://corporate.exxonmobil.com/en/company/worldwide-operations/crude-oils/zafiro-blend>.

³⁴¹ Footnote 1 (p.218) of the 2013 Report.

- NNPC-COMD's 800,488,000 barrels³⁴², 800,488,096³⁴³ and 800,338,000 barrels³⁴⁴;
- DPR's 800,927,000 barrels³⁴⁵, 801,026,000 barrels³⁴⁶ and 801,164,146 barrels³⁴⁷;
- Companies' 800,950,095 barrels.³⁴⁸

Including Ekanga/Zafiro, production volumes reported were more consistent from the same sources, but varied between NNPC-COMD's 804,517,940 barrels³⁴⁹, DPR's 805,268,756 barrels³⁵⁰ and Companies' 805,054,705 barrels.³⁵¹

The 2013 EITI Report also highlights discrepancies between DPR and NNPC production figures.³⁵² Section 3.3.1.1 (p.55-56) raises concerns that they "*put doubt on the integrity of production and lifting figures and raises issues of accountability.*" The 2013 EITI Report also raised concerns over the fact that DPR's reconciliation of 2012 and 2013 production figures with companies only took place in August 2014 and involved sign-off only from the JV companies, given that it did not participate.³⁵³ Instances are noted when DPR and operators signed off on the same production volume more than once.³⁵⁴

Natural gas production volumes: Table 8.1.5A (p.196) provided total natural gas production³⁵⁵, disaggregated by sales, flaring, reinjection, utilised and unaccounted.³⁵⁶ Figures are also disaggregated by gas producing company in Table 8.1.5B (pp.197-198) and Figure 8.1.5E (p.200) as well as disaggregated by quarter in Table 8.1.5D (p.201).

Oil production value: While the 2013 EITI Report did not explicitly provide the total oil production value, the numerous sources provided for calculations of oil prices allowed readers to calculate this figure.³⁵⁷

³⁴² In Section 2.5 (p.33) and Tables 3.3.1A (p.54), 2.5 (pp.33-34), 8.3.1 (p.218) and disaggregated by type of commercial arrangement in Table 8.3.1.1 (p.219)

³⁴³ In Tables 8.2.4A (pp.212-215), 8.4.1A (p.225) and 8.2.4C (p.217)

³⁴⁴ In Table 3.3.1B (p.55)

³⁴⁵ In Table 3.3.1B (p.55)

³⁴⁶ In Table 3.3.1A (p.54)

³⁴⁷ In Table 8.4.1A (p.225)

³⁴⁸ In Table 8.4.1A (p.225)

³⁴⁹ In Tables 8.2.4B (pp.215-217), 8.4.1A (p.225) and 8.3.1 (p.218), disaggregated by 29 types of crude Nigeria produces, producer name, 2013 production volumes, average daily production volumes and share of total production.

³⁵⁰ In Table 8.4.1A (p.225)

³⁵¹ In Table 8.4.1A (p.225).

³⁵² A difference of 538,000 barrels is noted in Section 8.4.4 (p.259), which also describes the monthly reconciliation between companies and DPR and NNPC through curtailment meetings. A comparison of 2013 production volumes (both including and excluding Zafiro) between NNPC and DPR data is provided in Table 8.4.1B (pp.226-227), disaggregated by type of crude, and between companies and DPR in Table 8.4.1C (p.227).

³⁵³ Production volumes reconciled between DPR and each operator are provided in Appendix 4.A (pp.13-34), disaggregated by operator, field and month of production.

³⁵⁴ E.g. Chevron's Escravos crude production in November-December 2013 and Chevron's Pennington crude production in December 2013, in Section 3.3.1.1 (p.55-56) of 2013 NEITI Oil and Gas Report.

³⁵⁵ 3,209,321.14 mmscf.

³⁵⁶ Table 8.1.5A (p.196) states that these unaccounted volumes are the consequence of sabotage or theft.

³⁵⁷ The selection of pricing options was described in Section 8.14.1.1.4 (pp.344-345). The application of pricing options for all 219 domestic crude oils was tested in Section 8.14.1.1.2 (p.342) and in Appendix 8.14.1.1.2 (pp.218). The NEITI request to review the methodology and studies undertaken by NNPC-COMD for setting the monthly Official Selling Price (OSP) was unsuccessful. NNPC's 2013 Monthly OSP fixes were shown in Figure 8.3.3.1.7B (p.349), while the 2013 NNPC Monthly OSP and Crude Oil Grade API and Sulphur Content was provided in Figure 8.3.3.1.7C (p.350). The price differentials of Agbami, Brass River, Bonny, Escravos, Forcados and Qua Iboe grades were provided in Appendix 8.14.1.1.3A (pp.219-225), disaggregated by trading day. Potential alternatives to the current OSP system were presented in Section 8.14.1.1.9 (pp.352-353). The letter from NNPC dated 18 February 2014 indicating its use of official selling price (OSP) as realisable price (RP) was provided in Appendix 3.4.5.1D (pp.105-). The FIRS' letter of interpretation of the court ruling on the use of realisable price (RP), pending resolution of

Natural gas production value: The 2013 EITI Report did not provide the value of natural gas production, aside from a breakdown of MCA gas lifting volumes and values disaggregated by month and project in Appendix 4.3.10B (pp.172-173). It was not possible to calculate the value of 2013 natural gas production from natural gas pricing data in the 2013 EITI Report.³⁵⁸ While Table 3.3.8 (p.66) provided information on the two average 2013 sales prices (for gas sales and for gas feedstock sales to NLNG), it remained unclear whether these calculations of total natural gas sales was equivalent to the value of natural gas production.

Section 8.1.4 (pp.193-194) described the determination of domestic natural gas prices, highlighting the lack of clear-cut policies or formulae for determining gas prices.³⁵⁹ Tables 8.1.4A-E (pp.194-195) provided natural gas sales prices of key producers (SPDC, Seplat, Pan Ocean, NPDC/ND Western).

Location: The 2013 EITI Report provided information on the location of oil production, given its provision of the names of the main crude oil blends. While it did not explicitly provide the location of natural gas production, the domestic gas sales pricing information provided for SPDC, Seplat, Pan Ocean and NPDC/ND Western provides some information on the location of the main sources of production.

Crude oil theft: The 2013 EITI Report also provides information on crude oil losses due to theft and sabotage. Crude oil theft was described in Section 8.5.9 (pp.281-287), although the source of information was second-hand (from Oilprice.com). Sections 8.5.9A-J (pp.282-287) provided disaggregated crude oil theft figures for each JV and NNPC, although the source of figures was not consistently provided. Section 8.5.9.1 (pp.287-288) provided domestic crude oil losses (volumes and value³⁶⁰) on flow lines from crude oil terminals to refineries in 2013.³⁶¹

Stakeholder views

An investment bank analyst covering oil and gas noted that there were around five effective natural gas sales price in Nigeria, including different prices for sales to independent power producers and for feedstock sales to NLNG and WAGP. While he noted that all this information was in the public domain it was not compiled in one database, stating that a centralized source for natural gas pricing information would be useful both for the investment community, policymakers and the general public.

The Senate President highlighted the fact that there were no reliable production figures for oil and gas

the court case, was provided in Appendix 3.4.5.1C (pp.102-104). A letter dated 18 February 2014 announcing NNPC's OSP as realisable price RP was included in Appendix 3.4.5.1D (pp.105-). A 2013 daily tracking of dated Platts differentials vs NNPC OSP was provided in Figure 8.3.3.1.3A (p.342). A benchmarking of NNPC OSP vs Platt's differentials in 2013 was provided in Figure 8.3.3.1.3B (p.343). An overview of crude oil grades and price benchmarks was provided in Section 8.14.1.1.6 (p.348). A correlation of NNPC's Official Selling Point against crude quality (density and sulfur) was provided in Section 8.14.1.1.7 (pp.348).³⁵⁸ Section 8.1.4 (pp.193-194) described the pricing structure of domestic gas sales, with SPDC gas prices provided in Table 8.1.4A (p.194), SEPLAT gas prices in Table 8.1.4B (p.195), PAN OCEAN gas prices in Table 8.1.4C (p.195), NPDC/ND WESTERN gas prices in Table 8.1.4D (p.195) and gas-to-power and gas-to-commercial unit prices were provided in Table 8.1.4E (p.195). However, Section 8.1.4 also noted that different buyers pay different prices, in contravention of the last domestic gas price increase in 2008.

³⁵⁹ While several other agencies (such as NNPC, PPPRA) had announced price changes without approval, Section 8.1.4 noted there were different prices for different industries or end users, with discretionary pricing by NGC (on domestic gas sales) in some instances (eg Alson's unit price of NGN 38.81 was much lower than others).

³⁶⁰ The estimated value was based on a flat USD 100/barrel for 2013.

³⁶¹ The impacts of crude oil theft, including economic, environmental, social, health and governance impacts were described in Section 8.5.9.3 (pp.291-292). Unaccounted liftings of Focardos blend (not from oil theft), disaggregated by customer and invoice number, were provided in Appendix 3.3.17 (p.92). While oil and gas companies reporting in EITI were asked to provide crude oil losses, some companies (such as Mobil and Total) did not report these figures while SPDC submitted altered reporting templates for crude oil figures, according to Section 8.5.10 (p.292).

production, highlighting the potential role of NEITI in clarifying actual production data. Several CSOs consulted noted that the issue of the lack of metering equipment at oil and gas well-heads was one of the most pressing issues and represented one of the main ways in which the FGN was losing revenue. All DPR and industry representatives consulted explained that the call for installation of well-head metering equipment would not be possible given the significant additional costs and the fact that measuring well-head production would also include impurities. They explained that the current system of netting-back crude oil liftings to well-head was the most accurate way of measuring production. Several IOC representatives noted that the reference to well-head production in the Petroleum Act had been copied from US legislation but was not practicable in the Nigerian context given that crude oil was not processed in areas adjacent to the well-heads, as they were in the US. The DPR representatives noted that they agreed with NEITI that an audit of net-backs would be welcome, but they disagreed with public pronouncements focusing on the alleged production losses. Industry representatives noted that the recommendation to install well-head metering equipment reflected NEITI's focus on revenues accruable to government rather than the practicality of reforms recommended.

A former IA noted that the recommendation to install well-head metering equipment in recent NEITI Reports did not make sense given the existence of sediments and water in the mix. The 1999-2004 O&G EITI Report's original recommendation was for the installation of metering equipment at flow stations, where the crude was usually at least 95% pure, according to the former IA. Given that saboteurs typically tapped flow-lines from flow-stations to crude oil terminals, the installation of metering equipment at flow-stations would allow the FGN to estimate losses from crude oil theft and sabotage, which were currently unknown. The example of companies injecting crude oil in other operators' storage terminals installing their own metering equipment along their flow-lines to track the amount of crude oil injected was used by the former IA to explain that it was possible for oil companies to install such equipment.

Representatives from one IOC noted that they considered that the NEITI audit duplicated the monthly reconciliations companies ordinarily undertook with NNPC, NAPIMS and the DPR, explaining that any discrepancies between the monthly reconciliations and NEITI figures were due to a timing issue, in that monthly DPR reconciliations could lead to adjustments in subsequent months, while NEITI reports netted out production on an annualised basis.

Members of the Companies Forum noted that industry had worked closely with NEITI on differences between companies and the FGN over the use of OSP over RP for calculations of tax liabilities, with agreement reached between individual companies and DPR over liabilities in the 2008-2015 period, with disagreement over only a period in 2012 outstanding. Industry representatives consulted noted the importance of balanced reporting by NEITI on this issue, noting that while the 2013 Oil and Gas EITI Report provided the responses on this issue from relevant companies, most press releases and public pronouncements had only focused on the headline figure without the nuance that revealed both sides of this contentious issue. Representatives from DPR consulted confirmed that a new fiscal regime for oil and gas was introduced in January 2013, requiring the use of OSP over RP for the calculation of royalties.

Solid minerals

Documentation of progress

Production volumes: Section 1.3 (p.10) of the 2013 EITI SM Report provided the 2012 and 2013 production volumes and their shares of total mineral production for granite, limestone, laterite, sand, shale, red alluvium, coal, clay and "others", sourced from MID. Section 7.1.6 (p.72) noted that "for

commodities such as sand” companies reported sales volumes but not production data. Annexes 8.1 and 8.2 (pp.103-104) provided 2012 and 2013 production volumes disaggregated by mineral and location (state) for the same eight main minerals. The 2013 EITI Report however raised concerns over the quality of production figures reported.³⁶²

Production value: The 2013 EITI Report did not provide the value of solid minerals production and it was not possible to calculate production values without the provision of average prices for each mineral. The 2012 EITI Report provided volumes of production in Section 1.3 (p.10), but not production values or location of production, and raised the same concerns as the 2013 EITI Report regarding the reliability of MID’s production volumes figures. The NSWG has discussed the reliability of solid mineral production figures on several occasions, noting for instance at its 12 December 2013 meeting that “logistics problems” hindered the Ministry of Mines from adequately checking construction companies’ bills of quantity against actual quantities of material lifted.³⁶³

Stakeholder views

The IA highlighted the challenges in companies’ reporting of production figures, given that several companies reported only volumes sold rather than actual production. Given that MCO calculated production levels based on royalties paid, this had also created problems in sourcing production figures from government since several penalties or delayed payments from previous years had been wrongly taken into account to calculate 2013 production. A previous IA noted that MID’s solid minerals production data was unreliable given the MID’s lack of independent verification of companies’ self-reporting of production. The past IA noted that while MID had the statutory powers to confirm companies’ production figures, the department did not use these and the unreliability of production statistics represented the largest leakage in government revenues from the solid minerals sector. Industry representatives consulted noted that the MID was required to visit mines on a monthly basis to confirm production figures that were used as the basis for calculating royalty liabilities. Representatives from MID and MCO noted the pertinence of NEITI findings related to the accuracy of solid minerals production figures.

The MID representative noted that his department had followed up on NEITI recommendations within its capacity constraints and had started developing a means of net-back to calculate, for instance, limestone production based on available cement production statistics, as a means of overseeing companies’ self-reporting of production. However, this approach would not allow MID to calculate precise production volumes and would only be feasible for construction materials, not precious minerals, according to the representative who noted that MID intended to increase the frequency of its on-site mine visits to improve its production monitoring. Construction company representatives questioned the validity of the MID’s new netting-back approach given the significant assumptions that were required to calculate production volumes based on explosives used for instance. More broadly, industry representatives highlighted a significant change under the new government, where federal mines officers had increased the number and frequency of their on-site mine visits, although the focus of on-site verification appeared to be on larger construction companies rather than smaller operators, particularly in precious metals.

³⁶² Section 7.1.1 (p.70) noted that most material companies did not report their production volumes and values. Section 7.1.6 (p.72) also noted that production volumes data from MID was based on self-reporting by solid minerals companies, with no independent MID verification procedures. Section 7.1.6 (p.71) also noted that some production volumes reported by MID did not match corresponding royalty amounts.

³⁶³ See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. Nigeria has gone beyond the basic requirement in reconciling oil and gas production lifting figures. In oil and gas, the EITI Report provided production volumes for crude oil and natural gas. While it was possible to calculate production values for crude oil, there was insufficient information to do so for natural gas. In solid minerals, the EITI Report provided production volumes for the eight most significant minerals by volume but not values nor pricing information.

In preparing its next EITI Report, the NSWG should provide disaggregated production values for all key minerals produced including crude oil and natural gas. The NSWG may also wish to explore ways of using its EITI reporting to provide more accurate production volume figures, particularly in solid minerals, by exploring the potential for reconciliation of production volumes in the same way as in the oil and gas sector.

Export data (#3.3)

Oil and gas

Documentation of progress

Oil export volumes: Table 3.3.8 (p.66) provided volumes and values of crude oil exports, disaggregated by quarter. Table 8.4.1E (pp.229-230) provided a comparison of NNPC, DPR, companies and terminal operators' 2013 export data disaggregated by terminal and geographical location. While not explicitly provided, total export volumes could be calculated and varied between NNPC's 796,399,659 barrels, DPR's 796,389,747 barrels, companies' 795,758,261 barrels and terminal operators' 795,932,515 barrels. Additional information on oil exports was also provided including an overview of Nigeria's 27 crude oil terminals in Nigeria in Table 8.2.3 (pp.210-211) and an inventory of terminals' crude oil (including production and liftings) in Table 3.3.2 (pp.56-57). The 2013 EITI Report also provided extensive information on crude oil liftings, which include both domestic and export sales.³⁶⁴

Natural gas export volumes: While the 2013 EITI Report did not explicitly provide total 2013 natural gas export volumes, it provided sufficient data to calculate this figure. Table 3.3.8 (p.66) provided volumes and values of natural gas sales and NLNG feedstock sales disaggregated by quarter while Table 3.3.13 (p.73) provided the same by month. However, the volumes of natural gas sales provided included both domestic sales and exports through the West Africa Gas Pipeline (WAGP) to Benin, Togo and Ghana, implying that NLNG feedstock sales volumes and values represented only a share of total natural gas exports. Given that Section 8.6.12 (p.306) stated that 37% of natural gas produced was supplied to NLNG and WAGP, it was possible to calculate total natural gas export volumes³⁶⁵ based on total 2013 production volumes³⁶⁶ provided in Table 8.1.5A (p.196) even if this figure was not explicitly provided in the 2013 EITI

³⁶⁴ Nigeria has used its EITI reporting to reconcile crude oil lifting (but not export) figures between NNPC, DPR, companies and oil terminals. Total 2013 crude oil lifting volumes (including exports and domestic sales) in 2013 were listed in Table 8.3.1 (p.218). Crude oil liftings were presented by commercial arrangement type in Table 8.3.1.2A (p.222) and by month in Table 8.3.1.2B (p.223). Comparisons of 2013 crude oil liftings reported by terminal operators, DPR, NNPC and companies, disaggregated by crude type, were presented in Table 8.4.1D (p.228). A reconciliation of monthly crude oil sales between the NEITI Report and NNPC figures was provided in Table 3.3.15 (p.75).

³⁶⁵ 1,187,448.81 mmscf

³⁶⁶ 3,209,321.14 mmscf

Report.

Oil export value: Table 3.3.8 (p.66) provided the total value of crude oil exports, disaggregated by quarter.

Natural gas export value: While the 2013 EITI Report provided the value of natural gas sales through NLNG, it did not provide the value of natural gas exports through WAGP. Tables 3.3.8 (p.66) and 3.3.13 (p.73) provided the values of gas sales and NLNG feedstock sales, disaggregated by quarter, while Table 3.3.8 (p.66) provided the value of NLNG feedstock. A reconciliation of NLNG feedstock values between NNPC-COMD and CBN receipts is provided in Table 3.3.14 (p.74-75). While it was possible to calculate natural gas export volumes, the absence of a figure for gas sales to WAGP meant it was not possible to calculate the value of natural gas exports through WAGP. The 2012 NEITI Report provided oil and natural gas export volumes, the value of oil exports, but not of natural gas exports.

Stakeholder views

While a CBN representative noted that the CBN's Trade and Exchange Department published export data disaggregated by commodity, the Senate President highlighted the lack of reliable statistics on oil and gas exports and the role NEITI could play in producing accurate figures on oil and gas exports.

The IA confirmed that it had not studied the West Africa Gas Pipeline in preparing the 2013 EITI Report. Several industry representatives noted that the price at which the West Africa Gas Pipeline purchased natural gas from producers and the volumes of natural gas exported through the pipeline were not public, although this was not due to any confidentiality concerns but rather the fact that as an unlisted company WAGPCo had not regulatory requirement to disclose such information. The US Energy Information Administration has estimated that total exports of natural gas through the WAGP were 21 bcf in 2013 and 2014.³⁶⁷ A representative from an international oil and gas research company stated that the net-back price at which producers sold natural gas to WAGPCo was USD 2.5 per mmbtu.

NRGI has noted that crude oil pricing had been one of the main areas where NNPC export oil sales had improved with time, noting that the use of OSP would ostensibly limit political interference in pricing, since a strict application of the OSP formula would mean that the Brent market would typically determine over 90% of a crude oil cargo's price.³⁶⁸ NRGI also noted that recent audits³⁶⁹ that reviewed pricing data did not find a consistent pattern of large gaps between OSP and the reported spot market prices for Nigerian crude.

Solid minerals

Documentation of progress

Export volumes: The 2013 EITI Report provided export volumes for only a share of the solid minerals Nigeria exported. Annex 11 (pp.174-175) provided details of solid mineral export volumes, disaggregated by company, as reported by the Nigerian Customs Service. However, disclosures of solid minerals volumes

³⁶⁷ Cedigaz (September 2015), Statistical Database, as cited in footnoted 53 of EIA (6 May 2016), Country analysis brief: Nigeria, http://www.marcon.com/library/country_briefs/Nigeria/nigeria.pdf.

³⁶⁸ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

³⁶⁹ NRGI's August 2015 report quotes the following audits: Section 4.3.1 of the KPMG Project Anchor Report, Appendix B of the NEITI 2009-2011 Oil and Gas Financial Audit, and p.47f of the 2015 PwC Report.

exported were provided only for reporting companies, not for total exports. It is also noteworthy that certain companies providing export values in Annex 11 disclosed only export volumes while others disclosed only export values. The 2013 EITI Report included additional information on solid mineral exports, highlighting concerns regarding the reliability of export figures³⁷⁰, but did not disclose the location of origin of mineral export.

Export value: Section 1.3 (p.11) provided 2013 mineral export values, sourced from National Bureau of Statistics and disaggregated by the main mineral types.³⁷¹ Section 3.1.4.ii (p.19) provided the values of 2012 and 2013 mineral exports, disaggregated by mineral export type and for aggregate solid mineral exports as a share of total exports. Section 6.5 (p.69) provided disclosures on exports (including minerals type, quantity, FOB value and destination country) by only two of the 65 material companies. The 2012 EITI Report provided export volumes and values disaggregated by company, commodity and CIF value in Annex 7 (pp.159-160), but this represented self-reporting by material companies rather than total exports. No information was provided on the location of origin of exports.

Stakeholder views

The IA highlighted the fact that solid mineral export figures sourced from customs and the CBN did not match, because they used different criteria on what to include as exports and how to assess them, while companies' own disclosures on exports were also different. A past IA noted the existence of significant smuggling activities across land borders, which entailed that customs' export figures were not comprehensive and only represented formal exports. While MID was required to award export licenses for any mineral exports, this representative noted that this did not represent an accurate proxy for estimating total mineral exports given the prevalence of smuggling. A MID representative noted that they had started to work with the customs service to block precious metals export leakages at key exit points like ports and airports.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress in meeting this requirement. The EITI Reports provide export volumes for crude oil, natural gas and oil export values, although the value of natural gas exports is not disclosed. They also provide the export values for the three largest solid mineral exports that accounted for roughly two thirds of solid mineral exports, but only export volumes for material companies rather than for total exports. In preparing its next EITI Reports, the NSWG should disclose total export volumes and values for every mineral commodity exported. The NSWG may wish to consult with the Abuja-based West African Gas Pipeline Authority to clarify the volumes and values of natural gas exports carried through the WAGP. While WAGPCo annual reports are only published up to 2011³⁷², we understand that WAGPCo was non-operational for the first half of 2013,

³⁷⁰ Section 7.1.10 (p.74) described the export permitting approval process under Sections 143 and 131 of the Nigerian Minerals and Mining Act, highlighting different procedures, terms and criteria across different government agencies. Government agencies (MMSD, NCS and CBN) disclosed different export figures and used different criteria and terminologies, as noted in Section 7.1.10 (p.74). Thus the Independent Administrator was not able to reconcile export data across the different government entities or with company disclosures.

³⁷¹ Lead ores and concentrate, zinc, cement and "others" (which accounted for around a third of solid mineral exports).

³⁷² See http://www.wagpco.com/index.php?option=com_content&view=article&id=108&Itemid=11&lang=en.

but that the pipeline's capacity in 2013 was 170 million scf a day.³⁷³

Table 3 – Summary initial assessment table: Monitoring and production

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Overview of the extractive sector, including exploration activities (#3.1)	The EITI Reports provide extensive information on the solid minerals, oil and gas sectors, including information on history, reserves, location, trade profile and significant exploration activities.	Satisfactory progress.
Production data (#3.2)	In oil and gas, the EITI Report provided production volumes for crude oil and natural gas and sufficient information to calculate oil export value, but not for natural gas. In solid minerals, the EITI Report provided production volumes for the eight most significant minerals by volume but with no values or pricing information.	Meaningful progress.
Export data (#3.3)	The EITI Reports provide crude oil and natural gas export volumes and oil export values, but not natural gas export values. They also provide the export values for the three largest solid mineral exports that accounted for roughly two thirds of solid mineral exports, but only export volumes for material companies rather than for total exports.	Meaningful progress.
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> 1. The NSWG should ensure that future EITI Reports provide disaggregated production values for all key minerals produced including crude oil and natural gas. The NSWG may wish to explore ways of using its EITI reporting to disclose more accurate production volume figures, particularly in solid minerals, by exploring the potential for reconciliation of production volumes in the same way as in the oil and gas sector. 2. The NSWG should ensure that future EITI Reports disclose total export volumes and values for every mineral commodity exported. The NSWG may wish to consult with the Abuja-based West African Gas Pipeline Authority to clarify the volumes and values of natural gas exports carried through the WAGP. 3. The NSWG may wish to consider developing the extractive industries overview section of Nigeria's EITI reporting as an investment promotion tool by providing more analysis on market trends, which both industry and government appear to support. 		

³⁷³ Ghana Oil Watch (7 November 2013), 'West Africa Gas Pipeline Company (WAPCo) Ready to Run At Full Capacity', <http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/3362-west-africa-gas-pipeline-company-wapco-ready-to-run-at-full-capacity>.

4. Revenue collection

4.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

4.2 Assessment

Materiality (#4.1)

Oil and gas

Documentation of progress

Materiality threshold for revenue streams: The NSWG's definition of materiality for selecting revenue flows for reconciliation has evolved over time. There is no evidence of an oil and gas EITI scoping study having been undertaken since 2006. For the 2009-2011 O&G EITI Report, the NSWG seemed to include all oil and gas revenue flows in the scope of reconciliation at its 18 October 2012 meeting but established a threshold of USD 5 million for discrepancies, below which revenue streams were not required to be reconciled.³⁷⁴ For the 2012 and 2013 O&G EITI Reports, the NSWG adopted a materiality threshold of USD 5 million for selecting revenue streams for reconciliation. The NSWG's technical committee agreed this materiality threshold at its 10 March 2015 meeting³⁷⁵, although there is no evidence from meeting minutes of the different options considered for defining materiality. The materiality threshold was defined in Section 1.7 (p.22) of the 2013 O&G EITI Report and in the IA's ToR, included in Appendix 1.2 (pp.2-49), although a description of materiality was not provided. These sections clarify that selection of revenue streams was based on a materiality threshold of USD 5 million for all revenue streams excluding PAYE, VAT, WHT and CIT, which were included regardless. However, the NESS, NIMASA and NIWA fees were not disaggregated by individual stream but were rather aggregated as the total of fees paid to each entity.

The exclusion of the following flows from the scope of reconciliation is noted, but not explained, in Section 1.13 (p.25): government entities' budget financing; intra-NNPC group flows; commercial transactions between non-state companies (except to the extent necessary to validate transactions affecting terminal stock ownership, quantities and values); commercial transactions not related to oil and gas between non-state companies and state agencies; commercial transactions not related to oil and gas between state companies; and crude oil theft. However, the list of revenue streams in the scope of reconciliation provided in Section 1.12 (p.24) did not include signature bonuses, which is required under Requirement 4.1.b. From the list of revenue streams disclosed unilaterally by the government in Table 3.4.4 (p.88), it is evident that a material signature bonus of USD 12.5 million was received from a non-

³⁷⁴ See minutes of NSWG meeting, 18 October 2012, Ref: NSWG/2012/4, unpublished, provided by NEITI Secretariat.

³⁷⁵ See minutes of NSWG's technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

material company (Sigmund Oilfields Ltd) and was not reconciled.

Descriptions of material revenue streams are provided, including of proceeds from sale of government's crude oil and gas³⁷⁶, Petroleum Profits Tax³⁷⁷, oil and gas Royalty³⁷⁸, Value Added Tax (VAT)³⁷⁹, Withholding Tax (WHT)³⁸⁰, Pay As You Earn (PAYE)³⁸¹, Concession Rental³⁸², Gas Flared Penalties³⁸³, Education Tax (EDT)³⁸⁴, NDDC Levy³⁸⁵, NCDMB payments³⁸⁶, NESS fees³⁸⁷, NIMASA payments³⁸⁸ and NIWA payments.³⁸⁹

Materiality threshold for companies: The materiality threshold adopted for the 2013 O&G EITI Report appears to have changed between the approved ToR for the IA, the NSWG's technical committee's decision, the inception report and the final 2013 EITI Report. Section 4.ii (p.10) of the ToR for the 2013 EITI Report defines this materiality threshold as including all companies that produced oil and gas or made any payments to government in 2013, implying an effective (but unstated) materiality threshold of 0. However, the NSWG's technical committee agreed a different materiality threshold at its 10 March 2015 meeting, covering all companies that produced oil and gas.³⁹⁰ The IA's 26 May 2015 Inception Report (p.37) recommended that the NSWG agree that while all companies producing oil and gas were to be "covered by the exercise" (which we understand to mean companies for which the government would make unilateral disclosures), only those companies with payments to government of more than USD 5 million would be included in the scope of reconciliation. There is no evidence from meeting minutes of the NSWG's agreement with the Inception Report's proposals, although Section 1.7 (p.22) of the 2013 EITI Report confirmed the materiality threshold of USD 5 million for selecting companies for reconciliation. However, calculations in Section 1.7 of the 2013 EITI Report show that the USD 5 million threshold was applied for PPT and royalty payments respectively. This materiality threshold resulted in the selection of 31 of the 40 companies that made PPT payments and 20 of the 26 companies that made royalty payments in 2013. There were also discrepancies in the calculations of the reconciliation coverage, between the Inception Report's estimate of 99.95% of PPT payments and 99.82% of royalty payments on the one hand and the 2013 EITI Report's estimate of 99.96% of PPT flows and 99.86% of royalty flows.

The materiality threshold adopted appears to exclude companies operating in the JDZ, given that the absence of oil and gas production in the JDZ implies that no JDZ license-holder made PPT and royalty payments in 2013. Section 5 (p.125) provided a link to the JDZ's 2003-2013 EITI Report³⁹¹, an edited version of STP's first EITI Report³⁹², which confirmed the lack of production in the JDZ in 2013.

Material companies: There also appear to be variations in the number of material companies reported

³⁷⁶ in Sections 2.7 (pp.35-36), 3.1 (pp.44-45), 8.8.2 (pp.321-324) and Appendix 3.4.5.1A (pp.94-99)

³⁷⁷ in Sections 2.7 (pp.35-36), 3.1 (pp.44-45), 3.4.5.1 (p.89), 8.8.2 (pp.321-324) and Appendix 3.4.5.1A (pp.94-99)

³⁷⁸ in Sections 3.4.5.1-3 (p.89-93), 3.1 (pp.44-45), 8.8.2 (pp.321-324) and Appendix 3.4.5.1A (pp.94-99)

³⁷⁹ in Sections 3.1 (pp.44-45) and 6.11 (pp.147-149)

³⁸⁰ in Section 8.8.2 (p.322)

³⁸¹ in Sections 3.1 (pp.44-45) and 8.8.2 (p.323)

³⁸² in Sections 3.1 (pp.44-45), 6.4 (p.130) and 8.8.2 (pp.321-324)

³⁸³ in Sections 3.1 (pp.44-45) and 6.7 (pp.142-143)

³⁸⁴ in Sections 3.1 (pp.44-45), 6.8 (pp.144-145), 8.8.2 (pp.321-324) and Appendix 3.4.5.1A (pp.94-99)

³⁸⁵ in Sections 3.1 (pp.44-45), 6.9 (pp.145-146) and 8.8.2 (pp.321-324)

³⁸⁶ in Sections 3.1 (pp.44-45), 6.10 (pp.146-147) and 8.8.2 (pp.321-324)

³⁸⁷ in Sections 3.1 (pp.44-45) and 6.17 (pp.165-167)

³⁸⁸ in Sections 3.1 (pp.44-45) and 6.15 (pp.163-164)

³⁸⁹ in Sections 3.1 (pp.44-45) and 6.16 (p.165)

³⁹⁰ See minutes of NSWG's technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

³⁹¹ [https://eiti.org/files/First%20Report%20%202003-2013%20\(Nigeria-Sao%20Tome%20and%20Principe\).pdf](https://eiti.org/files/First%20Report%20%202003-2013%20(Nigeria-Sao%20Tome%20and%20Principe).pdf).

³⁹² https://eiti.org/files/First%20EITI%20Report%202003_2013.compressed.pdf.

between the Inception Report and various sections of the 2013 EITI Report. The 2013 Inception Report listed (pp.34-35) 31 companies producing oil and gas in 2013, based on information from DPR, as well as 57 companies having made material payments to government based on examination of their 2012 payments (p.36). However, Section 2.11 (p.42) of the 2013 EITI Report stated that 41 oil and gas companies were considered material. Yet while Tables 8.16.1 (pp.383-384) and 8.7 (pp.309-311) provided a list of 42 companies producing oil and gas in 2013 (6 JVs, 9 PSCs, 17 SR, 9 MF and 1 SC), it was noted that two of these (Star Deep and Cavendish Petroleum) were not producing in 2013, which implied that the number of companies producing oil and gas in 2013 was 40. While Table 3.4.4 (p.88) claims to provide a summary of reconciled revenue flows, disaggregated by company and revenue stream, it is apparent that the number of companies for which reconciled payments were reported was 47 (including NNPC, NPDC and NLNG) and included companies such as Sigmund Oilfields Ltd that were excluded from the scope of reconciliation.

Material company reporting: Section 9 (p.392) stated that all payments to government by material companies were reconciled, while Tables 6.1-6.17 (pp.127-166) provided the detail of material company reporting disaggregated by reconciled revenue stream.³⁹³ The 2013 EITI Report noted that Star Deep reported aggregate PPT payments on behalf of its PSC partners and that SPDC reported aggregate gas royalty figures on behalf of its JV partners. Section 2.11 (p.42) also noted that only 29 of the 41 material companies returned field legal contract templates.³⁹⁴ However, the 2013 EITI Report did not assess the materiality of omissions in material companies' reporting.

Material government entities: The ToR of the IA, available in the 2013 EITI Report's Appendix 1.2 (pp.12-13), listed government entities required to report, including nine FGN entities, state governments receiving WHT and PAYE from oil and gas companies and any other government entity receiving revenues related to oil and gas. However, Section 4.ii of the ToR (p.29) notes that state governments are excluded from the scope of reconciliation. The 2013 Inception Report (pp.25-33) provided a list of 17 FGN entities included in the scope of reporting, but did not refer to whether state governments were required to report. Section 1.10 (p.23) of the 2013 EITI Report listed eight FGN entities as well as NNPC and its subsidiaries as the government entities required to report, but did not refer to state governments' reporting. Section 7 of the ToR (pp.25-26) and the Inception Report (p.32) listed the Joint Development Authority as a government entity required to report.

Figure 8.8.2A (p.321) provided a diagram of financial flows received by the government from material

³⁹³ Material companies' reporting was disaggregated in the 2013 EITI Report: 32 material companies reported 2013 PPT payments in Table 6.1 (pp.127-128), although one company (Stardeep) reported total payments including those on behalf of its PSC partners; 37 material companies reported 2013 Royalty oil payments in Table 6.2 (pp.128-129); 9 material companies reported 2013 Royalty gas payments in Table 6.3 (p.130), although SPDC reported figures on behalf of all parties in the JV; 12 material companies reported 2013 license concession rentals payments in Table 6.4 (p.131); 8 material companies reported 2013 Company income tax (gas) payments in Table 6.5 (p.131); 23 material companies reported 2013 Gas flare penalties payments in Table 6.7 (p.142-143); 31 material companies reported 2013 Education Tax payments in Table 6.8 (p.144-145); 37 material companies reported 2013 Value Added Tax (VAT) payments in Table 6.11b (pp.148-149); 35 material companies reported 2013 Withholding tax (WHT) payments in Table 6.12.1 (pp.149-150); 14 material companies reported 2013 Pay As You Earn (PAYE) tax payments in Table 6.13.1 (p.158); 25 material companies reported 2013 NDDC 3% contribution levy payments in Table 6.9 (p.146); material companies reported 2013 NCDMB contributions in Table 6.10 (p.147); 8 material companies reported 2013 NIMASA payments in Table 6.15 (p.164); 3 material companies reported 2013 NIWA levy payments in Table 6.16 (p.165); and 31 material companies reported 2013 NESS fee payments in Table 6.17 (p.166).

³⁹⁴ Contract legal information requested included type of commercial arrangements, shareholding structure between companies in the arrangement, OPL/OML number and date granted

companies³⁹⁵, while Figure 8.8.2B (p.325) provided a flow chart of financial transactions associated with upstream oil and gas.

Government reporting: The 2013 EITI Report noted that certain government entities did not provide all information requested. Section 6.15 (p.165) noted the fact that NIMASA was the sole government entity not to return any reporting template. With regards to NESS fee revenues from 31 companies in 2013, Table 6.17 (p.166) noted that while companies reported USD 63 million, NESS reported USD 81.535 million and CBN reported USD 43,843,040, although CBN fee collections could not be tied to individual entities because CBN did not provide details of payments. Section 8.6.14 (p.308) noted that some payments into CBN accounts were recorded without names of paying entities, resulting in improper recording and the creation of unidentified templates by the CBN for PPT, VAT, Royalties and Gas flare penalties. The lack of effective receipt issuance at DPR was noted in Section 8.6.14 (pp.308-309). Section 1.11 (p.23) noted that NESS fees and NIMASA payments were not reconciled because the two entities did not provide corroborative data on the payments.³⁹⁶ The 2013 EITI Report did not assess the materiality of omissions by material government entities.

Discrepancies: The materiality threshold for discrepancies also appears to have changed between the ToR for the IA and the 2013 EITI Report itself. While Section 4.ii of the ToR for the IA (Appendix 1.2, p.12) set a materiality threshold for investigating discrepancies at 0.5% of total reconciled oil and gas revenues, which was confirmed by the NSWG's technical committee at its 10 March 2015 meeting³⁹⁷, the 2013 Inception Report (p.37) sets a lower threshold of 0.05% of reconciled revenues, which was confirmed in Section 1.3 (p.20) of the 2013 EITI Report. There is no evidence from meeting minutes of the NSWG's approval of this lower threshold for discrepancies.

Section 3.4.1 (pp.84-85) quantifies aggregate net unresolved discrepancies in the reconciliation of companies' payments to government as only USD 492,000, or 0.0017% of "payments in scope" (which we understand to mean reconciled revenues). Section 3.4.2 (pp.85) provided a summary of unreconciled differences in the reconciliation of NIWA oil and gas revenues. Despite the lack of reporting by NIMASA and the unresolved discrepancies identified, Section 6 (p.127) stated that all financial flows reported as 2013 payment by oil and gas companies were confirmed received by the respective receiving government agencies. Beyond reconciling companies' actual payments to government, the 2013 EITI Report also calculates each company's tax liabilities based on reported production figures and applicable tax rates.³⁹⁸

Full government disclosure: Full unilateral government disclosure was provided for all material revenue streams, including proceeds from sale of government's crude oil and gas³⁹⁹, Petroleum Profits Tax⁴⁰⁰, oil

³⁹⁵ including payment flows received from various government agencies (FIRS – taxes, DPR – royalty oil and gas, signature bonuses, concession rentals, gas flare penalty, miscellaneous) and IOCs.

³⁹⁶ Recommendations for improving reporting and record-keeping at the NESS Secretariat (domiciled at CBN) were provided in Section 6.17 (p.167).

³⁹⁷ See minutes of NSWG's technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

³⁹⁸ A computation of royalty liabilities by the NEITI based on production figures and applicable rates compared to entities' own computations was provided in Table 3.4.5.3 (p.91), revealing under-assessments by three PSC operators, four JV operators and nine marginal-field/sole-risk operators by a total of USD 168,323,449 (of a total of USD 2,155,798,114 of royalty liabilities assessed by the 2013 Report).

³⁹⁹ in Table 3.1 (pp.44-45)

⁴⁰⁰ in Section 1.7 (p.22) and Table 3.1 (pp.44-45)

and gas Royalty⁴⁰¹, Value Added Tax (VAT)⁴⁰², Withholding Tax to Federal Government⁴⁰³, Pay As You Earn (PAYE) to Federal Government⁴⁰⁴, Licenses and Concession Rental⁴⁰⁵, Gas Flared Penalties⁴⁰⁶, Education Tax (EDT)⁴⁰⁷, NDDC Levy⁴⁰⁸, NCDMB payments⁴⁰⁹, NESS fees⁴¹⁰ and NIWA levies.⁴¹¹ However, as noted above (*in material revenue streams*), NESS and NIWA fees were not disaggregated by revenue stream and were reported consolidated by receiving entity. The government also unilaterally disclosed some revenue streams excluded from reconciliation, such as Signature Bonuses⁴¹². However, there was no government full unilateral disclosure of NIMASA payments given that NIMASA was the only government entity that did not participate in EITI reporting, although companies disclosed their NIMASA payments⁴¹³ and cabotage levies⁴¹⁴.

The 2012 NEITI Report provided limited justification for the materiality thresholds for selecting revenue streams and companies, only listing the material revenue streams and material companies. It only sets a quantitative materiality threshold for discrepancies, at 0.5% of total financial flow, in Section 2.7 (p.19). As in the 2013 Report, only companies with financial or production flows were included in the scope of reporting, as noted in Section 2.11 (p.24). The 2012 Report listed material companies and five material government entities, although the materiality of non-reporting did not appear to be assessed.

Stakeholder views

The IA stated that it had not been involved in defining materiality thresholds for selecting revenue streams and companies, explaining that scoping for EITI Reports was undertaken by the NEITI Secretariat. While members of the three broader constituencies stated they had not been involved in setting the materiality thresholds, former NSWG members consulted stated they had participated in these discussions. Technical staff at the NEITI Secretariat stated that full unilateral government disclosure was secured only during the data collection phase, not during the scoping phase when key materiality decisions were made. Materiality decisions were typically made on the basis of the previous year's payments to government according to the technical staff. All stakeholders who held views on the materiality discussions considered that the materiality threshold used for selecting revenue streams for reconciliation applied to all revenue streams and technical secretariat staff noted that the NSWG had not discussed materiality definitions specific to individual types of payments, such as direct subnational payments or transportation payments. One international CSO expressed concerns over the comprehensiveness of EITI reporting given the exclusion of license assignment and renewal fees from the scope of reconciliation, noting his understanding that companies would have had to make significant payments for their license renewals during the period under review.

⁴⁰¹ in Section 1.7 (p.22), Table 3.1 (pp.44-45)

⁴⁰² in Table 3.1 (pp.44-45)

⁴⁰³ in Table 3.1 (pp.44-45)

⁴⁰⁴ in Table 3.1 (pp.44-45)

⁴⁰⁵ in Table 3.1 (pp.44-45)

⁴⁰⁶ in Table 3.1 (pp.44-45)

⁴⁰⁷ in Table 3.1 (pp.44-45) and Section 10.1.1 (p.392)

⁴⁰⁸ in Table 3.1 (pp.44-45)

⁴⁰⁹ in Table 3.1 (pp.44-45) and Section 6.10 (pp.146-147)

⁴¹⁰ NESS fees were unilaterally disclosed for the first time as noted in Sections 3.4.1 (p.85) and 6.17 (pp.165-167), Table 3.1 (pp.44-45), while Section 3.4.3 (pp.85) provided commercial banks' disclosure of NESS payments.

⁴¹¹ in Table 3.1 (pp.44-45) and Section 6.16 (p.165).

⁴¹² in Table 3.1 (pp.44-45)

⁴¹³ in Table 3.1 (pp.44-45), Section 6.15 (pp.163-164)

⁴¹⁴ in Section 3.4.1 (p.85)

None of the stakeholders consulted, including the IA, appeared to have realised the change in the materiality threshold for selecting material companies between the ToR and the Inception Report. A CSO member of the former NSWG considered that the NSWG had consistently adopted the same materiality thresholds for the 2013 EITI Reports as in previous reports. While the NEITI Secretariat considered the threshold for selecting material companies to be total payments to government of more than USD 5 million, the IA stated that the materiality threshold for selecting companies had been payments of either PPT or royalties of more than USD 5 million. Nonetheless the IA stated that Sigmund Oilfields Ltd should have been included as a material company despite the fact it had not made any PPT or royalty payments in 2013, since it had made a USD 12.5 million signature bonus payment. However, the IA explained the exclusion of Sigmund Oilfields Ltd with the fact that the government had not disclosed this payment ahead of data collection and that the IA had only discovered this payment by examining DPR bank statements during the course of reconciliation, with contradictory information about the reasons for this payment. Government and industry representatives consulted stated that non-producing OPL-holders did not make annual payments to government but did make an initial payment upon award of the license, although FIRS representatives stated that non-producing companies also paid capital gains tax on asset disposals, VAT on goods and services and Withholding Tax.

A member of the Companies Forum considered that the materiality threshold for selecting revenue streams ensured that Nigeria's EITI reporting covered all material revenue flows to the government. However, a CSO member of the former NSWG expressed concerns over the comprehensiveness of NEITI reporting given the possibility that certain revenue flows such as signature bonuses were not reconciled. While the first NEITI Report covering 1999-2004 had not disclosed signature bonuses according to this representative, a successful PWYP campaign had prompted the inclusion of signature bonuses in the scope of EITI reporting, albeit only as a unilateral disclosure from government. The IA noted that signature bonuses from material companies would have been reconciled if they were above USD 5 million, but noted that bonuses paid by non-producing companies would not be reconciled. One industry representative also expressed concerns over the lack of reconciliation of all signature bonus payments. A former NSWG Chair expressed concerns that significant revenues could be omitted from EITI reconciliation, not due to the exclusion of signature bonuses but rather because the aggregate value of revenue flows below the USD 5 million threshold could be significant.

A former NSWG Chair and a former Executive Secretary noted that participation in EITI reporting by both material companies and government entities had improved markedly in the past decade of implementation and that entities typically reported in a timely manner. Entities that had previously lagged in reporting had now established dedicated EITI focal points, which combined with high-level support had improved participation on all sides. All stakeholders consulted noted that all material companies had reported in the 2013 EITI Report and that the only government entity that had not reported was NIMASA, although several government entities had not provided the full scope of information required (such as NESS, which had not provided information disaggregated by company). The IA noted that NIMASA had not participated in EITI reporting for 2013 and had not provided reasons for non-reporting. Technical staff at the NEITI Secretariat explained that NIMASA's non-reporting was due to communications challenges rather than a refusal to report, given that the parastatal's managing director had changed during the data collection phase and NIMASA had misunderstood efforts to follow up on its reporting template. Several NIMASA staff stated that they did not consider NIMASA levies to be extractives levies, but rather fees applicable to any company operating in Nigerian territorial waters, and expressed surprise that such revenues were included in NEITI reporting. The representatives expressed

concern over the Senate's investigation of the 2013 EITI Report's findings, confirmed that NIMASA's lack of reporting was due to miscommunications rather than a lack of willingness to participate, and pledged that the entity would participate in future EITI reporting.

Solid minerals

Documentation of progress

Materiality threshold for revenue streams: The NSWG agreed materiality thresholds for the 2012 and 2013 SM EITI Reports at the same time, since the two reports were initially planned to be combined. Given that scoping decisions and data collection had been completed prior to the IA's appointment, the IA was not involved in setting the materiality threshold for selecting revenue streams for reconciliation in the 2012-2013 EITI Reports, as noted in Section 2.1 (p.14) of the 2013 Report. While the IA discussed the materiality thresholds with the NSWG upon its appointment, the IA had only verified the adequacy of the materiality thresholds set by the NSWG, which led to its strong recommendation in Section 7.1.3 (p.71) that a new scoping study be carried out on the solid minerals sector to allow the NSWG to agree on materiality thresholds, significant payments, important extractive companies, government entities and the reporting templates. The IA confirmed in Section 2.1 that its preliminary work was limited to verifying the adequacy of the agreed scope compared to the EITI Standard, but the 2013 EITI Report did not define or justify the materiality threshold for selecting material revenue streams.

Given that the largest solid mineral license-holders in terms of payments to government were construction and cement companies, for whom mining represented an "insignificant" share of total activity, the 2013 EITI Report excluded common-law taxes (e.g. VAT, CIT, etc.) from the disclosures required from construction and cement companies, but maintained them for "core" mining companies focused on precious minerals, as noted in Section 4.2.3 (p.40). This was due to the impossibility of disaggregating common law taxes related specifically to solid minerals activity during the scoping and reporting phases, as noted in Section 4.2 (pp.37-38). The categorisation of companies (between "core mining" and others) was based on the share of the company's mining activity in relation to its entire activity, with Annex 3 (pp.85-87) providing the share of material companies' mining activities.

Section 4.1 (pp.32-36) provided the list of material revenue streams, which covered most revenue streams listed under Requirement 4.1.b.⁴¹⁵ However, Section 7.1.3 (p.71) noted that reporting templates included a category of "other payments" and that several fees related to concessions (stamp fees and duties paid to both FIRS and MID) were not included as separate lines in the reporting templates⁴¹⁶,

⁴¹⁵ The material revenue streams were Value Added Tax (VAT), Company Income Tax (CIT), Education Tax, PAYE (FCT), Withholding Tax, Other payments to FIRS, Mining titles(s) application processing fee, Mining titles(s) annual service fees, Mining title(s) fee for processing of renewal application, Penalty fee for late renewal of mining titles (application), Fees for application for enlargement (processing) of mining titles, Application for relinquishment of mining title fees, Application for transfer of mining titles fees, Application for surrender of mining titles fees, Application for consolidation of mining titles fees, Fees for application to endorse additional mineral, Fees for application for certified true copy of lost certificate of mining title, Fees for application for amendment of documents, Search fee/due diligence, Fees for cadastre map information, application for certified true copy of other documents other than title documents, Royalty, Permit to deposit tailings, Permit to export minerals for commercial purposes, Permit to export minerals samples for analysis, Permit to possess and purchase minerals, Registration of accredited agents for movement of minerals, Permit to import explosives, Blasting certificates, Licence to manufacture explosives, Permit to erect a magazine, Licence to buy explosives, Licence to sell explosives, Permit to use AMFO and Explosives magazine license.

⁴¹⁶ Which were provided in Annexes 5-6 (pp.93-101).

although neither the 2013 EITI Report, the inception report nor NSWG meeting minutes provided an explanation for the exclusion of these revenue streams.

Section 4.1 (p.37) clarified that material companies were also required to unilaterally disclose 18 payment streams, although these do not include revenues listed in Requirement 4.1.b.⁴¹⁷

Descriptions of material revenue streams: Material revenue streams were listed in Section 4.1 (pp.32-36) and described in Section 4.3.1 (pp.41-44), including tax rates where applicable.

Materiality threshold for companies: The first two SM EITI Reports (covering 2007-2010 and 2011 respectively) had adopted a two-tier materiality threshold for selecting companies for reconciliation. This had consisted in total CIT payments of over USD 2 million for construction and cement companies and in total royalty payments of over USD 2 million for “core” mining companies, as agreed for the 2011 SM EITI Report at the NSWG’s 19 September 2013 meeting.⁴¹⁸ For the 2012 and 2013 SM EITI Reports, the NSWG agreed a single materiality threshold of NGN 2 million in royalty payments to MID at its 25 June 2014 meeting.⁴¹⁹ This materiality threshold was reconfirmed in Section 1.4 (p.11) of the 2013 EITI Report. The different company materiality thresholds considered⁴²⁰ (and associated reconciliation coverages) were described both in the minutes of the NSWG’s 24 June 2014 technical committee meeting⁴²¹ and in Section 4.2.1 (p.38) of the 2013 EITI Report. While the technical committee’s 2012-2013 materiality discussions were based on 2011 royalty payments, the 2013 EITI Report’s materiality discussion was based on 2013 royalty payments. Section 4.2.1 (p.38) stated that a total of 65 companies were selected for reconciliation, providing a reconciliation coverage of 90.49% of royalties. Section 4.2 (pp.37-38) provided a full justification for the approach adopted to setting the materiality threshold for selecting companies.⁴²² In addition to the 56 material companies that made royalty payments of over NGN 2 million, Section 4.2.1 (p.38) also noted that the NSWG agreed to include another 11 companies below the materiality threshold “to allow comparability between 2012 and 2013”, bringing the total of material companies to 65.

Material companies: Sections 1.4 (p.11) and 4.2.1 (p.38) noted that 65 solid minerals companies were included in the scope of reconciliation and Section 4.2.2 (pp.39-40) listed all 65 companies, delineated

⁴¹⁷ The 18 payment flows unilaterally disclosed by material companies were: Dividend from Government Investment (Shares), Customs Duties, Excise Duties, Import Duties, Pre-shipment/Destination Fees, Others (NCS), Registration fees for environmental impact analysis, Mineral separation services, Mineral analysis, Consultancy fees, Annual surface rents (Grounds Rents), Pay As You Earn (PAYE), Business Premises, Withholding Tax, Property Rates (Tenement Rates), Compensation, Corporate Social Responsibility cash payments, Corporate Social Responsibility in-kind payments.

⁴¹⁸ See minutes of NSWG meeting, 19 September 2013, unpublished, provided by NEITI Secretariat.

⁴¹⁹ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁴²⁰ The three options considered for the materiality threshold for selecting companies were royalty payments of NGN 5 million, NGN 2 million and NGN 1 million.

⁴²¹ See minutes of NSWG technical committee meeting, 24 June 2014, unpublished, provided by NEITI Secretariat.

⁴²² Given that the solid minerals sector was dominated by ASM, most companies paid common law taxes on activities other than mining and it was not possible to disaggregate common law taxes related to solid minerals during the scoping phase, as noted in Section 4.2 (pp.37-38). For instance VAT accounted for 53% of 2013 revenues from companies with solid mineral licenses, but sales of mineral products were not subject to VAT. Section 4.2 (pp.37-38) also noted that there was no large-scale mining activity and that total revenues were small at NGN 28,736 billion (of which 96% came from VAT, CIT & EDT, WHT and Customs duties, 3% royalties and 1% other taxes), while 4 cement companies and 1 construction company accounted for 88% of reconciled revenues. Large-scale construction companies (quarrying granite, sand) and cement companies (limestone, laterite, clay) accounted for most of royalties so selecting companies on the basis of total payments to government was also considered problematic. The NSWG thus decided to define company materiality based on royalty payments made by mining companies to MID through the State Officers in the 36 States of the Federation.

between companies above the materiality threshold and the additional 11. Annex 3 (pp.85-87) provided details of companies' Tax Identification Number, Registration number, incorporation date, activity type and value of share capital for 57 of the 65 material companies that reported such information.

Material company reporting: The reconciliation results (disaggregated by company) in Section 5.1 (pp.46-48) revealed that 58 of the 65 material companies returned reporting templates. Annex 10 (pp.109-173) provided the reconciliation sheets per company. Section 1.5 (p.12) listed the seven non-reporting companies.⁴²³ Section 1.5 (p.12) notes that the seven non-reporting companies accounted for NGN 86 million, or 0.28% of total revenue declared by government entities. Section 1.6 (p.13) explained that the initial gross discrepancies of 41% of reported government revenues were reduced to 1% (NGN 301,774,143) upon investigations. Section 5.1 (pp.46-48) provided the pre- and post-reconciliation discrepancies, disaggregated by company, revealing that payments to FIRS accounted for 96% of total unreconciled discrepancies.

Section 7.1.1 (p.70) stated that "most" material companies did not report information on their production, staffing or location of operations as requested, although the exact number of non-reporting companies was not provided. In addition, Annex 2 (p.84) reveals that all but eight material companies did not disclose details of their tax liabilities (as of 31 December 2013), although Section 6.6 (p.69) confirms that this was required.

Section 6.3 (p.67) provided companies' unilateral disclosure of payment streams not included in the reconciliation scope, although these were aggregated for all companies by receiving entity. Section 6.3.1 (p.68) provided this data disaggregated by company, but not by payment flow.

Material government entities: Section 1.4 (p.11) confirmed that all government entities collecting material revenue streams were required to report. Section 4.3.3 (p.45) listed the six government entities required to participate in the 2013 EITI Report, although it is noteworthy that the ASM Department of the MMSD is a sub-department of MID, meaning that five government entities were required to report. While Section 3.2.2.iii (p.27) described the Solid Minerals Development Fund, it was not included in the scope of reporting despite being statutorily a revenue-collecting entity: established in 2013, it did not have a budget in 2013 and thus did not collect revenue.

Government reporting: Section 1.2 (pp.8-9) of the 2013 Report provided reconciled government revenues by receiving government entity. Section 1.5 (p.12) listed four of the five material government entities that returned reporting templates for the 2013 EITI Report.⁴²⁴ Sections 1.1 (p.8) and 1.5 (p.12) stated that the Nigeria Customs Service (NCS) did not submit any revenue information, only information on minerals exports. The IA had briefed the NSWG at its 12 March 2015 meeting on the challenges of the Nigerian Customs' refusal to disclose figures and the lack of cooperation between government agencies.⁴²⁵ However, there appear to have been gaps in some government entities' EITI reporting. From the presentation of reconciliation results (disaggregated by revenue stream) in Section 5.2 (pp.49-50), it is evident that MCO did not report two revenue streams⁴²⁶ and that MID did not report one revenue

⁴²³ The seven non-reporting companies were C.C.C Const Nig Ltd, Blackstone Crushing Ltd, Milatex Geneworks Ltd, C&C Constr Co. Ltd, Esser West Africa and CNC Engineering Company Ltd.

⁴²⁴ The four reporting government entities were Federal Inland Revenue Services (FIRS), Mining Cadastre Office (MCO), Mines Inspectorate Department (MID) and Central Bank of Nigeria (CBN).

⁴²⁵ See minutes of NSWG meeting, 12 March 2015, unpublished, provided by NEITI Secretariat.

⁴²⁶ Application for surrender mining title fees and Fees for application for certified true copy of lost certificate of mining title.

stream⁴²⁷, even though companies reported such payments. Section 7.1.1 (p.70) noted that MID had reported only aggregate figures for royalties and other service fees, not disaggregated by company. Sections 1.1 (p.8), 1.5 (p.12) and 7.1.1 (p.70) highlighted that FIRS did not provide complete declarations covering all material companies.

The 2013 EITI Report only assessed the materiality of some of these omissions. Sections 1.1 (p.8) and 1.5 (p.12) noted that the NCS did not collect customs and import duties from solid minerals companies, given the Nigerian Minerals and Mining Act's exemption of customs and import duties on goods imported exclusively for mining. While the NCS did not report any revenue information, the IA assessed the impact of NCS's omissions as nil given the lack of revenues. However, the presentation of reconciliation results per revenue streams in Section 5.2 (pp.49-50) revealed that material companies had reported payments to NCS for four revenue flows.⁴²⁸ The 2013 EITI Report did not assess the materiality of omissions by FIRS and MID. However, based on information provided in Section 5.3.2.b (p.55) it is possible to calculate that omissions by FIRS amounted to 3% of reported government revenue from the solid minerals sector while MID's omissions amounted to 0.1%.

The 2013 Report also highlighted weaknesses in record-keeping across government entities, including the lack of common reference to companies aside from their name⁴²⁹, the incomplete nature of the NEITI solid minerals database⁴³⁰ and the lack of a unique formal template for government's EITI reporting.⁴³¹

Discrepancies: There is no evidence from meeting minutes, the inception report or the 2013 EITI Report that the NSWG agreed a materiality threshold for discrepancies. Sections 1.6 (p.13) and 5.1 (pp.46-48) of the 2013 EITI Report stated that the initial discrepancies of 41% of reported government revenues were reduced to 1% post-reconciliation⁴³², of which payments to FIRS accounted for 96%, and provided discrepancies per company. Section 5.4a-f (pp.56-63) and Annex 10 (pp.109-173) provided more detailed information on unreconciled discrepancies.⁴³³

The 2013 EITI Report also re-calculated material companies' royalty liabilities based on reporting production volumes. Section 7.1.6 (p.71) noted that some of the production volumes reported by MID did not match corresponding royalty amounts, while Sections 1.6 (p.13), 5.4a-f (pp.56-63) and 5.5 (pp.64-65) provided detailed calculations of royalty liability "under-assessments".⁴³⁴

⁴²⁷ Permit to export mineral samples for analysis.

⁴²⁸ Material companies reported payments to NCS for Customs duties, Import Duties, Pre-shipment/destination fees and "others".

⁴²⁹ Section 7.1.1 (p.70) noted that the spellings of company names sometimes varied across different government agencies, posing a significant challenge to identifying specific company payments.

⁴³⁰ in Section 7.1.4 (pp.71-72).

⁴³¹ in Section 7.1.3 (p.71) highlighted the lack of consistency in the presentation of government's EITI disclosures.

⁴³² Reconciled government disclosures were reduced from an initial NGN 55,880,632,497 to a post-reconciliation NGN 30,252,584,194. Reconciled government revenues (by receiving government entity) in Section 1.2 (pp.8-9) showed that companies disclosed a total of NGN 33,114 million, of which NGN 30,253 million was reconciled.

⁴³³ Unreconciled discrepancies post-reconciliation were further detailed in Section 5.4a-f (pp.56-63). The reconciliation sheets by company were provided in Annex 10 (pp.109-173). The detail of adjustments to select companies' disclosures of VAT, CIT, Education Tax, PAYE (to FCT), WHT and Customs duties were provided disaggregated by revenue stream and by company total for all common law taxes in Section 5.3.1.a-e (pp.51-54). Similar detail of adjustments of common law tax revenues in government disclosures was provided in Section 5.3.2.a-c (pp.54-55).

⁴³⁴ The difference between amounts actually paid and those calculated was included (in aggregate), at NGN 170,693,002 or 15.2% of total royalties declared by MID. The detail of the under-reporting was provided in Sections 5.5 (pp.64-65) and 5.4a-f (pp.56-63), disaggregated by company and type of mineral with production, royalties paid, royalties estimated and discrepancy.

Full government disclosure: Section 1.2 (p.8) provided unilateral disclosure of government's 2013 mining revenues (NGN 31,001 million), but not disaggregated by revenue stream. Sections 4.2.2 (p.40) and 4.3.2 (p.44) noted the IA's recommendation for government entities to unilaterally declare full revenues aggregated by revenue stream from non-material companies. Annex 9 (pp.105-108) provided government unilateral disclosure of royalties from non-material companies, disaggregated by company. Section 6.2 (p.67) provided MCO's and MID's unilateral disclosure of revenues from non-material companies, but only disclosed revenues aggregated by receiving government entity, not disaggregated by revenue stream. Section 4.1 (p.37) added that government entities were required to unilaterally disclose four revenue streams that had been excluded from the scope of reconciliation.⁴³⁵

The 2012 EITI Report set the same NGN 2 million in royalty payments as the materiality threshold for selecting companies in the reconciliation scope and documents the rationale for this threshold, but did not provide the coverage of reconciliation. While seven of the 65 companies selected for reconciliation did not report, their combined share of government revenues from solid minerals was only 0.38% and the IA thus deemed them immaterial. It also found that two government entities (ASM and NCS) had not reported, although the materiality of these omissions was not assessed.

Stakeholder views

The IA for the 2012 and 2013 EITI Reports explained that the revised approach to materiality in the 2013 EITI Report marked an improvement over previous EITI Reports, given that the 2011 EITI Report had included large VAT and CIT payments that were not related to extractive industry activities. The IA emphasised that they had made no decisions on their own and that all scoping decisions had been taken by the NSWG. However, a development partner expressed concern over the number of material companies selected for these EITI Reports, noting that the IA spent too much time chasing small companies. A past IA noted that the original selection of material revenue streams in the scope of reconciliation in the first SM EITI Report had been based on the results of the NSWG's original 2011 solid minerals scoping study and had not been discussed again subsequently. All industry representatives consulted confirmed that it was impossible to disaggregate the common taxes they paid (e.g. VAT, CIT, etc.) on solid minerals activities from non-extractives activities. A MID representative confirmed that MID was involved in discussions related to establishing the materiality threshold for selecting material companies ahead of solid minerals EITI reporting.

The IA noted that while the materiality of omissions by FIRS and MID was not assessed, it was possible to calculate the share of government revenues these represented from Section 5.3.2.b. The MID representative consulted considered that since the SM EITI Report covered the largest companies in the sector, it represented a fair reflection of the sector. While the 2013 EITI Report was not comprehensive, according to the representative, the aim was to extend the scope of EITI reporting to all companies operating in the solid minerals sector in due course. Several CSOs expressed concerns over the comprehensiveness of EITI reporting in the solid minerals sector given that a large number of companies were considered non-material. The PWYP Nigeria coalition had issued a press release on 26 May 2016⁴³⁶ raising concerns over the fact that only 10% of the total of 619 solid minerals companies that made payments to government in 2013 had been included in the scope of EITI reporting. The press release

⁴³⁵ The four non-material revenue streams unilaterally disclosed by government entities were: Application for Artisanal and Small-Scale Mining, Application for Registration of mineral buying centre per mineral, Application for annual renewal of buying centre licence and Nigerian Export Supervision Scheme (NESS) Fees.

⁴³⁶ PWYP (26 May 2016), Press release on NEITI 2013 Solid Minerals Audit.

alleged that the 554 non-material companies somehow refused to report.

Initial assessment

The International Secretariat's assessment is that Nigeria has made meaningful progress towards meeting this requirement.

In oil and gas, the 2013 EITI Report defined materiality thresholds for selecting material companies and revenue streams, listed material entities, described material revenue streams and identified omissions in reporting. However, the materiality threshold for selecting companies appears to have changed during the course of reporting without documented approval from the NSWG and the 2013 EITI Report does not appear to provide a comprehensive list of material companies. The reconciled revenue streams also excluded flows listed under Requirement 4.1.b, such as signature bonuses. The materiality of entities' reporting omissions were not assessed and the IA did not include an overall assessment of the comprehensiveness of the EITI Report. There were also gaps in government's full unilateral disclosure of revenues in material revenue streams, most notably in NIMASA's non-reporting. Finally, the nomenclature for certain payment streams appears outdated: while the 2013 EITI Report refers to NLNG dividends and loan repayments as a single revenue flow, we understand from NLNG's own corporate disclosures that it had completed its loan repayments on 15 December 2010.⁴³⁷ In preparing Nigeria's next O&G EITI Report, the NSWG may wish to undertake an oil and gas scoping study to consider options for defining materiality thresholds. The NSWG should ensure that all revenue flows listed under Requirement 4.1.b are included in the scope of reconciliation and that the materiality threshold for selecting companies ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The list of material companies should also clearly be defined. The NSWG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. Finally, the NSWG should ensure that Nigeria's next O&G EITI Report includes the IA's assessment of the materiality of omissions, its statement on the comprehensiveness of the EITI Report and that full unilateral government disclosure of material revenues from non-material companies is included.

In solid minerals, the 2013 EITI Report defines materiality thresholds for selecting revenue streams and companies, as well as discrepancies, describes material revenue streams, lists material companies, identifies non-reporting companies (and their share of reported government solid minerals revenues) as well as government entities and provides part of the government's full unilateral disclosure. However, it does not define a materiality threshold for discrepancies and does not include an assessment of the materiality of all omissions in government reporting, nor the IA's assessment of the comprehensiveness of the EITI Report. Finally, most of the government's unilateral disclosures are not provided disaggregated by revenue stream. In preparing Nigeria's next SM EITI Report, the NSWG is encouraged to consider the IA's recommendation that it undertake a new solid minerals scoping study to assess different options for defining materiality. It should also agree a materiality threshold for discrepancies and ensure that the IA's assessment of the materiality of material entities' reporting omissions and its assessment of the comprehensiveness of the EITI Report be clearly included. Finally, the NSWG should ensure that full government unilateral disclosure of all material revenues from non-material companies be included,

⁴³⁷ The lenders for the LNG trains included African Development Bank and a group of 19 international banks led by BNP Paribas, Citigroup, Credit Lyonnais, MCC and West LB. The lenders for the LNG ships included Citibank, Credit-Suisse First Boston, ABN AMRO Bank, Credit Lyonnais, Fortis, ING Bank, HVB, Verein und Westbank, West LB, Standard Chartered Bank. See pp.57-59, NLNG (2015), NLNG 2015 Facts and Figures, http://www.nlng.com/Media-Center/Publications/Facts_and_figures_2015.pdf.

disaggregated by revenue stream.

In-kind revenues (#4.2)

Oil and gas

Documentation of progress

The state is entitled to in-kind revenues in the oil and gas sector in the form of Profit Oil, Equity Oil and as in-kind payments of Petroleum Profits Tax, Royalties as well as payments of Companies Income Tax and Education Tax (by companies operating under MCA). The SOE, NNPC, collects these in-kind revenues and sells it, either to its own subsidiaries (through its subsidiary PPMC) for domestic refining or to oil trading companies (including five companies in which it holds a majority stake) for export. The proceeds of these sales are collected by NNPC, although there is evidence of delays or shortfalls in NNPC's remittances of these proceeds to the Federation Account. While payments of subsidies for refined oil products is meant to be paid by CBN through the Petroleum Support Fund on approval from the Office of the Auditor-General of the Federation, successive NEITI Reports have highlighted how NNPC deducts subsidy claims directly from the domestic crude oil proceeds before remitting to the Federation Account.⁴³⁸ Nigeria's EITI Reports have also shown how certain companies buying crude oil from NNPC have not complied with the 30-day period for payments, while NNPC has in many instances not complied with the 90-day limit for remitting proceeds to the Federation Account.⁴³⁹

Materiality: Sections 3.2.1 (pp.49-50), 10.2.5 (pp.395-396) and 4.1 (p.109) of the 2013 EITI Report stated that the FGN collects in-kind revenue as Profit Oil, Equity Oil and as payment for Petroleum Profits Tax and Royalties. Sections 8.2.1.1.1 (pp.204-205) and 8.2.1.1.2 (p.205) provided the FGN's equity crude entitlements. In-kind flows under PSCs were described in Section 4.2 (p.109-110), including a diagram of crude oil lifting allocations under PSC arrangements in Figure 4.2 (p.110). In-kind flows under alternative financing JVs (MCAs) were described in Section 4.3 (p.114-123), while Figure 8.12.2.6 (p.366) provided a flow chart of PPMC's crude oil allocations. While there is no evidence from NSWG meeting minutes, the 2013 Inception Report or the 2013 EITI Report of a dedicated discussion of the materiality of these in-kind revenues by the NSWG, the descriptions provided in the 2013 EITI Report clearly imply that these revenues were material (and certainly above the materiality threshold adopted for all revenue flows). The NNPC-NAPIMS confirmed to the IMTT at its 13 February 2014 meeting that there was no commercial regime for sharing gas revenues between government and companies.⁴⁴⁰ The 2013 EITI Report also provided extensive and detailed descriptions of the marketing of NNPC's share of crude oil production and of the state's entitlements to in-kind revenues.⁴⁴¹

⁴³⁸ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?', <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

⁴³⁹ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?', <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

⁴⁴⁰ IMTT (13 February 2014), Minutes of IMTT meeting, unpublished, provided by NEITI Secretariat.

⁴⁴¹ The system flow for crude oil marketing was described in detail in Appendix 3.2.4 (pp.89-92). NNPC's Crude Oil Marketing Division (COMD) was described in Sections 8.14.2 (p.361), 3.2.1 (p.50) and 3.2.4 (pp.51-52), which trades crude from three sources: JVs in Section 8.14.2.1 (p.361), PSCs in Section 8.14.2.2 (p.361) and NPDC-operated fields in Section 8.14.2.3 (p.362). Section 3.2.5 (p.53) described NNPC's entitlement liftings on behalf of FIRS, DPR, Federation (Profit Oil and Equity Oil) and JV alternative funding partners. NNPC's participating interest in the 6 JVs was described in Table 8.14.2.1 (p.361) and for its 9 PSC

Volumes collected: The 2013 EITI Report reconciled lifting volume figures of Federation crude oil between records from NNPC's COMD, NNPC's COSM, the DPR, oil terminal operators and companies. Tables 8.2.1.2.1A (pp.205-206) and 3.3.3 (pp.57-58) provided Federation oil *entitlements under JVs in 2013* disaggregated by company.⁴⁴² Table 8.2.1.2.1B (p.207) provided a comparison of JV production entitlements to *volumes actually lifted at JVs in 2013*, disaggregated by company.⁴⁴³ Table 8.2.1.2.1C (p.208) provided Federation crude oil *volumes actually lifted under PSCs in 2013*, disaggregated by company/FPSO.⁴⁴⁴ Section 4.3.8 (pp.120-121) provided a review of MCA transactions in 2013 including verification of crude oil and gas lifted in 2013 under each of MCA project, tracking of government take from the MCA and payment of MCA Royalty Oil and PPT Oil to the respective DPR and FIRS accounts. Section 6 (p.127) noted that all in-kind payments had been confirmed to NNPC records and validated to CBN statements of accounts.⁴⁴⁵

Volumes sold: Section 8.2.1.1.1 (pp.204-205) explained that a share of the FGN's crude was sold internationally (Export Crude), marketed on behalf of the Federation by NNPC-COMD, while the other share was for domestic use (Domestic Crude), sold to PPMC for domestic refineries. The domestic crude allocation remained unchanged at 445,000 bpd since it was initially fixed by Government in 2003, volumes designed to meet the four Nigerian refineries' installed capacity. Since 2010 however, due to refineries' operating below installed capacity, PPMC engaged in alternative production arrangements such as Offshore Processing Arrangements (OPA) and Swap Arrangements, both described in Section 7.1 (pp.169-170).

Table 3.3.2 (pp.56-57) provided the inventories at crude oil terminals, showing Federation and PPMC total 2013 crude oil liftings⁴⁴⁶. Table 3.3.3 (pp.57-58) provides volumes⁴⁴⁷ of NNPC-COMD crude oil sales of Federation crude. Section 4.3.8 (pp.120-121) and Tables 4.3.9A-B (pp.121-122) provided Federation in-kind revenues from all MCAs in 2013. Section 8.14.1.2 (p.361) provided 2013 NNPC-COMD crude oil

arrangements in Table 8.14.2.2 (p.362). Fully-owned NNPC subsidiary NPDC was described in Section 8.14.2.3 (p.362). The management of crude oil sales during Trial Marketing Periods was described in Section 10.1.9 (p.393). Reforms addressing challenges in recording in-kind revenue flows by FIRS and DPR were also noted in Section 10.1.2 (p.392), with the opening of separate accounts in 2007 for Tax and Royalty proceeds and monthly reconciliation meetings being held to ensure smooth implementation of the resolutions since 2014.

⁴⁴² The information on oil entitlements under JVs covered production volumes, NNPC's equity stake, NNPC's production volumes share, company equity stake and company production volumes share. A total of 403,441,793 barrels was produced under JV agreements in 2013, of which NNPC's share was 242,065,076 barrels. The value of NNPC's share of crude oil losses (to theft and sabotage), as reported by the companies in 2013, was noted as 13% of total Federation lifting (i.e. total NNPC lifting net of those on behalf of NPDC and PANOCEAN), according to Section 8.5.10 (p.292).

⁴⁴³ The comparison of entitlements to volumes actually lifted covered NNPC's equity stake, NNPC's actually lifted volumes share, variance with NNPC share entitlement, company equity stake, company's actually lifted volumes share and variance with companies' share entitlement. A total of 233,894,303 barrels was actually lifted by NNPC (a variance of 8,170,773 barrels with NNPC's share entitlement) and a total of 167,465,556 barrels was actually lifted by companies (a variance of 877,971 barrels with companies' share entitlement).

⁴⁴⁴ The information on Federation entitlement volumes actually lifted from PSCs covered PSC production volumes, NNPC lifting volumes, NNPC's lifting volumes share, companies' lifting volumes, company's lifting volumes share and total lifting volumes. A total of 313,747,545 barrels was produced under PSCs in 2013, of which 311,712,802 barrels was actually lifted, with NNPC lifting 103,778,059 barrels and PSC companies lifting 207,934,743 barrels.

⁴⁴⁵ Section 6 (p.127) noted that in-kind flows were recorded in the value of actual crude oil liftings for 2013 since it could be "safely assumed" that payment had been made by the companies concerned as at the time of lifting by NNPC. This was used to explain differences in the NEITI Report in the in-kind flow figures and actual cash remittance by NNPC into CBN accounts compared to the actual crude oil liftings in 2013.

⁴⁴⁶ Total crude oil liftings were 340,767,000 barrels in 2013 according to crude oil terminals' inventories.

⁴⁴⁷ Totalling 332,350,000 barrels.

volumes⁴⁴⁸ sold on behalf of NPDC. Table 3.3.5A (p.61) provided volumes of crude oil marketed by NNPC in 2013 on behalf of different parties⁴⁴⁹, disaggregated by government entity, while Appendix 8.14.1.2 (pp.232-270) provided these figures with additional details including crude oil characteristics and buyer name.⁴⁵⁰ Table 3.3.5B (p.62) provided the volumes and value of 2013 NNPC liftings and the destination accounts.⁴⁵¹ Tables 4.2.1A-C (p.111-112) reconciled volumes of 2013 NNPC crude oil liftings for settlement of royalty to DPR, disaggregated monthly, between figures from NNPC-COMD (crude oil lifting profile and sales documents), DPR and the DPR/CBN JP Morgan Crude Oil and Gas Account.⁴⁵² Table 4.2.1D (pp.112-113) reconciled 2013 volumes of NNPC crude oil liftings for settlement of PPT to FIRS, disaggregated by month, between figures from NNPC-COMD (crude oil lifting profile and sales documents), DPR and the FIRS/CBN JP Morgan account.⁴⁵³

Table 3.3.18 (p.79) provided monthly crude oil volumes sold domestically. Section 3.3.17 (p.77) reconciled domestic crude oil sales volumes, disaggregated by month⁴⁵⁴, between NNPC-COMD and NNPC-COSM figures, while Section 3.3.5.1 (p.63) reconciled domestic crude oil sales between NNPC-COMD, NNPC-COSM and DPR disclosures. Tables 8.5.3A-E (pp.264-267) reconciled aggregate domestic sales oil volumes to each of NNPC's three refining subsidiaries⁴⁵⁵ between NNPC's PPMC subsidiary and each of NNPC's three refining subsidiaries. Section 3.3.17 (p.77) reconciled 2013 domestic crude oil sales volumes between NNPC-COMD and NNPC-COSM records, disaggregated by month and quarter.⁴⁵⁶ Section 8.14.2.4 (p.362) provided 2013 NNPC-COMD crude oil volumes sold⁴⁵⁷ on behalf of PPMC. Table 8.4.5A (p.260) provided domestic crude volumes allocation according to COMD's 2013 domestic crude sales schedule.⁴⁵⁸ Tables 8.4.5B (p.260) and 8.5.3A-E (pp.264-267) provided details of domestic crude allocations that were

⁴⁴⁸ Totalling 27.7 million barrels.

⁴⁴⁹ These different parties included Federation exports, domestic crude sales, FIRS, DPR, MCA (alternate funding), Satellite Field Development Project Account, Reserve Development Project, Pre-export financing, NPDC account, Pan Ocean account and Trial Marketing Period. A total of 363,190,000 barrels worth USD 39,906,107,000 was marketed.

⁴⁵⁰ The information provided in Appendix 8.14.1.2 (pp.232-270) included beneficiary party, covering customer name, B/L date, crude type, quantity lifted, vessel name, unit price, crude value, L/C number, pricing option, API content and destination country.

⁴⁵¹ Direct Federation, FIRS, DPR, partners, SFDP, RDP, pre-export, NPDC and Pan Ocean accounts.

⁴⁵² A total of 7,721,901 barrels of oil was collected on DPR's behalf in 2013, valued at USD 829,783,418.16. Of this only USD 801,945,051.36 was actually paid, given that December liftings would have been paid in early 2014 given the 30-day credit limit. NNPC-COMD records of liftings for DPR were 1,900,000 barrels (worth USD 209,110,250) lower than DPR's records.

⁴⁵³ A total of 73,236,276 barrels (worth USD 8,029,264,057.01) was lifted for PPT payments to FIRS, but only USD 7,545,823,172.98 was actually paid. An erroneous payment of PPT to the NNPC/CBN Jp Morgan Crude Oil and Gas Account was identified, covering 999,006 barrels (worth USD 106,654,879.57). Section 3.3.15.1 (p.76) recommends that FIRS PPT payments be paid to the correct account, not the NNPC/JPM crude oil and gas account.

⁴⁵⁴ Reconciliations of COMD and COSM figures for domestic crude oil sales included information on volumes and values disaggregated by PPMC liftings, offshore processing, product exchange, domestic usage PHRC refinery cargo, domestic usage KRPC/WRPC refineries (combined).

⁴⁵⁵ Note that Port Harcourt Refining Co. manages the two refineries in Port Harcourt.

⁴⁵⁶ Information included volumes and values of PPMC liftings, offshore processing, product exchange, domestic usage PHRC refinery cargo, domestic usage KRPC/WRPC refinery as well as total domestic sales. Volumes of domestic crude oil lifted by NNPC-COMD for NNPC-PPMC totalled 158.814 million barrels in 2013 according to records of COMD-COSM and DPR, but a lower 154.796 million barrels according to NNPC-COMD lifting profiles.

⁴⁵⁷ totalling 36.3 million barrels.

⁴⁵⁸ Information on COMD's crude oil sales schedule covered PPMC lifting volumes disaggregated by PPMC's supply to refineries, PPMC crude oil exchange, offshore processing and export as unprocessed PPMC crude, as well as the statutory PPMC annual allocation of 445,000 bpd (which totalled 162.425 million barrels in total in 2013). The total shortfall from the supposed PPMC yearly allocation was calculated as 3.610 million barrels and it was noted that the refineries combined had not been able to refine up to 30% of the domestic crude oil allocation of 445,000 bpd, resulting in alternative production arrangements such as Offshore Processing Arrangements and Swap Arrangements.

refined in 2009-2013. Tables 8.4.5C (p.261) and 8.5.2 (p.263) provided a breakdown in uses of crude oil allocated for domestic purposes for 2009-2013, including volumes processed offshore and volumes covered by Refined Product Exchange Agreements (RPEA).⁴⁵⁹ The 2013 EITI Report provided additional information on OPAs and RPEAs⁴⁶⁰ (see Requirement 4.3).

Tables 3.3.2-4 (p.60) highlighted discrepancies in payment by JVs to NPDC accounts, with Federation and PPMC (export and domestic) crude oil lifting volumes of 340.767 million barrels reported by NNPC-COSM and of 332.350 million barrels by NNPC-COMD.⁴⁶¹

Sales proceeds: Sections 3.2.1 (p.50) and 3.2.4 (pp.51-52) described the sales proceeds of liftings for different government entities, which are transferred through designated foreign and local bank accounts with JP Morgan Chase and CBN for each of the parties (FIRS, DPR, NNPC, PPMC). Thus, Federation equity crude oil and gas were accounted for directly by NNPC while in-kind oil and gas sales proceeds for Royalty, PPT, CIT and EDT were accounted through DPR and FIRS bank accounts at the CBN.

Table 3.3.6 (p.64) provided gross 2013 revenue flows accruable to the Federation from crude oil sales.⁴⁶² Table 3.3.5A (p.61) provided the value of actual crude oil marketed by NNPC-COMD in 2013 on behalf of different parties⁴⁶³, while Appendix 8.14.1.2 (pp.232-270) provided additional details on these sales including beneficiary party, covering customer name, B/L date, crude type, quantity lifted, vessel name, unit price, crude value, L/C number, pricing option, API content and destination country. Table 3.3.5B (p.62) traced these values in the respective destination accounts.⁴⁶⁴

Table 3.1 (pp.44-45) provided the values of proceeds from in-kind flows (including settlement of PPT from

⁴⁵⁹ Tables 8.4.5C and 8.5.2 provided information on crude volumes allocated to refineries (158,814,000 barrels in 2013), crude volumes delivered to refineries (38,293,000 barrels), export volumes (36,392,000 barrels), volumes covered by OPAs (24,665,000 barrels), and crude volumes covered by RPEAs (59,464,000 barrels). 52.97% of domestic crude allocations was used for OPA and RPEAs in 2013. With refineries' capacity utilization at only 24.11% in 2013, the balance of 75.89% of 158.814 million barrels allocated to PPMC was either processed outside the country as part of OPAs and RPEAs, or exported unprocessed, according to Section 8.5.2.1 (pp.263-264). NNPC was recommended to terminate all ad-hoc arrangements involving barter exchange or offshore processing. A more detailed description of OPAs and RPEAs was included in Section 8.5.5 (pp.268-269), including comments that despite bi-monthly RPEAs reconciliation meetings the arrangements had run consistent losses since 2010, and that OPA product value is calculated on the basis of CIF for PPMC but as FOB by the NEITI Audit.

⁴⁶⁰ The 2013 PPMC/SIR offshore processing agreement was detailed in Table 8.5.5A (pp.269), with a total of 20,865,385 barrels of crude (worth USD 2,266,594,678.87) covered by the OPA in 2013, and an overview of the OPA arrangements over 2010-2013 is provided in Table 8.5.5B (p.270). The 4 RPEAs active in 2013 were detailed in Section 8.5.6 (pp.271-274), with the value of under-delivered refined products totalling USD 211,886,659.86 for the four in 2013, highlighting the uneconomical nature of the agreement for NNPC/PPMC. Variances in reported crude oil volumes used for OPA and RPEA by COMD and PPMC in 2013 were highlighted in Table 8.5.6C (p.274), including a variance 5.610 million barrels that could not be reconciled (1.81 million barrels from RPEAs and 3.8 million barrels from OPA). Losses were further detailed in Table 8.5.6D (p.274).

⁴⁶¹ Aggregate liftings of 4,017,839 barrels (worth USD 439,853,712.95 – NGN 68,065,150,673.36) allocated by Forcados Terminal from Ugheli (OML 34) for domestic refining between May and December 2013 were unaccounted for by NNPC-COMD in 2013, according to Section 3.3.17.1 (p.78). The deliveries were made but the cargoes could not be valued because the terminal did not provide shipping documents for those cargoes (they were only later provided in September 2014, with cargoes valued accordingly).

⁴⁶² The value of total sales on behalf of the Federation were USD 38,463,314,000 in 2013, including USD 8,098,883,000 in proceeds from sale of Federation Equity and Profit Oil (aggregated), USD 829,783,000 in PSC Royalty Oil, USD 8,029,264,000 in PSC Tax Oil, USD 490,274,000 in MCA Tax Oil (JV Alternative Funding), USD 134,722,000 in MCA Royalty Oil (JV Alternative Funding), USD 17,435,818,000 in Domestic crude oil sales, USD 364,500,000 in gas (net NGL 2 retention), USD 251,506,000 in gas (NGL 2 retention), USD 1,261,396,000 in feedstock (cash call) and USD 96,130,000 in feedstock (MCA).

⁴⁶³ The different parties for whom NNPC marketed crude oil were Federation exports, domestic crude sales, FIRS, DPR, MCA (alternate funding), Satellite Field Development Project Account, Reserve Development Project, Pre-export financing, NPDC account, Pan Ocean account and Trial Marketing Period, totalling 363,190,000 barrels worth USD 39,906,107,000 in 2013.

⁴⁶⁴ The destination accounts were Direct Federation, FIRS, DPR, partners, SFDP, RDP, pre-export, NPDC and Pan Ocean accounts.

PSCs and MCAs, Royalty Oil from PSCs and MCAs, MCA Gas CIT/EDT, MCA Royalty Gas, Federation Equity and Profit Oil). Section 8.14.1.2 (p.361) provided the value of 2013 NNPC-COMD crude oil sales on behalf of NPDC.⁴⁶⁵ Tables 4.2.1A-C (p.111-112) reconciled the value of 2013 NNPC crude oil liftings for settlement of royalty to DPR between figures from NNPC-COMD, DPR and the DPR/CBN JP Morgan Crude Oil and Gas Account.⁴⁶⁶ Table 4.2.1D (pp.112-113) reconciled the value of 2013 NNPC crude oil liftings for settlement of PPT to FIRS between figures from NNPC-COMD, DPR and the FIRS/CBN JP Morgan account.⁴⁶⁷ Section 4.3.8 (pp.120-121) provided a review of MCA transactions in 2013, including tracking of government take from the MCA and payment of MCA Royalty Oil and PPT Oil to the respective DPR and FIRS accounts. Table 4.3.9A (p.121) provided 2013 royalty revenue flows to the Federation from MCA projects in 2013, including total sales value⁴⁶⁸, while Table 4.3.9B (pp.121-122) provided Tax Oil revenues derived by the Federation from MCA Projects in 2013, including total payments to FIRS/CBN JP Morgan account⁴⁶⁹. Table 4.3.10A (p.122) reconciled the revenue flows from crude oil sales from the MCAs and their distribution between NNPC-COMD figures for crude oil sales profile and NNPC-COMD's records of monthly allocation, including value of liftings⁴⁷⁰, value of PPT proceeds to FIRS⁴⁷¹, value of royalty proceeds to DPR⁴⁷², value of Education Tax proceeds (USD 6,167,000) and the value of proceeds transferred to Carry and Share agreements⁴⁷³.

Table 3.3.10 (pp.70-71) provided payments received in the different JP Morgan Crude Oil and Gas Revenue Accounts in 2013⁴⁷⁴, while Table 3.3.11 (p.72) provided monthly export crude oil sales values and the value of proceeds received by the JP Morgan Crude Oil and Gas Revenue (Dollar) Account. Table 3.3.19A (p.80) and Appendix 3.3.19 (p.93) provided details of the Domestic Crude Receivable Control Account for 2013, including value of crude supplied to NNPC, subsidy deductions at source and payments to Federation Account.⁴⁷⁵

Table 3.3.18 (p.79) provided the monthly (Naira) value of domestic crude oil sales. Section 3.3.17 (p.77) reconciled the value of 2013 domestic crude oil sales between figures from NNPC-COMD and NNPC-COSM⁴⁷⁶, while Section 8.14.2.4 (p.362) provided the value of 2013 NNPC-COMD crude oil sales on behalf

⁴⁶⁵ totalling 27.7 million barrels worth USD 3.1 billion.

⁴⁶⁶ A total of 7,721,901 barrels of oil was collected on DPR's behalf in 2013, valued at USD 829,783,418.16. Of this only USD 801,945,051.36 was actually paid, given that December liftings would have been paid in early 2014 given the 30-day credit limit. NNPC-COMD records of liftings for DPR were 1,900,000 barrels (worth USD 209,110,250) lower than DPR's records.

⁴⁶⁷ A total of 73,236,276 barrels (worth USD 8,029,264,057.01) was lifted for PPT payments to FIRS, but only USD 7,545,823,172.98 was actually paid. An erroneous payment of PPT to the NNPC/CBN Jp Morgan Crude Oil and Gas Account was identified, covering 999,006 barrels (worth USD 106,654,879.57). Section 3.3.15.1 (p.76) recommends that FIRS PPT payments be paid to the correct account, not the NNPC/JPM crude oil and gas account.

⁴⁶⁸ of USD 134,721,667.61, of which USD 115,434,488.80 was traced to DPR/CBN JP Morgan Account as the balance of USD 19,287,178.81 was not due for settlement as at 31st December, 2013

⁴⁶⁹ Excluding USD 71,547,870.41 not yet due for settlement as at 31st December 2013. It was noted that total MCA Tax Oil liftings include USD 6,167,986.36 MCA Education Tax (EDT).

⁴⁷⁰ USD 705,941,000

⁴⁷¹ USD 484,107,000

⁴⁷² USD 134,720,000

⁴⁷³ USD 80,946,000

⁴⁷⁴ Total inflows were determined as USD 9,641,025,000 while total outflows were USD 9,057,627,000, leaving a surplus of USD 583,398,000. Total export crude proceeds received in 2013 were USD 7,325,204,000.

⁴⁷⁵ Information on the domestic crude receivable control account in 2013 included opening balance, value of crude oil supplied to NNPC, subsidy deduction (only for November and December), transfers to the Federation Account and outstanding payments.

⁴⁷⁶ disaggregated by month and quarter, including volumes and values of PPMC liftings, offshore processing, product exchange, domestic usage PHRC refinery cargo, domestic usage KRPC/WRPC refinery as well as total domestic sales. Volumes of domestic

of PPMC.⁴⁷⁷ Appendix 3.3.21 (pp.93-94) provided monthly movements⁴⁷⁸ in the NNPC/CBN Naira account in 2013. Section 3.3.21 (p.83) provided details of the CBN/NNPC Crude Oil and Gas Revenue (Naira) Control Accounts.⁴⁷⁹

Discrepancies: The 2013 EITI Report also highlighted several discrepancies, in some instances unexplained, related to the collection and sale of the state's share of in-kind revenues. These ranged from variations in the value of sales proceeds⁴⁸⁰ to instances of NNPC's non-compliance with the 90-day limit for remitting proceeds to the Federation Account.⁴⁸¹

Disaggregation: Table 8.14.1.2B (p.355) provided information on crude oil sold by NNPC-COMD including type of off-taker (Nigerian traders, NNPC trading companies, international traders, bilateral customers and refineries). Appendix 8.14.1.2 (pp.221-259) provided more detailed information on all crude oil lifting transactions carried out by NNPC-COMD, including customer name, B/L date, crude oil type, quantity lifted, vessel name, unit price, letter of credit number, pricing option, API content and country of destination. Section 8.14.1.1.8 (pp.351) described sales and purchase agreements with approved crude oil traders and highlighted that five (foreign state-owned) entities⁴⁸² that did not feature on the approved list of crude oil off-takers appeared in the NNPC-COMD crude oil sales records. While Section 3.ii of the ToR for the 2013 O&G EITI Report (p.10) required that the IA reconcile oil sales volumes and proceeds by including buying companies in the reporting process, there is no evidence in the 2013 EITI Report (nor in NSWG meeting minutes) of efforts to include crude oil buyers in the scope of EITI reporting.

Additional information: The 2013 Report includes additional information related to sales of Federation oil, such as pricing methodologies and lifting metering.⁴⁸³

crude oil lifted by NNPC-COMD for NNPC-PPMC totalled 158.814 million barrels in 2013 (worth USD17.436 billion), according to records of COMD-COSM and DPR, compared to 154.796 million barrels (worth USD 16.996 billion) according to NNPC-COMD lifting profiles.

⁴⁷⁷ totalling 36.3 million barrels worth USD 4.0 billion.

⁴⁷⁸ including opening balance, receipt into the account, transfers to the Federation Account and closing balance.

⁴⁷⁹ Information included opening (1 January 2013) and closing (31 December 2013) balances, crude oil lifting proceeds, outstanding subsidy repayment, other misc. lodgements, transfers to the Federation Account and transfers to the JV cash call account. Total receipts into the CBN/NNPC Crude Oil and Gas Revenue (Naira) Account were NGN 1.572 trillion (NGN 1.467 trillion for domestic crude oil sales, NGN 91.41 billion for outstanding subsidy repayment and NGN 13.67 billion for other miscellaneous lodgements), while transfers to the Federation Account totalled NGN 1.574 trillion.

⁴⁸⁰ Several variances between expected and actual flows (related to Satellite Field Development Programme and the Reserve Development Project) to the destination accounts were highlighted in Section 3.3.5 (p.62), although these are all accounted for. A USD 2.274 billion unexplained discrepancy between the value of crude oil sales invoiced by NNPC-COMD and the amount traced to the NNPC Crude Oil Revenue Naira account at CBN was noted in Section 3.3.5.1 (pp.62-63). Inconsistencies in NNPC records of revenue receivable with the underlying records of sales transactions and NEITI Reports are highlighted in Section 3.3.9.1 (p.70), noting that some crude oil and gas traders did not comply with the 30-day credit payment rule.

⁴⁸¹ Delays in domestic crude oil sales settlements by NNPC were detailed in Table 3.3.20 (p.82), including domestic crude oil sales proceeds of NGN 1,354,550 million and an outstanding amount of NGN 1,349,770 million. NNPC's non-compliance with the 90 days credit for remittance of sales proceeds was noted in Sections 3.3.20.1 (p.82), 8.14.1.1.1 (p.344) and 10.1.5 (p.393). Despite the fact that payment was made by off-takers within 30 days, NNPC's non-compliance resulted in an aggregate default period of 190 days on the assumption that Bill of Lading dates (on aggregate basis) were the last day of the months, which was considered as the worst case scenario, as described in Section 3.3.20.1 (p.82). A breakdown of NNPC's non-compliance with the 90 day credit period was provided in Appendix 8.14.1.1.3B (p.226), disaggregated by Bill of Laden date.

⁴⁸² Republic of Ghana (TEMA), Republic of Zambia (SARB), Sierra Leone (Sahara), SINOPEC and PTT.

⁴⁸³ A detailed system flow chart for crude oil marketing was provided in Appendix 3.2.4 (pp.89-92) and described in Section 3.2.4 (p.51). The production measurement process at the well-head was described in Section 8.2.4 (pp.211-212), including both DPR's and companies' calculations of well-head production and limitations in accuracy (+/- 10%). Production metering infrastructure at individual terminals was described in Sections 8.15.6 (pp.367-376).

The crude oil pricing method for Federation equity crude was described in Section 8.14.1 (pp.341-342), noting NNPC-COMD's

Stakeholder views

A FIRS representative confirmed that the FGN collected only three revenue streams in-kind (Tax Oil, Royalty Oil and Profit Oil). A former IA and a PSC-holder representative confirmed that PSC agreements did not refer to natural gas but only to crude oil, meaning that there were no in-kind revenues collected in natural gas. The Senate President highlighted the importance of transparency in NNPC's crude oil sales as part of current reforms in the oil and gas sector. Members of Companies Forum noted that the level of disaggregation and detail in disclosures of government's sale of its share of in-kind revenue was helpful to clarify the sales process for the state's in-kind revenues and responded to demands from civil society stakeholders. One industry representative noted that including buyers of the state's share of oil production would be challenging given the number of companies involved, but not impossible. One international CSO questioned the quality of the EITI Report's analysis of in-kind revenue sales and recommended that the EITI Reports should focus on providing the data and allowing others to interpret it.

President Buhari welcomed the EITI Standard's requirements on the sale of the state's share of production at the UK Anti-Corruption Summit on 12 May 2016, noting the government's commitment to work to "enhance company disclosure on payments to governments for the sale of oil, gas and minerals," noting that Nigeria was "already reporting progress through the EITI working groups and [would] continue to work with interested countries to build a common understanding and strengthen the evidence for transparency in this area."⁴⁸⁴

NRGI has highlighted that Nigeria was the only major world oil producer that sold crude oil primarily to traders through term-contracts signed by NNPC-COMD, rather than to end-users, and NNPC sold crude oil to governments that did not refine the crude oil they bought, which had caused scandals in five buyer

three pricing options. The compliance testing on the application of the different pricing options in Section 8.14.1.1.2 (p.342) and in Appendix 8.14.1.1.2 (pp.218) revealed that 21 out of 219 domestic crude oil transactions failed the test, resulting in a shortfall of NGN 3.2 billion (USD 20.8 million). NNPC's Audit Department was recommended to review the arithmetical accuracy and transparency of the pricing option elected, with subsequent approval from NNPC's senior management before finalization of the invoice. A 2013 daily tracking of dated Platts differentials against the NNPC OSP was provided in Figures 8.3.3.1.3A (p.342) and 8.3.3.1.3B (p.343), revealing mixed results in price differentials of Agbami, Brass River, Bonny, Escravos, Forcados and Qua Iboe grades and gross under-performance for Escravos and Agbami. An overview of crude oil grades, benchmarking or differentials was provided in Section 8.14.1.1.6 (p.348), noting that several grades were not quoted on Platts and were priced in significantly different ways. A correlation of NNPC's OSP against crude quality (density and sulphur) was presented in Section 8.14.1.1.7 (p.348), with two notable exception noted (Agbami priced lower despite a higher API and lower sulphur; Ima priced lower than Erha and Forcados in spite of its higher API and lower sulphur).

The selection of pricing options was described in Section 8.14.1.1.4 (pp.344-345), highlighting three buyers of crude that did not follow the pricing procedures, but were not imposed a penalty by NNPC (Trafigura, Calson and AMG). A schedule of transactions without pricing option selection date for 159 different invoices is provided in Appendix 8.14.1.1.4 (pp.226-230). The influence of fluctuations in market conditions on potential losses to NNPC and the Federal Government crude revenues were analysed in Section 8.14.1.1.5 (pp.345-347). An NEITI request to review the methodology and studies undertaken by NNPC-COMD for setting the monthly OSP was unsuccessful. NNPC's 2013 Monthly OSP fixes were shown in Figure 8.3.3.1.7B (p.349), while the NNPC Monthly OSP and Crude Oil Grade API and Sulphur Content for 2013 was provided in Figure 8.3.3.1.7C (p.350). The price differentials of Agbami, Brass River, Bonny, Escravos, Forcados and Qua Iboe grades were provided in Appendix 8.14.1.1.3A (pp.219-225), disaggregated by trading day.

Potential alternatives to the current OSP system were presented in Section 8.14.1.1.9 (pp.352-353). The letter from NNPC dated 18 February 2014 indicating its use of OSP as RP was provided in Appendix 3.4.5.1D (pp.105). The FIRS' letter of interpretation of the court ruling on the use of realisable price (RP), pending resolution of the court case, was provided in Appendix 3.4.5.1C (pp.102-104). A letter dated 18 February 2014 announcing NNPC's OSP as RP was included in Appendix 3.4.5.1D (pp.105).

⁴⁸⁴ FGN (12 May 2016), Country statement from Nigeria, London Anti-Corruption Summit,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf.

countries.⁴⁸⁵ NRGi has also highlighted the role of NNPC's five trading subsidiaries in marketing the state's share of oil production.⁴⁸⁶ A September 2013 report by Chatham House found that NNPC's confidential agreements typically entailed selling crude to traders at below-market prices, of up to USD 0.4/barrel discounts in 2012, before then "flipping" them (in the words of the report) to larger traders with access to tankers.⁴⁸⁷ NRGi has also highlighted that the main buyers of Nigerian crude oil exports in 2010-2012 included Switzerland-based Addax, Arcadia, Glencore, Gunvor, Mercuria, Trafigura and Vitol as well as Nigerian companies Sahara and Taleveras under the Jonathan administration. NRGi has also highlighted that, in 2013 specifically, "many" companies listed on NNPC-COMD's term-contract list did not meet the minimum award criteria including a USD 500 million annual turnover, a prior track record in trading or "Nigerian oil and gas", submission of three years of audited accounts and a commitment to investing in "priority" sectors of the Nigerian economy. Meanwhile the average value of these term contracts had increased between 2012 and 2014 according to NRGi, as the number of accredited traders fell from 50 to 38 between April 2012 and April 2014.⁴⁸⁸ NRGi has also reported that over half (USD 12 billion) of the USD 20 billion claimed as missing by former CBN Governor Lamido Sanusi were from domestic crude oil sales. NRGi has quoted past audits and investigations to claim that NNPC used various techniques to sell domestic crude oil at sub-market prices, including using low exchange rates to convert dollar payments into naira and selling crude at discounts.⁴⁸⁹ According to NRGi's analysis of NEITI and FAAC data, NNPC gave no timely explanations at all for revenue withholdings ranging from USD 270 million to almost USD 7 billion annually.⁴⁹⁰

Solid minerals

Documentation of progress

This requirement is not applicable to Nigeria's solid minerals sector (*see Requirement 2.6*).

Stakeholder views

Stakeholders consulted confirmed that solid minerals SOEs were inactive in 2013 and did not collect any in-kind revenue either statutorily or in practice.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement in oil and gas, while the requirement is not applicable in the solid minerals sector. The 2013 EITI Report provides volumes collected, sold and proceeds generated from the state's share of in-

⁴⁸⁵ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁸⁶ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁸⁷ Chatham House (December 2015), 'Nigeria's booming borders: the drivers and consequences of unrecorded trade', <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/20151207NigeriaBoomingBordersKoniHoffmannMelly.pdf>.

⁴⁸⁸ <http://nnpcgroup.com/Portals/0/NNPC%20Crude%20Application%20Advert%202013%20Revised%20May.pdf>, as quoted in Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁸⁹ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁹⁰ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

kind revenues. The NSWG has also made efforts to go beyond the requirement in ensuring that the 2013 EITI Report also provides significant additional information on the terms of sales and buyers of Nigeria's share of crude oil production. While there is no evidence that the NSWG discussed the materiality of in-kind revenues, we understand that the general materiality threshold for selecting revenue streams was applied and it is evident that the state's in-kind revenues were material. However, the IA's divergence from the ToR for the 2013 EITI Report given the lack of inclusion of crude oil buyers in the reconciliation process is a concern (*see Requirement 4.9*).

Barter and infrastructure transactions (#4.3)

Oil and gas

Documentation of progress

Barters: There were several barter agreements in force in 2013, including offshore processing agreements (OPAs) where NNPC exchanges crude oil for refined products of this crude with the SIR refinery in Abidjan and refined products exchange agreements (RPEA) with oil traders, also known as Swaps. Under OPAs, a foreign refiner receives Nigerian crude oil, which it then refines and remits the resulting refined products back to NNPC. Under RPEAs, crude oil is allocated to a trader, who is then responsible for importing specified refined products worth equivalent to the value of crude oil provided, net of agreed fees and costs withheld by the trader.

The 2013 EITI Report covers the evolution of Carry Arrangements and MCAs in Section 4.3 (p.114), describing the evolution from crude swap arrangements (whereby the operator funded NNPC's share of cash call and was reimbursed by lifting NNPC's share of production from the related field) in the late 1980s/early 1990s to Third Party Financing, Carry Agreements and currently MCAs, where operators fund NNPC's share of cash calls before being reimbursed (in cash) from the proceeds from sales of NNPC's share of the MCA's production. Sections 7.1 (pp.169-170), 8.5.1 (p.262) and 8.5.5 (pp.268-269) described OPAs and RPEAs in detail, including a history of the arrangements and concerns over losses to the FGN incurred as a result. The details of each OPA for the years 2010-2013 are provided in Tables 8.5.5A-B (pp.269-270), while Section 8.5.6 (pp.271-274) detailed the four RPEAs active in 2013.⁴⁹¹ Volumes of crude oil covered under OPAs and RPEAs were provided in Tables 3.3.3 (pp.57-58), 8.5.2 (p.263) and 8.5.6C (p.274) as well as Section 8.5.2.1 (pp.263-264), with additional information on OPAs in Table 8.5.5A-B (pp.269-270), on RPEAs in Section 8.5.6 (pp.271-274) and on estimated losses in Tables 8.5.6C (p.274) and 8.5.6D (p.274) as well as Sections 8.5.5 (pp.268-269) and 10.2.12 (p.395).⁴⁹² Section 8.5.6.1 (pp.274-275) stated that all crude oil volumes covered under OPAs and RPEAs were recorded in the 2013 EITI Report. The 2012 EITI Report also described the OPAs and RPEAs and disclosed volumes and values covered under the arrangements for 2012 (pp.300-306).

Infrastructure: There is no evidence from meeting minutes of the NSWG's consideration of infrastructure provisions, although Section 3.iii (pp.10-11 of the 2013 EITI Report appendix) of the ToR includes the standard ToR's language requiring the IA to evaluate the existence of infrastructure provisions and barter as part of oil and gas agreements. Appendix 3.6.2 (pp.133-144) of the 2013 EITI Report provided details of

⁴⁹¹ Section 8.5.6 highlighted the combined USD 211,886,659.86 value of under-delivered refined products under the RPEAs.

⁴⁹² The losses are due to the fact that the value of product covered by OPAs is calculated on the basis of CIF by PPCM but is in fact FOB (and categorized as such by the NEITI Audit) since NNPC must cover the associated transport charges.

infrastructure projects disaggregated for the nine reporting companies, including license number, value of initial commitment, project description, location name, total value, project status and amount disbursed as of 31 December 2013. These expenditures would appear to represent social expenditures however and there appear to be inconsistent categorizations of payments in the 2013 EITI Report, such as:

- Mobil Producing Nigeria (MBNU)'s NGN 5.5 million construction of a six-classroom block with offices at Comprehensive Secondary School at Ekpri-Nsukara Offot in Uyo LGA, categorized as an infrastructure provision in Appendix 3.6.2 (pp.134);
- Niger Delta Petroleum Resources' NGN 71million construction of a two-block school in Rumuekpe, categorized as a social expenditure in Appendix 3.6.1 (p.130).
- Total E&P Nigeria's NGN 26.177 million construction of a six-classroom block at Ntit Oton, categorized as a quasi-fiscal expenditure in Appendix 3.6.3 (p.164);

Stakeholder views

Most stakeholders consulted who held views on the EITI Report's coverage of OPAs and RPEAs expressed their satisfaction at the coverage of these types of barter in the 2013 EITI Report, noting that the politically-charged nature of the issue. One international CSO raised concerns over the calculation of losses incurred as a result of OPAs and RPEAs, noting that NRG's assessment of losses in its August 2015 report on NNPC oil sales was more rigorous than NEITI's comparison of FOB vs CIF pricing of crude oil under the agreements, which excessively simplified the issue.

We note that President Buhari cancelled all OPAs and RPEAs in August 2015, stating that OPAs were "skewed in favour of the companies such that the value of product delivered is significantly lower than the equivalent crude oil allocated"⁴⁹³ and launched probes into practices under the previous government.⁴⁹⁴ Subsequently NNPC signed new RPEAs deals with its trading subsidiaries Duke Oil, Calson (a joint venture with Swiss trader Vitol) and Napoil (another joint venture with commodities trader Trafigura) in September 2015.⁴⁹⁵

NRGI has covered OPAs and RPEAs extensively. Combined, OPAs and RPEAs covered around 210,000 bpd (roughly one tenth of total national crude oil production) in the 2010-2014 period, worth over USD 35 billion, according to calculations from NRG.⁴⁹⁶ NRG has estimated the average cost to NNPC of the OPAs since 2011 as USD 7.52 per barrel.⁴⁹⁷ NRG has argued that these types of agreement would be acceptable if implemented transparently with balance and integrity, citing the 2011 RPEA contract signed with Duke Oil as an acceptable model for future deals, assuming the competitive award of agreements.⁴⁹⁸ NRG has

⁴⁹³ NNPC (26 August 2015), "Press Release - NNPC Cancels Contract for Delivery of Crude Oil to Refineries", <http://nnpccgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/584/NNPC-Cancels-Contract-for-Delivery-of-Crude-Oil-to-Refineries.aspx>.

⁴⁹⁴ FT (15 September 2015), "Cash-strapped Nigeria to renegotiate contracts with oil majors", <http://www.ft.com/cms/s/0/e0d8ca46-5bcf-11e5-a28b-50226830d644.html#axzz4CSkyM25D> and Frontier News (14 June 2015), "Buhari Commences Probe On Crude Oil Swap Contracts", <http://www.frontiersnews.com/buhari-commences-probe-on-crude-oil-swap-contracts/>.

⁴⁹⁵ Naij.com (September 2015), "Buhari signs new oil swap agreement", <https://www.naij.com/546577-president-buhari-substitutes-jonathans-oil-swaps-deals.html>.

⁴⁹⁶ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁹⁷ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁹⁸ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria',

also noted that the (now-cancelled) OPAs did not meet Nigeria's actual fuel needs, supplying a broad range of product when demand was primarily for gasoline and kerosene. NRGI has argued that the main reason for structuring an OPA was to offload hard-to-sell crude and hedge against oil price volatility, which reflected Nigeria's current situation in light of declining North American demand for Nigerian crude in a more suitable way than RPEAs.⁴⁹⁹

In relation to reporting of infrastructure provisions, the IA noted that the descriptions of specific revenue streams included in the reporting templates were not clear, which explained why the categorisation of payments was effectively left to reporting entities' discretion. However, one industry representative noted that reporting templates had become clearer and better defined in recent reporting cycles, providing reporting companies with a clear idea of what information the template requested.

NNPC representatives and investment bank research analysts consulted noted that, in line with the terms of Joint Operating Agreements (JOAs, the JV agreements), all companies operating pipelines were required to maintain an open access system, allowing third-parties to access their infrastructure. Members of the Companies Forum stated that JV agreements (JOAs) signed in the 1960s and PSCs signed in 1993 did not include provisions for the development of infrastructure available for third-party use. However one development partner and one international CSO noted that they did not consider there to be an open access policy for use of crude oil or natural gas pipelines. The NNPC representatives also noted the existence of domestic market infrastructure obligations as part of the 2005 and 2007 block bidding rounds. One industry representative noted that PSCs signed since 2005 included requirements for the development of infrastructure for third-party use, such as independent power plants, but that none of these PSCs had yet moved to the production phase and thus were unlikely to have been included in the scope of NEITI reporting. DPR representatives were not aware of any infrastructure provisions in oil and gas companies' contracts with government, noting that while a number of oil-for-infrastructure deals signed in 2007 had subsequently been cancelled under the Yar'Adua administration (they noted that some deals such as the one involving KNOC had not been cancelled and were still under litigation). One development partner considered it to be part of the EITI mandate to track the level of implementation of infrastructure provisions agreed as part of license allocations and expressed concern that this had not been done.

Solid minerals

Documentation of progress

There is no evidence from meeting minutes or in the 2013 EITI Report that the NSWG considered the existence of barter or infrastructure provisions in the solid minerals sector.

Stakeholder views

None of the stakeholders consulted had any knowledge of barter or infrastructure provisions in the solid minerals sector. The IA noted that its approach to determining the existence of barter and infrastructure provisions was based on its understanding of the licensing process and legal requirements, as well as confirmation during interviews with different government entities.

http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁴⁹⁹ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress in meeting this requirement. This requirement does not appear to be applicable in the solid minerals sector. In oil and gas, the 2013 EITI Report discloses terms and assesses performance of barter of crude oil for refined products as well as some information on infrastructure provisions, although we note that these infrastructure provisions may social expenditures that have been mis-categorised. We note that NNPC has switched to a system of Direct-Sale-Direct-Purchase in late 2015 to replace OPAs and RPEAs, that NNPC's new management claims resulted in losses of around 30% per cargo and could save it USD 1 billion a year.⁵⁰⁰ We also note that Trafigura published its 2013 payments to governments in EITI implementing countries, which revealed that it had transacted USD 2.5 billion worth of products with NNPC under RPEAs in 2013.⁵⁰¹ In preparing its next O&G EITI Report, the NSWG should assess the existence of infrastructure provisions during the scoping phase to ensure that companies' disclosures are categorised according to strict definitions.

Transport revenues (#4.4)

Oil and gas

Documentation of progress

An overview of Nigeria's 27 crude oil terminals in Nigeria is provided in Table 8.2.3 (pp.210-211) of the 2013 EITI Report, including terminal name, operator name, location (on or offshore), capacity (barrels) and type of crude (it is noted that Cavendish's Obe terminal didn't operate in 2013). It was noted that some companies active in 2013 did not have their own terminals and injected their crude oil to other terminals in order to export; there was typically an agreement for use of the terminals between the terminal owners and the injecting companies. Table 3.3.2 (pp.56-57) reconciled crude oil inventories at terminals (both production and lifting⁵⁰²) in 2013 between figures from NNPC-COMD, NNPC-COSM, DPR, companies and terminal operators. There was no reference to tariffs or rates.

The 2013 EITI Report also provided information on crude oil losses during the transportation phase, due to theft and sabotage. Section 8.5.9 (pp.281-287) described crude oil theft⁵⁰³, Sections 8.5.9A-J (pp.282-287) provided disaggregated crude oil theft figures for each JV and NNPC, Section 8.5.9.1 (pp.287-288) provided 2013 crude oil losses on flow lines from crude oil terminals to refineries, and Section 8.5.9.3 (pp.291-292) described economic, environmental, social, health and governance impacts of crude oil theft.

The 2012 EITI Report described pipelines and marine services (p.325), although it did not clarify whether revenues accrued to government from the transportation of oil and gas. The 2012 EITI Report contained the same level of detail on volumes transported as well as information on crude oil thefts.

⁵⁰⁰ Section 7 (p.33), NNPC (April 2016), Financial and operations monthly report, <http://www.nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20&%20Operations%20Report%20for%20the%20Month%20of%20April%202016.pdf>.

⁵⁰¹ See p.17, Trafigura (November 2015), 2015 Responsibility Report, <http://www.trafigura.com/media/3250/trafigura-2015-responsibility-report-en.pdf>.

⁵⁰² including opening and closing balances, disaggregated by type of commercial arrangement.

⁵⁰³ Nigeria's losses to crude theft were reported at USD 1.7 billion, about NGN 272 billion per month, representing 7.7 percent of Nigeria's GDP.

Stakeholder views

All stakeholders who held views on the materiality discussions considered that the materiality threshold used for selecting revenue streams for reconciliation applied to all revenue streams and technical secretariat staff noted that the NSWG had not discussed materiality definitions specific to individual types of payments, such as transportation payments. The IA and NEITI Secretariat technical staff confirmed that there had not been an NSWG discussion of the materiality of transportation revenues, but considered that transportation revenues had not been included in the ToR for the 2013 EITI Report.

Industry representatives noted that the JVs' Joint Operating Agreements required that their transport infrastructure be made available for third-party use. All stakeholders consulted confirmed that some JVs in which NNPC held majority stakes received transportation revenues from third-party use of their pipelines and crude oil storage facilities, which combined were referred to as crude handling charges. The IA stated that the NSWG had not considered whether payments to NNPC or its subsidiaries for use of its crude oil storage facilities represented transportation revenue. Members of the Companies Forum and NNPC representatives stated that crude handling charges were an arms' length private-to-private commercial arrangement between the company injecting crude and the JV operating the transport and storage facilities. An investment bank research analyst covering oil and gas confirmed that there was no single tariff for crude oil storage and that each crude oil storage terminal set its own rates. A marginal field operator representative confirmed that his company paid an NNPC JV a fee to handle and store its crude oil production: the initial fee was negotiated with an annual escalation factor, which was periodically renegotiated. A sole risk operator representative noted that approval from DPR was required for all such crude handling agreements. Members of the Companies Forum noted that NNPC received its share of crude handling charges, given that all JV partners shared revenues from the JV's operations, and that these represented transportation revenues. An international CSO noted that NNPC should be collecting transportation revenues in theory given its stake in JVs operating crude oil storage depots but that it was unclear what happened to its share of crude handling charges.

Solid minerals

Documentation of progress

There is no evidence from meeting minutes or the 2013 EITI Report that the NSWG considered transportation payments in either the 2012 or 2013 EITI Reports.

Stakeholder views

The IA stated that its approach to determining the existence of transportation revenues in the solid minerals sector was based on its understanding of the solid mineral context in Nigeria and MID's lack of reporting of any accredited agent for movement of minerals.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made inadequate progress in meeting this requirement. This requirement is likely not applicable in the solid minerals sector, despite the lack of evidence of NSWG discussions of this issue. In oil and gas, while the 2013 EITI Report describes arrangements for the transportation and storage of crude oil by JVs in which NNPC holds a majority stake, there is no evidence of the NSWG's assessment of the materiality of transportation revenues such as crude handling charges. In preparing its next O&G EITI Report, the NSWG should assess the materiality

of any such transportation revenues and disclose such revenues should they be assessed as material.

Transactions between SOEs and government (#4.5)

Oil and gas

Documentation of progress

Section 2.6 (pp.34-35) of the 2013 EITI Report confirmed that state participation in the oil and gas sector gives rise to material revenue flows. Sections 3.2.1 (pp.49-50), 4.1 (p.109), 8.2.1.1.1-2 (pp.204-205) and 10.2.5 (pp.395-396) confirmed that NNPC-COMD collected in-kind revenues on behalf of the FGN as Profit Oil, Equity Oil, Tax Oil (as payment for Petroleum Profits Tax and, for MCAs, CIT and EDT) and Royalty Oil (as payment for Royalties).⁵⁰⁴ The 2013 EITI Report comprehensively disclosed in-kind revenue flows and reconciled volumes and values between different government entities involved (*see Requirement 4.2 on in-kind revenues*). Sections 3.3.20.1 (p.82), 3.3.9.1 (p.70), 8.14.1.1.1 (p.344) and 10.1.5 (p.393) highlighted instances of NNPC's non-compliance with the 90-day credit limit for remittance of proceeds of in-kind revenue sales to the Federation Account. Appendix 8.14.1.1.3B (p.226) provided a breakdown of NNPC's non-compliance with the 90-day credit period, disaggregated by Bill of Laden date, while Section 3.4.3 (p.86) detailed delays in domestic crude oil sales settlements by NNPC.

The 2013 EITI report also described deviations in practice in the non-remittal by NNPC of dividends from NLNG. The gas supply arrangements for NLNG and the Nigerian Gas Co. (NGC) were described in Section 8.1.3 (pp.192-193). Section 3.4.3 (p.86) noted that the receipt of Nigeria LNG (NLNG) payments of 2013 dividends, loan and interest repayments totalling USD 1.29 billion by NNPC was confirmed, but the proceeds could not be traced to the Federation Account. The cumulative NLNG proceeds unremitted by NNPC to the Federation Account by the end of 2013 were USD 12.92 billion, with the aggregate dividends and loan repayments by NLNG to NNPC for 2009-2013 provided in Table 3.1.1 (p.47). Section 10.2.4 (p.394) included a recommendation for NNPC to remit cumulative outstanding dividends from NLNG to the Federation Account, worth USD 11.63 billion at end-2013. The 2009-2011 O&G EITI Report had already noted the need to confirm the ownership of the 49% investments in NLNG, questioning whether it was held for the benefit of the Federation, the Federal Government or NNPC itself (p.19), concluding that the Federation should be the rightful owner of equity in NLNG (p.325).

The 2012 EITI Report disclosed and reconciled transfers from NNPC to the various CBN accounts maintained on behalf of various FGN entities, highlighting significant unremitted revenues from NNPC to FGN accounts, and disclosed (but did not reconcile) NLNG dividends to NNPC that were not remitted to the FGN. (p.89)

Stakeholder views

Most stakeholders consulted considered the description of SOE transactions with government to be comprehensive, although they expressed concern over the discrepancies highlighted in the EITI Reports. However, one development partner and one international CSO expressed concern over the lack of

⁵⁰⁴ In-kind flows under PSCs were described in Section 4.2 (p.109-110), including a diagram of crude oil lifting allocations under PSC arrangements in Figure 4.2 (p.110). In-kind flows under alternative financing JVs (MCAs) were described in Section 4.3 (p.114-123).

disclosure of ad hoc payments by NNPC from its JV cash call accounts to other parties.

NEITI Secretariat technical staff noted that NEITI had been the first entity to alert both the public and government about NNPC's lack of remittance of NLNG dividends. NRGi has also highlighted the average USD 1.5 billion a year in dividends from NLNG to NNPC, noting that there had been a cumulative USD 10 billion unremitted revenue from 2006 to 2015.⁵⁰⁵ The Center for Research on Multinational Corporations (SOMO) noted in a January 2016 report on NLNG that NLNG's total profits amounted to at least USD 29.5 billion over the period 2004 to 2013 and questioned the ten-year tax holiday extended to NLNG rather than the standard five-year period for such incentives in Nigeria.⁵⁰⁶ NRGi has noted that the Buhari administration had secured a portion of NLNG funds from NNPC in July 2015.⁵⁰⁷ Secretariat staff noted that from 2015 all NLNG dividends were transferred directly to the Federation Account, rather than to NNPC, while the outstanding remittances remained contested.

Secretariat staff confirmed that while NLNG payments to NNPC were categorized as "dividends and interest on loans", the NLNG loans had been paid off by 2010 and this category only represented dividends since 2010. The NLNG 2015 Facts and Figures report indicates that no Nigerian state-owned bank provided loans for the development of NLNG and that all original NLNG loans had been fully repaid as of 15 December 2010.⁵⁰⁸

Solid minerals

Documentation of progress

While neither the 2012 or 2013 EITI Reports explicitly stated that SOEs in the solid minerals sector were inactive, this requirement is not applicable. (*See Requirement 2.6 on state participation*)

Stakeholder views

Stakeholders consulted confirmed that solid mineral SOEs were inactive in 2013 and thus did not make any payments to government.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. While this requirement is not applicable in the solid minerals sector, the 2013 O&G EITI Report discloses SOE transactions with government including the remittance of proceeds of the sale of the state's in-kind revenues as well as NLNG dividends, highlighting deviations from statutory rules in practice.

⁵⁰⁵ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidenpcoilsales_mainreport.pdf.

⁵⁰⁶ SOMO (January 2016), How Shell, Total and Eni benefit from tax breaks in Nigeria's gas industry, <https://business-humanrights.org/sites/default/files/documents/How%20Shell-%20Total%20and%20Eni%20benefit%20from%20tax%20breaks%20in%20Nigerias%20gas%20industry.pdf>.

⁵⁰⁷ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidenpcoilsales_mainreport.pdf.

⁵⁰⁸ The lenders for the LNG trains included African Development Bank and a group of 19 international banks led by BNP Paribas, Citigroup, Credit Lyonnais, MCC and West LB. The lenders for the LNG ships included Citibank, Credit-Suisse First Boston, ABN AMRO Bank, Credit Lyonnais, Fortis, ING Bank, HVB, Verein und Westbank, West LB, Standard Chartered Bank. See pp.57-59, NLNG (2015), NLNG 2015 Facts and Figures, http://www.nlng.com/Media-Center/Publications/Facts_and_figures_2015.pdf.

Subnational direct payments (#4.6)

Oil and gas

Documentation of progress

There is no evidence from meeting minutes or the 2013 EITI Report that the NSWG considered the materiality of direct subnational payments prior to data collection. However, Section 4.viii of the ToR for the 2013 EITI Report (p.13 of the 2013 EITI Report's appendices) required the IA to assess the materiality of direct subnational payments and disclose any such material payments. Section 8.8.2 (pp.322-323) of the 2013 EITI Report described and disclosed three types of direct company payments to state governments in the form of Withholding Tax (WHT), Pay as you earn (PAYE) and NLNG local government taxes. Tables 6.12.2.1-18 (pp.150-157) disclosed company WHT payments to state governments, totalling USD 17,740,000 to 18 state governments, disaggregated by company and state government. Tables 6.13.2.1-10 (pp.158-163) disclosed company PAYE payments to state governments, totalling USD 556,030,000 to ten state governments, disaggregated by company and state government. Table 6.14 (p.163) disclosed NLNG's local government taxes as an aggregate, totalling USD 1,089,000 to five local government area (LGA) and one state government, although these were not disaggregated by receiving LGA. These direct subnational payments were unilaterally disclosed by reporting companies, but not reconciled with subnational government receipts. The ToR for the 2013 EITI Report explicitly excluded subnational transfers and direct subnational payments from the scope of reconciliation, stating that state governments were not required to report.⁵⁰⁹ The 2012 EITI Report provided a similar level of reporting of subnational direct payments for these three streams.

According to the NEITI Act, the NSWG has the right to ask for disclosures of payments received and revenues paid by states and local governments (under Article 3e) as well as the duty to build the capacity of local governments with statutory responsibility for monitoring revenues from extractives companies (Article 3g). The NSWG had previously made attempts to include state governments in the scope of EITI reporting through the initial Fiscal Allocation and Statutory Disbursement (FASD) Report⁵¹⁰, covering 2007-2011 and published in 2014. The report covered nine of Nigeria's 36 states (Ondo, Imo, Akwa Ibom, Rivers, Delta, Gombe, Kano, Nassarawa and Bayelsa States), as agreed at the NSWG's 20 June 2013 meeting⁵¹¹, and covered both states' disclosures of their subnational transfer receipts and direct subnational payments revenues. At its 5-6 December 2013 meeting, the NSWG's technical committee agreed that Nigeria should apply for an exemption from the EITI Board from reporting subnational direct payments and subnational transfers given that these had been covered in the 2007-2011 FASD Report.⁵¹² However this adapted implementation request was never received by the EITI Board. Minutes of the NSWG's 20 November 2014 meeting⁵¹³ report President Jonathan's wish for the NEITI to use the FASD to track government transfers to the 774 local government units given they were closest to the people. The

⁵⁰⁹ See p.22 of ToR for the Independent Administrator for the 2013 Oil and Gas EITI Report.

⁵¹⁰ NEITI (2014), 'NEITI: Fiscal allocation and statutory disbursement audit, 2007-2011 summary report', http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-FASD-Audit-Report-2007-2011/NEITI-FASD-Audit-Summary-Report-2007-2011-300614-SS.pdf. [Note: while the date on the 2007-2011 FASD Report was July 2013, we understand this refers to the date of the initial draft report, not the version approved by the NSWG.]

⁵¹¹ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁵¹² See minutes of NSWG technical committee meeting, 5-6 December 2013, unpublished, provided by NEITI Secretariat.

⁵¹³ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

Presidency followed up with a letter dated 23 June 2014 instructing NEITI to cover subnational transfers to local government units.⁵¹⁴ However, despite featuring in successive EITI workplans, work on the second FASD Report covering 2012-2014 had yet to be initiated as of 1 July 2016.

Stakeholder views

A CSO member of the former NSWG noted that there had been no discussion of the definition of direct subnational payments prior to data collection for the 2013 EITI Report. All stakeholders who held views on the materiality discussions considered that the materiality threshold used for selecting revenue streams for reconciliation applied to all revenue streams and technical secretariat staff noted that the NSWG had not discussed materiality definitions specific to individual types of payments, such as direct subnational payments. Technical staff at the NEITI Secretariat explained that subnational direct payments were not reconciled because including state governments in the scope of reconciliation would have expanded the scope of EITI reporting. Representatives from FIRS and RMFAC confirmed that the only taxes levied by subnational governments were state-level WHT and PAYE, but that all companies were also required to pay tenement rates to state governments, on the basis of the buildings they maintained in a particular state.

A former NSWG Chair and several CSOs noted that there had been contacts with the Governors' Forum several years previously, given the Governors' interest in assessing the unremitted revenues from NNPC to the Federal Allocation Account, from which they received their revenues. However, State Governors were far less interested in disclosing what they actually received from the FGN and had not followed up on their initial contacts with the NEITI, according to the former NSWG Chair. Several CSOs and NEITI Secretariat staff noted that the interest in EITI reporting from State Governors had waned following publication of the first FASD Report, which had highlighted challenges in state governments' revenue management and expenditures. These CSOs and secretariat staff noted President Jonathan's instruction to expand the FASD to all 36 states had not been implemented due to funding constraints and lack of political support.

A former NSWG Chair emphasised the significance of states and local governments for public service delivery and called for the decentralisation of NEITI to include subnational reporting. Given the lack of statutory mechanisms for the FGN to force state governments to participate, the former Chair highlighted the importance of a strong leadership from the FGN President through frequent public announcements in order to encourage state governors to engage with NEITI. One secretariat staff questioned whether it would be desirable to incorporate aspects of FASD reporting into annual EITI reporting, given that Nigeria was not implementing the EITI to comply with any international standard and stakeholders may wish to use FASD reporting to move beyond the minimum EITI requirements to disclose the use to which state governments put their revenues.

Solid minerals

Documentation of progress

While there is no evidence from meeting minutes that the NSWG discussed the materiality of direct subnational payments, Section 4.1.6 (p.29) of the 2012-2013 Inception Report stated that subnational direct payments were financially immaterial in the context of Nigeria and that it was not possible to

⁵¹⁴ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

reconcile them. The IA thus proposed to require material companies to unilaterally disclose payments under the five revenue streams because they were considered important to the areas served by local councils. Section 4.1 (p.37) of the 2013 EITI Report confirms that material companies were required to unilaterally disclose payments of annual surface rents, PAYE, Business premises and WHT to State Governments' Board of Internal Revenue (SBIR) as well as property fees (tenement rates) to local government councils (LGCs). Section 6.3.1 (p.68) provides the aggregate value of payments under the four streams to state governments for each reporting companies, with 20 companies reporting a total of NGN 1,726,674,950 in payments to SBIRs and 16 companies reporting a total of NGN 25,684,858 in property rates to LGCs in 2013. Annex 10 (pp.109-173) provided the reconciliation templates for each of the 28 companies that reported payments to either SBIRs or LGCs. The 2012 EITI Report provided the same level of unilateral disclosure by solid minerals companies.

Stakeholder views

Representatives from FIRS, RMFAC and industry confirmed that the five subnational direct payment flows covered in the 2013 EITI Report was comprehensive. The IA explained that payments to SBIRs and LGCs were unilaterally disclosed by companies as they were considered non-material, representing 3% and 0.1% of sector revenue respectively, although the IA noted it was not aware that the NSWG had discussed the materiality of such payments. The IA stated that including subnational revenues in the reconciliation process would be extremely laborious as it would involve government agencies at state and local level, with whom it was difficult to communicate. The IA also noted capacity constraints at the level of local councils.

One industry representative highlighted a June 2015 amendment to the Taxes and Levies Act allowing state governments to legislate their own taxes and fees and expressed concern that solid minerals companies might in future be required to pay royalties to both the FGN and state governments in certain states. Other industry representatives were not aware of this change in the fiscal framework.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. In some respects the NSWG has made efforts to go beyond Requirement 4.6 in publishing a standalone FASD Report, where the management and allocation of nine states' revenues were disclosed. The EITI Reports provide material companies' unilateral disclosures of payments to state and local governments and the 2007-2011 FASD Report provided nine of Nigeria's 36 states' disclosures of their direct subnational revenues. However, the NSWG does not appear to have considered the materiality of subnational direct payments, did not set a materiality threshold for such payments and did not reconcile such payments with subnational governments' receipts. In preparing its next EITI Reports, the NSWG should consider the materiality of direct subnational payments and clarify whether the three direct subnational payment streams disclosed only for the solid minerals sector (business premises, annual surface rent and tenement fees) are also applicable to oil and gas companies. Should the NSWG consider that it is not possible to reconcile material direct subnational revenues in its annual EITI reporting, it should submit a request for adapted implementation with the EITI Board.

Level of disaggregation (#4.7)

Oil and gas

Documentation of progress

The reconciled financial data in the 2013 EITI Report was disaggregated by reporting company and by revenue stream in Table 3.4.4 (p.88), although it was noted that StarDeep reported PPT payments that included partners' (Famfa and Petrobras) shares. In addition, Section 3.4.3 (pp.85) noted that NESS fee revenues were not disaggregated by company in the CBN's disclosures and that "most" companies did not report their NESS payments, although some companies responded that shipping companies mostly paid NESS fees on their behalf.

Section 3.4.5.1 (p.89) that PPT was levied on JVs on a company basis (there is no ring fencing), while PPT on PSCs was filed on a license-by-license basis and filed through NNPC-NAPIMS to FIRS. While some of the unilaterally-disclosed information in the 2013 report was disaggregated by project, such as NGL1-2 in Section 4.3.2 (pp.115-116), infrastructure project expenditures in Appendix 3.6.2 (pp.133-144), quasi-fiscal expenditures in Appendix 3.6.3 (pp.145-169) and social expenditures in Appendix 3.6.1 (pp.112-132), none of the reconciled financial data was disaggregated by project. The 2012 EITI Report provided the same level of disaggregation as the 2013 Report.

Stakeholder views

One international CSO considered that the NSWG's approach to disaggregation of reporting appeared to be dictated by the way in which NNPC and its JV partners already reported rather than by a conscious decision of the NSWG.

A member of the Companies Forum noted that project-level reporting could be useful, particularly in relation to the producing assets from which IOCs had divested in the past five years, but that this would represent significant logistical challenges linked to data collection. The representative also noted potential commercial considerations, although he did not consider it impossible to move to project-level reporting. Representatives from companies holding licenses under sole risk, marginal fields and PSC arrangements as well as FIRS and CBN confirmed that all royalty payments were calculated and executed on a license-by-license basis.

Representatives from a US-listed IOC noted that while it would be straightforward to implement project-level reporting for PSCs, this would be impossible for JVs. They explained that the legal framework required that JVs consider all of their OMLs as one, with budget planning and payments executed on a consolidated basis for all OMLs together. Any project-level reporting for JVs would require legal reform according to these representatives. The representatives explained that they had formally written to US regulators explaining this situation and had received an exemption for their Nigerian JV operations from project-level reporting under SEC guidelines implementing Dodd-Frank Act Section 1504. Representatives from FIRS confirmed that JV operators paid taxes and fees on a consolidated basis, not disaggregated by JV. An international CSO noted that the project-level reporting of one US-listed IOC to the US SEC in 2016 had not reported its payments for Nigerian JV operations disaggregated by OML.

Several representatives from PSC-holders noted that all calculations (for PSCs) including crude oil lifting and negotiations on annual work plans with NAPIMS were undertaken on a project-by-project basis. One industry representative noted that levies such as NCDMB or NIMASA levies were not calculated on a license-basis, but rather on a contract-by-contract basis for NCDMB levies and on a cargo-by-cargo basis for NIMASA, which tended to cover operations on several licenses.

Solid minerals

Documentation of progress

The 2013 EITI Report presented data disaggregated by company, government entity and revenue stream as noted in the report's introduction (p.7), with the data provided in this disaggregated way in the company reconciliation templates provided in Annex 10 (pp.109-173). The 2012 EITI Report provided the same level of disaggregation.

Stakeholder views

The IA noted that the NSWG had not discussed the possibility of project-level reporting ahead of the 2012 or 2013 EITI Reports.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. Despite limitations noted in the 2013 O&G EITI Report related to omissions in certain government entities' reporting, which we consider as part of the assessments on materiality (*Requirement 4.1*) and data quality (*Requirement 4.9*), data for both solid minerals and oil and gas is presented disaggregated by company, revenue stream and receiving entity. In preparing future EITI Reports, the NSWG may wish to consider what aspects of its EITI reporting could be undertaken at a project-level and the opportunities for US- and EU-listed companies to use EITI reporting in Nigeria as part of their compliance with US and EU legislation requiring domiciled companies to report project-level payments to government.

Data timeliness (#4.8)

Documentation of progress

Nigeria's 2013 O&G and SM EITI Reports were published on 23 May 2016. On 19 November 2015, Nigeria submitted a request for an extension to the 31 December 2015 reporting deadline for its two EITI Reports to 30 June 2016, citing delays in the President's reconstituting the NSWG as the cause for delay in publishing the 2013 EITI Reports.⁵¹⁵ Given that the NSWG was dissolved on 17 July 2015 following the Presidential election, the request was not endorsed by the NSWG and was signed by NEITI Acting Executive Secretary Dr. Orji Ogbonnaya Orji, although stakeholders were informed informally in December 2015.⁵¹⁶ The EITI Board's Implementation Committee agreed at its 72nd meeting on 23 February 2016 to defer a decision on Nigeria's extension request until Nigeria published the two EITI Reports. Both EITI Reports appear to have been ready for NSWG approval in December 2015, with the date on the 2013 O&G EITI Report reading September 2015 and that on the 2013 SM EITI Report reading December 2015. There is evidence from meeting minutes that the NSWG had been close to approving the 2013 SM EITI

⁵¹⁵ EITI International Secretariat (28 January 2016), IC paper 69-4-D, <http://eiti.org/internal/implementation-committee>.

⁵¹⁶ The International Secretariat's 28 January 2016 assessment of the extension request noted: "To seek endorsement from representatives of civil society and companies was considered to potentially overheat a tense situation by raising expectations about the imminent composition of the MSG. However, a NEITI Companies Forum of the key international oil and gas companies, national oil companies, and mining companies, was held on 2 December and were informed of the extension. It was supported. Civil society has also been informed of the request. This was reiterated at the Civil Society Forum in the third week of December. The donors including the World Bank and various embassies had a consultative meeting with NEITI on 1 December. They were also informed and were in support."

Report even earlier, having agreed at its 16 December 2014 meeting to provide final approval for the 2013 SM EITI Report at its first meeting of 2015.⁵¹⁷ The NSWG's technical committee had approved a draft 2013 SM EITI Report at its 10 March 2015 meeting, subject to minor amendments.⁵¹⁸

The 2012 SM EITI Report was published in December 2014, while the 2012 O&G EITI Report was published in March 2015. There is some confusion in meeting minutes over the actual date of the NSWG's approval. The NSWG approved the 2012 O&G EITI Report at its 16 December 2014 meeting, subject to its amendments, and directed the secretariat to publish it on the NEITI website before 31 December 2014.⁵¹⁹ However the NSWG noted at its 12 March 2015 meeting the EITI Board's approval of its extension request for the 2012 O&G EITI Report to 31 March 2015. Although the NSWG noted that reconciliation of NNPC disclosures was still ongoing, it approved the report for publication by 31 March 2015.⁵²⁰

There was also delay in publishing the 2011 SM EITI Report. While the "core" of the 2011 SM EITI Report was approved by the NSWG on 11 December 2013, the NSWG was granted an extension by the EITI Board for the full report to 31 May 2014. Having approved the draft report by circular on 23 May 2014, the 2011 SM EITI Report was published on the NEITI website that day and subsequently ratified by the NSWG at its 25 June 2014 meeting.⁵²¹

Nigeria published its 2009-2011 O&G EITI Reports in January 2013 and its 2007-2010 SM EITI Report in December 2012. There is however also confusion over the NSWG's effective approval date for the 2009-2011 O&G EITI Report. Having requested a one-month extension from the EITI Board from its 31 December 2012 deadline for publishing the 2009-2011 O&G EITI Report, which was granted despite the EITI International Secretariat's view that Nigeria was not eligible for the extension, Nigeria published the report on 30 January 2013.⁵²² However at its 21 March 2013 meeting, the NSWG was still discussing the finalisation of the 2009-2011 O&G EITI Report and agreed a 25 April 2013 deadline for the IA (Sada Idris & Co.) to complete the report.⁵²³ The NSWG's 2 May 2013 meeting noted that the 2009-2011 O&G EITI Report was only sent by the IA to the NSWG on 29 April 2013.⁵²⁴ The NSWG only finally approved the 2009-2011 O&G EITI Report at its 20 June 2013 meeting⁵²⁵ and approval for its publishing on the NEITI website was only granted by the NSWG at its 27 March 2014 meeting, subject to minor amendments to the "EITI++" section of the report.⁵²⁶

Stakeholder views

All stakeholders consulted expressed concern over the timeliness of NEITI reporting. Several CSOs considered that the timeliness of Nigeria's EITI Reports was a major challenge in terms of both usefulness and relevance of information. The PWYP coalition has repeatedly raised concerns about the timeliness of NEITI data in the past, starting at the time of the delayed publication of the 2006-2008 NEITI Report in

⁵¹⁷ See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

⁵¹⁸ See minutes of NSWG's technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

⁵¹⁹ See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

⁵²⁰ See minutes of NSWG meeting, 12 March 2015, unpublished, provided by NEITI Secretariat.

⁵²¹ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁵²² See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁵²³ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁵²⁴ See minutes of NSWG meeting, 2 May 2013, unpublished, provided by NEITI Secretariat.

⁵²⁵ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁵²⁶ See minutes of NSWG meeting, 27 March 2014, unpublished, provided by NEITI Secretariat.

2011, linking delays in publication to weak support from the Federal Executive Council.⁵²⁷ Government representatives echoed these concerns over timeliness, although FIRS representatives understood the delay in publication given that they considered that such audits took time. NNPC representatives consulted also noted that EITI reporting would be more useful if it was more timely, for instance in disclosing transactions between NNPC and NPDC that could be useful for NNPC's group management. Representatives from NNPC were also concerned over the public's potential misunderstanding over the period covered by NEITI Reports, given that the 2013 O&G EITI Report published in May 2016 was interpreted in the press as indicting the current NNPC management rather than management under the previous government. The NNPC representatives criticised the fact that the 2013 O&G EITI Report had not mentioned current NNPC reforms and raised concerns that such reforms would only be covered in the 2015 EITI Report published in 2017 or 2018. Solid minerals industry representatives consulted also considered Nigeria's EITI Reports to be outdated upon publication and that they thus studied the reports out of interest, rather than as part of their business operations. A past IA noted that given that procurement of the next IA could not commence while the work of the current IA was ongoing, this tended to create delays in EITI reporting.

The Senate President stated his expectation that NEITI reporting would become more timely in 2016, with the aim of producing both the 2014 and 2015 NEITI Reports by end-2016. Representatives from government entities including NNPC, PPPRA and FIRS stated that they already had 2015 data available as of August 2016. All NNPC representatives consulted called for closer cooperation and input from NEITI in shaping NNPC's monthly financial disclosures initiated in August 2015, as a means of mainstreaming EITI reporting in NNPC's monthly disclosures. The Senior Advisor to the President on Economic Matters noted the Presidency's interest in NEITI publishing "interim" reports on a timelier basis. A previous IA and a CBN representative noted that the automation of data collection through an online platform was crucial to streamlining data collection and ensuring more timely EITI reporting.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. The EITI Board did not take a decision on Nigeria's request for a six-month extension to the reporting deadline for its 2013 EITI Reports. The request was not endorsed by the NSWG and the 2013 EITI Reports were published more than five months after the 31 December 2015 deadline. However, there is a case for concluding that Nigeria has made satisfactory progress. It could be argued that the extension request is irrelevant, because the reports were ultimately published within six months of the deadline. Any suspension resulting from the denial of the extension request would have been automatically lifted (see requirement 8.2). The EITI Standard does not specify whether, in these circumstances, the requirement is then considered met. The EITI Board may wish to clarify this matter.

More broadly, there appear to have been consistent delays in Nigeria's EITI reporting. In preparing its next EITI Reports, the NSWG should ensure that procurement of the IA is launched with sufficient time for completion ahead of the reporting deadlines. The NSWG may also wish to explore ways of publishing sections of its EITI reporting separately, particularly those related to contextual information, and to explore means of mainstreaming EITI reporting through reporting entities' routine disclosures.

⁵²⁷ PWYP Nigeria (January 2012), 'Overview of the Nigeria Extractive Industries Transparency Initiative as the National Stakeholders working group holds their validator board meeting today', https://xa.yimg.com/kq/groups/22303365/708498385/name/PWYP_Nigeria+Statement+on+NEITI_Jan_2012.pdf.

Data quality (#4.9)

Procurement of the IA is governed by the 2007 Public Procurement Act, which vests authority for the constitution of the committee charged with technical evaluations of bids to the Chairman of the Tenders Board, interpreted as the NSWG's Board Tenders Committee (BTC) that had been established by the 2011 NSWG Board Charter. Under the NEITI Act, sub-committees such as the BTC derive their mandate from the NSWG and therefore can take decisions on its behalf. Significant decisions can be referred to the full NSWG for approval.⁵²⁸ The procurement of the IA is usually finalised once data collection has been completed. The procurement of the IA is undertaken according to the Prior Review and Procurement Method Thresholds established under the 2007 Public Procurement Act's Quality and Cost Based Selection (QCBS) method.⁵²⁹ The NEITI first issues a call for expressions of interest where interested companies respond to a summarised ToR with a dossier of their compliance documents (e.g. incorporation documents, exports' competencies, previous experience, etc.). The NEITI technical department then ranks bidders according to their technical capacity. The BTC approves the issuance of a request for proposals (RFP) to the selected bidders, circulating the full ToR. The BTC then forms an evaluation committee to assess the bids.⁵³⁰ Once the technical and financial proposals received, the secretariat's technical department scores the bidders on their technical proposals and presents the ranking to the NSWG's technical committee for approval. The secretariat's technical department invites bidders whose technical proposal is ranked above 75 points to the public opening of financial proposals with a one-week advance notice.⁵³¹ Following due diligence by the NEITI Secretariat's legal department on the bidder with the highest combined (technical and financial) score, the BTC forwards its recommendation to the Bureau of Public Procurement (BPP) for no objection and to the Federal Executive Council (FEC) for approval of contract award for contracts of more than NGN 100 million in value⁵³² or to the Secretary to the Government of the Federation's Ministerial Tenders Board for approval for contracts of less than NGN 100 million.

There are a number of requirements for bidders for the IA contract. Foreign firms bidding for the O&G EITI Reports are required to have a local audit company as a partner.⁵³³ Section 4 Sub-section 5 of the NEITI Act prohibits a company having audited a covered entity within the three years preceding the bid from performing NEITI audit in any given year of concurrence.⁵³⁴ The NEITI Act also bars any company from being selected in more than two consecutive bids (although each procurement round can cover several years).⁵³⁵ The Procurement Act 2007 (Part IV, Section 16 sub section 8) states that procuring entities are allowed to deny a firm award of contract based on previous performance.

The procurement process typically takes at least eight months.⁵³⁶ The NSWG has discussed potential ways of shortening delays in procurement of the IA on several occasions, most recently at the new NSWG's induction retreat in April 2016, where one of the suggestions was to consider using the same

⁵²⁸ See minutes of the Board Tenders Committee meeting, 17 April 2013, unpublished, provided by NEITI Secretariat.

⁵²⁹ See minutes of the Board Tenders Committee meeting, 23 and 29 October 2012, unpublished, provided by NEITI Secretariat.

⁵³⁰ See minutes of the Board Tenders Committee meeting, 17 April 2013, unpublished, provided by NEITI Secretariat.

⁵³¹ See minutes of the Board Tenders Committee meeting, 23 and 29 October 2012, unpublished, provided by NEITI Secretariat.

⁵³² See minutes of the Board Tenders Committee meeting, 22 September 2011, unpublished, provided by NEITI Secretariat.

⁵³³ See minutes of the Board Tenders Committee meeting, 22 September 2011, unpublished, provided by NEITI Secretariat.

⁵³⁴ This was invoked when one of three bidders having reached the minimum 75 points technical score for the 2012-2013 Solid Minerals EITI Report, given that the company had audited two material companies in the years under review. See minutes of the Board Tenders Committee meeting, 23 July 2014, unpublished, provided by NEITI Secretariat.

⁵³⁵ See minutes of the Board Tenders Committee meeting, 15 June 2015, unpublished, provided by NEITI Secretariat.

⁵³⁶ See minutes of the Board Tenders Committee meeting, 14 April 2014, unpublished, provided by NEITI Secretariat.

procurement to engage an IA for EITI Reports in two consecutive years.⁵³⁷ While the NSWG had undertaken preliminary work on internal estimates of the cost of the O&G and SM EITI reporting process in the past, it had subsequently been cancelled “based on a previous bad experience where confidentiality was compromised by a consultant engaged to do the job”; the BTC stated it did not wish for such internal estimates to interfere with the QCBS selection method at its 23 October 2012 meeting.⁵³⁸ However the NEITI Secretariat prepared internal cost estimates for the 2012 O&G EITI Report and the BTC agreed at its 21 January 2014 meeting a threshold 10% lower than the secretariat’s internal cost estimate, deciding to reject any “frivolous” bid below the threshold.⁵³⁹

There has been significant debate on both the NSWG and the BTC about inconsistencies between the NEITI Act and the Public Procurement Act. As a BPE representative noted to the new NSWG’s April 2016 induction retreat, the NSWG Board Charter erroneously prescribed procurement approval thresholds for the NEITI when all procurement-related matters were covered by the Public Procurement Act. While Sections 4 and 14 of the NEITI Act refer to the NSWG as the entity responsible for appointing IAs, the BPP representative stated that the NEITI should be responsible for procurement while the NSWG should only supervise, and not be involved, in the procurement process. The involvement of the NSWG in implementation issues such as approving and awarding contracts was seen to “rob” it of its oversight function. Arguing for the need for a harmonisation of the NEITI Act and the Public Procurement Act, the representative also noted that the NEITI Executive Secretary should be the chair of the Tenders Board.⁵⁴⁰ The BTC conducted a procurement training for NSWG members on 27 June 2014 in addition to continuous training for secretariat staff. This also served to highlight inconsistencies between the Public Procurement Act and the NEITI Act in the NSWG’s role in appointing the IA, according to minutes of the 23 July 2014 BTC meeting. It was agreed that the NEITI would formally engage the BPP on this issue in order to resolve it.⁵⁴¹

Oil and gas

Documentation of progress

Appointment of the Independent Administrator (IA): The NSWG appointed a consortium of Taju Audu & Co. (Chartered Accountants) and YKY Consulting (UK) as the IA for the 2013 O&G EITI Report in May 2015, as noted at its 16 June 2015 meeting.⁵⁴² The procurement process was launched on 21 January 2014, when the BTC endorsed the adverts for expressions of interest for the 2013 EITI Report.⁵⁴³ A total of 23 companies responded to the call for expressions of interest by 23 April 2014.⁵⁴⁴ The BTC agreed to issue a request for proposals (RFP) to eight shortlisted bidders at its 10 June 2014 meeting⁵⁴⁵, which the NSWG

⁵³⁷ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

⁵³⁸ See minutes of the Board Tenders Committee meeting, 23 and 29 October 2012, unpublished, provided by NEITI Secretariat.

⁵³⁹ See minutes of the Board Tenders Committee meeting, 21 January 2014, unpublished, provided by NEITI Secretariat.

⁵⁴⁰ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

⁵⁴¹ See minutes of the Board Tenders Committee meeting, 23 July 2014, unpublished, provided by NEITI Secretariat.

⁵⁴² See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

⁵⁴³ See minutes of the Board Tenders Committee meeting, 21 January 2014, unpublished, provided by NEITI Secretariat.

⁵⁴⁴ See minutes of the Board Tenders Committee meeting, 29 April 2014, unpublished, provided by NEITI Secretariat.

⁵⁴⁵ See minutes of the Board Tenders Committee meeting, 11 June 2014, unpublished, provided by NEITI Secretariat.

approved at its 25 June 2014 meeting.⁵⁴⁶ However the issuance of RFPs was delayed and the Executive Secretary explained to the BTC at its 23 July 2014 meeting that this was “in view of the fact that there was no urgency involved in the Oil and Gas Audit 2013 as the report is expected before end of 2015.”⁵⁴⁷ The NSWG agreed at its 16 December 2014 meeting to proceed with a repeat procurement of the Taju Audu & Co consortium for the 2013 EITI Report, following its satisfactory performance for the 2012 EITI Report and the “tight” deadline of end-2015 for producing the 2013 EITI Report⁵⁴⁸, a decision that was confirmed at the NSWG’s 12 March 2015 meeting.⁵⁴⁹

The NSWG had first appointed the Taju Audu & Co – YKY Consulting (UK) consortium for the 2012 O&G EITI Report on 27 May 2014.⁵⁵⁰ The procurement process for the 2012 EITI Report started in October 2012⁵⁵¹ and the BTC issued a RFP for six bidders for the 2012 EITI Report at its 23 October 2012 meeting.⁵⁵² A list of shortlisted bidders for the 2012 EITI Report was forwarded to the BPP on 14 January 2014 and circulated to NSWG members on 21 January 2014.⁵⁵³ While Sada Idris & Co., the IA for the 2009-2011 O&G EITI Report, had received the highest technical score for its bid for the 2012 EITI Report, the NSWG decided at its 27 March 2014 meeting to disqualify the bidder given its poor performance on the 2009-2011 EITI Report (given delayed submission of the final report) and referred the matter back to the BTC for re-evaluation of bids.⁵⁵⁴ At its 14 April 2014 meeting, the BTC considered the option of combining the procurements of the IAs for the 2012 and 2013 O&G EITI Reports, although, recognising this would force the NSWG to ask the EITI Board for an extension on the 31 December 2014 deadline for the 2012 EITI Report, the BTC decided to proceed with the two procurements separately. An ad hoc committee was formed by the Secretariat and four NSWG members to assess the technical proposals.⁵⁵⁵ The BTC assessed the second round of technical scores from the three shortlisted bidders at its 29 April 2014 meeting and agreed on the opening of the highest-ranked bid following the one-week notice period.⁵⁵⁶

With regards to the 2009-2011 O&G EITI Report, a RFP was issued in June 2010 but the BTC only considered bids at its 22 September 2011 meeting.⁵⁵⁷ The BTC had a vigorous discussion of the procurement process for the 2009-2011 EITI Report at its 22 January 2012 meeting.⁵⁵⁸ In the absence of a NSWG in late 2011-early 2012, the NEITI Secretariat had submitted a proposed winner for the 2012 EITI Report to the BPP and the FEC for “no objection” in late 2011. However, the BTC decided that, given that the NSWG had tasked the NEITI Secretariat to undertake due diligence on the bidders at its 22 September 2011 meeting, final approval of the proposed winning bidder was considered to be the NSWG’s final decision and the BTC aligned itself with the NSWG’s decision. The BTC agreed to form a committee of the NSWG Chair, BTC Chair, Executive Secretary and DFA to clarify the “ambiguities and overlap” in the roles

⁵⁴⁶ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁵⁴⁷ See minutes of the Board Tenders Committee meeting, 23 July 2014, unpublished, provided by NEITI Secretariat.

⁵⁴⁸ See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

⁵⁴⁹ See minutes of NSWG meeting, 12 March 2015, unpublished, provided by NEITI Secretariat.

⁵⁵⁰ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁵⁵¹ See minutes of NSWG meeting, 18 October 2012, Ref: NSWG/2012/4, unpublished, provided by NEITI Secretariat.

⁵⁵² See minutes of the Board Tenders Committee meeting, 23 and 29 October 2012, unpublished, provided by NEITI Secretariat.

⁵⁵³ See minutes of the Board Tenders Committee meeting, 21 January 2014, unpublished, provided by NEITI Secretariat.

⁵⁵⁴ See minutes of NSWG meeting, 27 March 2014, unpublished, provided by NEITI Secretariat.

⁵⁵⁵ See minutes of the Board Tenders Committee meeting, 14 April 2014, unpublished, provided by NEITI Secretariat.

⁵⁵⁶ See minutes of the Board Tenders Committee meeting, 29 April 2014, unpublished, provided by NEITI Secretariat.

⁵⁵⁷ See minutes of the Board Tenders Committee meeting, 22 September 2011, unpublished, provided by NEITI Secretariat.

⁵⁵⁸ See minutes of the Board Tenders Committee meeting, 22 January 2012, unpublished, provided by NEITI Secretariat.

of the Secretariat Tenders Committee (STC), the BTC and the NSWG.⁵⁵⁹

Terms of Reference for the Independent Administrator: The first ToR for the O&G EITI Report (covering 1999-2004) was originally developed by a consultant based on international best practice but have since been reviewed for every procurement round “based on the experience garnered by the Secretariat.”⁵⁶⁰ Since December 2012, the NEITI Secretariat’s technical department has been charged with drafting the IA’s ToR, with input from other secretariat departments, before circulating the draft ToR to the NSWG’s Technical Committee for comments and to the full NSWG for approval.⁵⁶¹

The ToR for the IA for the 2013 EITI Report was endorsed by the NSWG’s technical committee on 3 March 2015⁵⁶² and by the NSWG at its 12 March 2015 meeting.⁵⁶³ The ToR is generally consistent with the Standard ToR agreed by the EITI Board with several notable exceptions, but its scope is significantly larger than the standard ToR in that it also requires reconciliation of production and lifting volumes as well as intra-government transfers of oil and gas revenues. The ToR provides the detailed scope of the contextual information that should be included in the EITI Report as required by the EITI Standard, such as details on contribution of the extractives to the economy, production and export data, overview of the extractives sector, legal and regulatory framework, license allocations, license registers, contracts, beneficial ownership, revenue distribution, social expenditures and quasi-fiscal expenditures.

However the ToR omitted reference to transportation revenues and specifically excluded subnational transfers and direct subnational payments from the scope of reconciliation, with state governments excluded from reporting.⁵⁶⁴ In addition, the second part of Annex 1 of the agreed ToR, covering revenues and reporting entities, and Annex 2 covering supporting documentation were left blank by the NSWG, although the revenue streams included in the scope of reconciliation (p.7) and the reporting entities (p.9) were listed in the full text of the ToR. The agreed ToR included all of the standard options for quality assurance⁵⁶⁵ that are part of the standard ToR agreed by the EITI Board.

The ToR for the Independent Administrator for the 2012 O&G EITI Report were endorsed at the NSWG’s meeting on 12 December 2013.⁵⁶⁶ While the BTC’s 21 January 2014 meeting stated that the 2012 ToR was consistent with the standard ToR agreed by the EITI Board, it included the same deviations as noted for the 2013 EITI Report.⁵⁶⁷

Agreement on the reporting templates: The reporting templates for oil and gas are designed according to the type of commercial arrangement (JV, MCA, PSC, Sole Risk and Marginal Field), with reporting entities receiving all templates and returning only those applicable to their arrangement. The NSWG’s technical committee agreed to use the 2012 reporting templates for the 2013 O&G EITI Report at its 10 March 2015 meeting, with a new reporting template for NESS payments.⁵⁶⁸ This followed a workshop with reporting

⁵⁵⁹ See minutes of the Board Tenders Committee meeting, 22 January 2012, unpublished, provided by NEITI Secretariat.

⁵⁶⁰ See minutes of the Board Tenders Committee meeting, 19 December 2012, unpublished, provided by NEITI Secretariat.

⁵⁶¹ See minutes of the Board Tenders Committee meeting, 19 December 2012, unpublished, provided by NEITI Secretariat.

⁵⁶² See minutes of NSWG’s technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

⁵⁶³ See minutes of NSWG meeting, 12 March 2015, unpublished, provided by NEITI Secretariat.

⁵⁶⁴ See p.22 of ToR for the Independent Administrator for the 2013 Oil and Gas EITI Report.

⁵⁶⁵ These included including requesting confirmation letters from reporting companies’ external auditors and, “where relevant and practical”, from government entities’ external auditors.

⁵⁶⁶ See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

⁵⁶⁷ See minutes of the Board Tenders Committee meeting, 21 January 2014, unpublished, provided by NEITI Secretariat.

⁵⁶⁸ See minutes of NSWG’s technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

entities on the draft 2013 reporting templates in February 2015, where companies and government entities were able to provide input to the reporting templates.⁵⁶⁹ Following approval of the reporting templates, data collection started on 1 April 2015⁵⁷⁰ and was concluded in late May. Following its appointment in June, the IA signed confidentiality agreements with all reporting entities and undertook verification visits to all reporting entities.⁵⁷¹ It then produced an initial report in September 2015 and, following revisions together with the NEITI Secretariat's Technical Department, produced a final draft of the 2013 O&G EITI Report in December 2015.

Review of audit practices: The 2013 EITI Report provided a review of statutory government audit procedures, as part of its description of the budget process in Section 2.8 (p.39), and provided links to the Budget Office of the Federation⁵⁷² and to the Office of the Auditor General of the Federation⁵⁷³. However, this included only a cursory description of the audit process, explaining that the Auditor General of the Federation (OAGF) was responsible for auditing public accounts while the Public Accounts Committee (PAC) was responsible for post-budget period audits. Sections 8.8.1 (pp.320-321) and 8.13 (pp.338-339) described the OAGF's statutory audit responsibilities under Sections 85 S.5 and 80(1) of the Constitution, while Figure 8.13 (p.339) provided a flow chart of the OAGF transaction recording process. The 2013 EITI Report did not provide advice to readers on how government entities' financial statements could be accessed and we note that the latest audit reports available on the OAGF website⁵⁷⁴ are for 2007. The OAGF's letter of attestation in Appendix 1.13 (p.1) confirmed that all 2013 government accounts were audited in line with the International Standards of Accounting (ISA) (*see below*).

However, the 2013 EITI Report did not refer to or describe the statutory procedures for company auditing, nor whether all material companies had their 2013 accounts audited, nor provide an assessment of whether these were required to be in line with international standards. Section 1.3 (p.20) of the 2013 Report noted that all reconciled payments disclosed were confirmed with reporting entities' audited financial statements, which would imply that all reporting entities had their 2013 financial statements audited and had made these available to the IA for review, although this was not explicitly stated. It did not provide guidance on how to access the audited 2013 financial statements for all reporting entities either.

Assurance methodology: The approach to ensuring the reliability of data in the 2013 EITI Report appears to have changed substantially between the ToR and the actual 2013 EITI Report, with no evidence from meeting minutes of the NSWG's approval of the revised approach. While Section 7 of the 2013 ToR (p.15 of the 2013 EITI Report's appendices) included all of the standard options for quality assurance⁵⁷⁵ that are part of the standard ToR agreed by the EITI Board, the 2013 Inception Report (pp.39-40) stated that since the IA was not involved in data collection it would ensure the integrity and reliability of the reported data in the course of field validations at company levels by ensuring that the data collected was "vouched" to the companies' records and to audited financial statements. There is no evidence from meeting minutes

⁵⁶⁹ See minutes of NSWG meeting, 12 March 2015, unpublished, provided by NEITI Secretariat.

⁵⁷⁰ See minutes of NSWG's technical committee meeting, 3 and 10 March 2015, unpublished, provided by NEITI Secretariat.

⁵⁷¹ See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

⁵⁷² <http://www.budgetoffice.gov.ng/>.

⁵⁷³ <http://www.oaugf.gov.ng/>.

⁵⁷⁴ <http://www.oaugf.gov.ng/AuditReport.html>.

⁵⁷⁵ These included including requesting confirmation letters from reporting companies' external auditors and, "where relevant and practical", from government entities' external auditors.

of the NSWG's approval of the 2013 Inception Report, although minutes from the NSWG's 16 June 2015 meeting only note that the IA had submitted the Inception Report prior to the meeting.⁵⁷⁶ Sections 1.13 (pp.24-25) and 1.3 (p.20) of the 2013 EITI Report described the approach to quality assurance. For companies, reporting templates were "comprehensively reviewed and also "vouched" (for consistency)" in comparison with audited financial statements and explanations obtained from companies where discrepancies occurred. For government entities, reporting templates were checked for consistency with "the provisions of Nigerian laws, Government Financial Regulations and Generally Accepted Accounting Standards." Section 1.3 (p.20) noted that the audited financial statements and records obtained from all the covered entities (government and companies) were reviewed to ensure that the populated templates were linked to the financial statements and company records. The policies and procedures for the preparation of financial statements and the procedures for payments were also documented and reviewed to ensure compliance with the International Standards in Auditing (IASs) and the relevant oil and gas regulatory laws on payments. Section 1.6 (p.21) noted that the audit was conducted on a cash-based accounting basis. Reference was made to Generally Accepted Accounting Standards but only for government disclosures, not for companies.

Confidentiality: The 2013 Inception Report (pp.39-40) stated that the IA was not involved in data collection, which was undertaken by the NEITI Secretariat. There is no evidence from meeting minutes of the NEITI Secretariat's provisions for preserving the confidentiality of disclosures prior to reconciliation. The IA noted (p.21) that the main sources of information for the 2013 Report were reporting templates of participating entities, returned to the IA electronically. Section 1.13 (p.25) noted that confidentiality agreements were signed with reporting companies to safeguard information and ensure that EITI disclosures were only used for production of the EITI Report.

Reconciliation coverage: Section 1.7 (p.22) provided the reconciliation coverage in line with the agreed materiality threshold in terms of PPT and royalties, but not in terms of total government revenues from the extractive industries. The IA states in Section 6 (p.127) that all financial flows reported as payment by companies were as confirmed received by the respective receiving government agencies for 2013. The names of government entities that did not report were provided, but the names of non-reporting companies were not and the materiality of omissions by non-reporting companies was not provided. (see *Requirement 4.1*)

Assurance omissions: Section 1.3 (p.20) of the 2013 Report noted that all reconciled payments disclosed were confirmed with reporting entities' audited financial statements, which would imply that all reporting entities had their 2013 financial statements audited and had made these available to the IA for review, although this was not explicitly stated.

Section 1.13 (p.25) noted the OAGF's attestation that government agencies had fully declared all material flows to the government in its reconciliation forms and that those amounts were consistent with the financial statements of the government for the period audited. The OAGF's letter of attestation in Appendix 1.13 (p.1) stated that "*the OAGF examined data and revenues received by government agencies mentioned and confirms that it tested the completeness and accuracy of payments data submitted to the EITI reconciler from the audited accounts of the Federation for the year 2013 under the Auditing Standards of Supreme Audit Institutions (ISSAI) published by INTOSAI. Based on this examination, we confirm that the transactions reported therein are in accordance with instructions issued by the NSWG and also certify that*

⁵⁷⁶ See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

the audit was conducted in line with International Standards on Auditing (ISA) and other best practices. It is in the opinion of the audit, that reconciled data reported by government entities and companies are reliable and consistent with the underline records made available at the respective entities.”

However, the 2013 EITI Report highlighted several quality assurance omissions by government entities. Section 1.11 (p.23) noted that NESS and NIMASA did not provide corroborative data on their revenues, while Section 6.17 (p.167) noted that the NESS Secretariat did not produce audited annual reports containing statements of income and expenditures in accordance with pre-shipment inspections required under the 1996 Export Act.⁵⁷⁷ Section 6.15 (p.165) also noted NIMASA’s lack of reporting in the 2013 EITI Report. Section 8.6.14 (p.308) noted that “some” payments into CBN accounts were recorded without names of paying entities, resulting in improper recording and the creation of “unidentified templates” by CBN for PPT, VAT, Royalties and Gas flare penalties. Section 8.6.14 (pp.308-309) noted the lack of effective receipt issuance at DPR.

Data reliability assessment The IA’s September 2015 letter of finalization for the 2013 EITI Report (p.3) noted that the procedures adopted were not designed to constitute an audit or review in accordance with the ISA and that the IA thus did not express any assurance on the NEITI information beyond explicit statements in the EITI Report.

Sourcing of information: The ToR for the IA in the 2013 EITI Report’s Appendix 1.2 (pp.2-49) clearly assigned responsibility to the IA for drafting the contextual information in the 2013 EITI Report. Appendix A provided a timeline and individual stakeholder responsibilities for production of the various parts of the 2013 EITI Report, revealing that all research and drafting was undertaken by consultants. The authorship of Taju Audu & Co and YKY Consulting (UK) was confirmed in the September 2015 letter of report finalization (p.3). Section 1.5 (p.21) described the sources of data in the 2013 EITI Report in general terms, including financial statements, accounting records, various transaction registers and past NEITI Reports and (un-named) secondary sources. Comments and responses from various reporting entities (individual companies, NNPC, DPR, FIRS) were included throughout the 2013 EITI Report in relation to past or current NEITI findings and recommendations, and these were consistently sourced. While most non-financial information in the 2013 EITI Report was consistently sourced, we note the existence of certain gaps such as Reserves estimates in Sections 2.2 (pp.27-28), 8.6.4 (pp.295-299) and Table 8.6.4 (p.298), as well as disaggregated crude oil theft figures in Sections 8.5.9A-J (pp.282-287). Section 8.5.10 (p.293) noted limitations on the reliability of 2013 export crude oil loss figures due to the incompleteness of producers’ records and the lack of evidence provided by NNPC, noting that there is “no doubt” that actual losses could be larger than loss figures reported for 2013.

Past recommendations: Section 10 (pp.392-396) of the 2013 EITI Report provided an assessment of progress in following up on recommendations from previous EITI Reports. The IA’s assessment was that ten of the 25 past EITI recommendations had either been initiated or completed⁵⁷⁸, while the remaining

⁵⁷⁷ The 2013 EITI Report recommended that comprehensive and regular reporting of NESS operations be undertaken, as well as the reconciliation of export volumes (from other agencies like DPR and the Department of Weights and Measures of the Federal Ministry of Trade and Investments) in the NESS’ annual financial report.

⁵⁷⁸ The past EITI recommendations successfully follow up on were: Offsetting of outstanding Education Tax payments against PPT payments in Section 10.1.1 (p.392); FIRS and DPR opened separate accounts in 2007 for Tax and Royalty proceeds and started monthly reconciliation meetings to ensure smooth implementation of the resolutions of in-kind transactions, in Section 10.1.2 (p.392); DPR established accounting systems to ensure NNPC notifies it of any new block awards to manage all signature bonus commitments entered into by companies, in Section 10.1.3 (pp.392-393); two companies, Chevron and Mobil, made their

15 had not yet been successfully implemented.⁵⁷⁹

Current recommendations: The 2013 EITI Report included many recommendations, both related to strengthening EITI reporting and linked to broader extractive industry governance.⁵⁸⁰ However, recommendations in the 2013 EITI Report did not relate to reforms needed to bring auditing practices in

outstanding PPT payments while the variance is being contested, in Section 10.1.4 (p.393); settlement of court litigation was reached on OML 13 & 16, which were transferred back to the government and re-tendered as OPLs 2001 – 2003 (former OML 13) and OPL 2004 (former OML 16), in Section 10.1.6 (p.393); NNPC confirmed that the total subsidy approved and certified by the PPPRA for the period of January to December 2012 amounted to NGN 893.746 billion, thereby reconciling that subsidy claim, in Section 10.1.7 (p.393); PPPRA provided updated schedule and reconciled the differences in recovery remittances to ensure accuracy of payment records between PPPRA and OAGF, in Section 10.1.8 (p.393); a guideline was put in place for managing crude sales during Trial Marketing Periods (the IA had access to this) in order to harmonise the different practices across PSCs, in Section 10.1.9 (p.393); from 2013, the rates used by NNPC for domestic crude oil allocation into the Federation Account were as advised by CBN, stopping the practice of discretionary selection of exchange rates used by NNPC, in Section 10.1.10 (p.394). The tenth recommendation on which the 2013 Report considered there had been progress was on NNPC's non-compliance with the 90 days credit limit on domestic crude allocations in Section 10.1.5 (p.393). A monitoring framework was jointly developed by OAGF, RMAFC and NNPC to ensure that payments be made by NNPC when due, although no effective date of implementation is provided.

⁵⁷⁹ The 15 past EITI recommendations which had not yet been fully followed up on and implemented were: crude oil pricing regime, still in arbitration, in Section 10.2.1 (p.394); royalty and PPT validations affected by still-contested pricing in Section 10.2.2 (p.394); disagreement over the basis for royalty computation under the 1993 PSC, with over USD 8 billion in "contingent liability" in Section 10.2.3 (p.394); dividends from NLNG to NNPC (USD 11.63 billion outstanding) in Section 10.2.4 (p.394); while the 2000 MoU regulating JVs was replaced the new fiscal regime still does not use OSP and payments in some years are contested, in Section 10.2.5 (p.393); lack of defined agreement for sharing associated gas under PSCs in Section 10.2.6 (p.394); lack of defined standard for crude oil measurement for royalty purpose in Section 10.2.7 (pp.394-395), with DPR's new measurement guideline meant to take effect in Q3-2014 but yet to be; progress on management of refined product importation and distribution, with PPMC starting to convert obsolete loading meters from analogue to digital at some depots, in Section 10.2.8 (p.395); losses of petroleum products in pipelines through theft and sabotage in Section 10.2.9 (p.395); loss of revenue due to NNPC Pioneer Status for some oil and gas companies in Section 10.2.10 (p.395); NNPC's deduction of subsidy at source from domestic crude sales in Section 10.2.11 (p.395); losses due to OPA/RPEA arrangements in Section 10.2.12 (p.395); issues in fiscal regime used by Addax in royalty computations pending Supreme Court adjudication, in Section 10.2.13 (p.395); issues in royalties for PSC production beyond 1,000 metres water depth in Section 10.2.14 (p.395); issues in Federation equity crude entitlements related to NPDC-operated blocks and blocks divested from NNPC to NPDC in Section 10.2.5 (pp.395-396).

⁵⁸⁰ Key recommendations of the 2013 EITI Report included: proper recording of all transactions in Section 8.8.1 (pp.320-321), including receipts to oil and gas companies following payment; inclusion of narration by the receiving bank (CBN) for each transaction; monthly reconciliation meetings between CBN, companies and the beneficiary revenue agencies to reconcile transaction records; OAGF's establishing a formal structure to monitor financial contributions from oil and gas companies to the Niger Delta Development Commission (NDDC) and Nigerian Content Development and Monitoring Board (NCDMB). Pricing methodologies should be selected by crude oil buyers, reviewed by a department independent from NNPC-COMD, and supported by a valid audit trail in Section 8.14.1.1.5 (pp.345). Minister of Petroleum Resources to compel DPR to finalize the appropriate pricing methodology for royalty computations, swift resolution of pricing controversy, and DPR, FIRS and NNPC to conclude the on-going pricing methodology discussions in Section 3.4.5.3 (pp.92-93). NNPC-NAPIMS to ensure periodic and timely verification of capital costs claimed by MCA operators and to conduct value for money audits to assess the benefits accruable from MCAs in Section 4.3.10.1 (p.123), including full and periodic reconciliation of gas volumes between NNPC and IOCs. DPR is to clarify or interpret section 61(1) of the Petroleum (Drilling and Production) Regulations of 1969 (as amended) to ensure uniform enforcement of quarterly payments deadlines/frequency on payments across all petroleum companies in Section 3.4.5.4 (p.94). NNPC to make available all information relevant to the NEITI Oil and Gas Audit and auditors to sign relevant confidentiality and data protection agreements in Section 4.2.1.1 (p.114). Comprehensive and regular reporting of NESS operations to include NESS collections, details of NESS fee payers and the corresponding export values, and the NESS annual financial report to reconcile export volumes recorded with those of other regulatory agencies in Section 6.17 (p.167). Recommendation for annual or bi-annual block bidding rounds to allocate blocks to suitable operators in Section 8.6.14 (p.306). Investigation of all past divestments/assignments of JV assets (mainly involving NPDC) in Section 6.6.7 (p.141). Timely and periodic reconciliation of production volumes between NNPC and DPR in Section 8.4.4 (p.259). Regular audits by NNPC on the JOA operators' bank accounts to ensure proper reconciliation of cash call accounts and ensure that Pan Ocean makes payments of outstanding cash call in Section 6.6.6 (pp.138-139). NAPIMS to maintain records of cash calls paid/refunded on each OML and make these available to the NEITI Audit in Section 6.6.7 (p.141). Introduction of integrated reporting through NEITI efforts to establish the NEITI Audit Data Base Management System (NADBMS) in Section 9 (p.392).

line with international standards.

The ToR for the 2012 Report defined (p.25) the same assurances to be provided by entities as in the 2013 ToR. The 2012 EITI Report similarly confirmed that information provided through reporting templates by government reporting entities were kept in accordance with the provisions of Nigerian laws, Government Financial Regulations and Generally Accepted Accounting Standards (p.25), while all reporting from material companies was also compared to their audited financial statements. The OAGF attested to the reporting templates submitted by all government entities (pp.25-26). The 2012 Report did not provide guidance on how to access reporting entities' audited financial statement.

Stakeholder views

A member of the NEITI Secretariat explained that the secretariat had been successful in bringing down the cost of the IA and improving the quality of EITI Reports by following open competitive bidding. Secretariat staff confirmed that representatives from all three stakeholder groups had been involved in the procurement process for the 2013 EITI Report. Several CSOs noted that the conflicts between procurement rules under the Public Procurement Act and the NEITI Act posed a challenge at every procurement round. One CSO noted that the BTC had asked for the BPP to interpret the NEITI Act's procurement provisions but that this had not resolved the issue. A secretariat staff noted that while a past NSWG Chair had maintained that the NSWG had powers to procure the IA under the NEITI Act, the Public Procurement Act had always been followed in practice. Several secretariat staff noted that the NEITI Secretariat would not forward a recommendation related to the IA's procurement to the Secretary to the Government of the Federation (SGF) without approval from the NSWG and that the SGF had never acted against the wishes of the NSWG. A secretariat staff noted that the BPP had sent a strongly-worded letter to the NEITI Secretariat after the new NSWG's induction in April 2016 stating that the NSWG did not have the right to procure the IA itself. The NSWG had subsequently disbanded the BTC and established a due process committee to ensure that due process was followed in the procurement of the IA, according to secretariat staff.

A past IA noted that while it was not necessary to bid for NEITI work in consortium with a foreign partner, successful bidders would typically require staff with skills, such as a crude oil metering measurement expert for pricing calculations and a licensing expert, which the IA claimed were difficult to source within Nigeria. The PWYP Nigeria coalition has raised concerns over the procurement process for IAs in the past, focusing on questions about the capacities of international consultants, the lack of transparency in procurement and the choice of certain Nigerian-owned firms (such as Sada Idris, and Haruna Yahaya & Co.) as the IAs in 2012.⁵⁸¹

All CSO and industry representatives consulted noted that neither of their constituencies provided input to the development of the ToR for the IA, although they did provide input to the design of reporting templates, even if revisions to reporting templates were typically minor. One CSO who maintained close relations with the NEITI Secretariat stated that the secretariat typically reached out to them informally to seek comments on the draft ToR for the IA. Most industry representatives consulted considered that the ToR for the oil and gas IA had initially been agreed in 2004 and had only undergone small changes thereafter. Members of the Companies Forum noted that companies had not been involved in drafting

⁵⁸¹ PWYP Nigeria (January 2012), 'Overview of the Nigeria Extractive Industries Transparency Initiative as the National Stakeholders working group holds their validator board meeting today', https://xa.yimg.com/kq/groups/22303365/708498385/name/PWYP_Nigeria+Statement+on+NEITI_Jan_2012.pdf.

the ToR for the IA for the 2013 EITI Report (nor previous ToRs), as industry wanted to remain independent from NEITI and not be seen to be interfering in their work. One industry representative noted that one of the main reasons for creating the Companies Forum in November 2015 was to ensure company engagement in EITI implementation, including in providing input to the drafting of the ToR. A former NSWG Chair noted that the first NSWG had consistently engaged in technical discussions, including providing substantive input to drafting the ToR for the IA, and that this ensured that there was sufficient buy-in from all stakeholders required to report.

A past IA noted that EITI reporting templates had originally been developed in 2006 for the first NEITI Report covering 1999-2004 and that all subsequent templates had only introduced revisions to the existing templates. Secretariat technical department staff explained there had been no stakeholder workshop on the 2013 reporting templates given that the only change to the 2012 templates had been the inclusion of NESS fees, but that a two-day reporting templates workshop had taken place in 2014 for the 2012 EITI Report. The IA noted that the main difference between the 2012 and 2013 NEITI Report ToRs was the inclusion of NPDC in the scope of reporting, while the main revision in the 2012 templates had been the template for NPDC. While the 2013 EITI Report had expanded the scope of reporting to include JV cash calls for NPDC on divested blocks, this had not required additional templates since cash calls had already been covered in previous templates according to the IA and secretariat staff. A member of the NEITI Secretariat confirmed that the reporting templates had remained broadly constant since the 2012 EITI Report, but that the main changes in the 2013 EITI Report related to beneficial ownership disclosure, NESS levies and social expenditures.

Secretariat staff noted that they typically received comments on draft reporting templates from all three stakeholder groups on the NSWG. All industry representatives noted that industry had the opportunity of providing input on the reporting templates during two-day workshops on the reporting templates, but that any changes they suggested were always minor and typically related to the lay-out of reporting templates rather than the substance. However, most industry representatives stated they did not consider it to be industry's role to provide substantive input to the design of EITI reporting templates and that such input would be inappropriate, given that they considered EITI reporting as a pure compliance issue. One industry representative expressed concerns over potential anti-trust litigation if there was even a perception that companies were organising to try to influence the methodology of the government auditing, which they considered the NEITI Reports to be. Several industry representatives noted that reporting templates (particularly sections related to payments) were usually designed in a way that did not fit in with their in-house accounting systems. Several FIRS, RMFAC and CBN representatives consulted noted that they always participated in the templates workshops and provided input, although these only constituted minor amendments. CSOs noted they did not tend to participate in reporting template workshops, although secretariat staff noted that a few CSOs normally attended the reporting templates workshops prior to data collection, although these workshops mainly involved companies and government entities. A development partner noted that the templates workshops appeared to be more focused on explaining reporting templates to material entities rather than as a means of seeking their input. Most industry representatives highlighted a change in the approach to agreeing reporting templates for the 2013 EITI Report, given that some reporting templates (such as the one related to crude oil losses) that had been agreed as being optional for the 2012 EITI Report were then sent to them with the provision that it was mandatory to complete them. Industry representatives confirmed that each reporting template included a descriptive page to guide reporting entities, but noted their impression that the definitions of payment flows were not always sufficiently specific.

The IA and technical department staff confirmed that the IA had not been involved in designing the reporting templates for the 2012 or 2013 EITI Reports and that the NEITI Secretariat had undertaken data collection. Secretariat staff explained that the NEITI Secretariat had started helping with data collection for the 2012 EITI Report due to delays in procurement of the IA and the need to meet tight reporting deadlines. The IA considered that the government was responsible for sending and collecting reporting templates because it was difficult for private companies like theirs to get cooperation from material companies. While there were no mechanisms at the NEITI Secretariat for ensuring the confidentiality of information pre-reconciliation, the IA said it did not consider this to affect the reliability of the data since the information in the reporting templates was subsequently reconciled with original documents (e.g. receipts or crude mass balances) during the field visits. The IA also noted that companies had never raised concerns over the reporting template information during field visits. A secretariat staff explained that the NEITI Secretariat signed a non-disclosure agreement with each material company to confirm that information in their reporting templates would only be used for the purposes of NEITI reporting. The NDAs were typically signed by the secretariat's technical director to provide some level of protection to the Executive Secretary. The IA confirmed that it also signed NDAs with reporting companies since they would not be granted access to companies' facilities for verification without such agreements. Members of the Companies Forum noted that companies did not have concerns about the confidentiality of information pre-reconciliation, but that they had expressed concerns over the (cyber-)security of disclosures on the automated data collection platform under development in 2015. Once appointed, the IA explained that it reviewed the returned reporting templates for completeness and based their inception report on these templates, without contact with reporting entities.

The IA confirmed it had only examined companies' audited financial statements during the verification phase, not during the inception phase. While the IA noted that all material oil and gas companies provided 2013 financial statements audited to international standards, the IA had only kept copies of certain companies' financial statements and had not documented its review of audited financial statements. The IA confirmed that Nigerian auditing standards were in line with ISA, which an OAGF representative confirmed and noted that it was a member of INTOSAI. A former IA noted that the FGN had switched to accrual-based accounting in 2015. For government entities the IA stated that it had not examined their audited financial statements but had verified reporting templates against original receipts or bank records. The IA confirmed it had not had access to all government entities' audited financial statements, noting NNPC had not undertaken an audit since 2005 and that FIRS and DPR did not have up to date audited financial statements. An OAGF representative explained that the OAGF was not empowered to audit parastatals established by Act of the National Assembly, but was empowered to vet (or comment) on their audits that were undertaken by private external auditors. The OAGF representative explained that some (but not all) OAGF reports were available on their website, although its intention was for all audit reports to be published in due course and that all audit reports were available on demand. NNPC representatives explained the two-tier structure of their audit procedures: the OAGF undertook auditing of the FGN's upstream investments through NNPC, while the second type of audit was undertaken by private auditors and covered all of the NNPC group's activities, including at the level of subsidiary units. NNPC representatives noted that their 2014 and 2015 group audits were ongoing and due to be completed by October 2016 and January 2017 respectively. The publication of such audits was not automatic and was subject to the OAGF's decision following presentation at the National Assembly's Public Accounts Committee according to NNPC representatives. PwC called NNPC's accounting system for sales "inaccurate and weak," as evidenced by "significant discrepancies in data from different

sources.⁵⁸² NRGi has cited sources from KPMG's 2010-2011 report on NNPC, the Presidential Task-Force and the PwC audit of NNPC describing the lack of centralized information system within NNPC, with data spread across individual work-stations causing significant deviations in figures. While NNPC's implementation of SAP enterprise planning software had been ongoing for some time, it remained unfinished as of mid-2015 according to NRGi.⁵⁸³

Staff from the NEITI Secretariat's technical department confirmed that the management representation letter signed by reporting entities as part of their reporting templates did not refer to their audited financial statements. The IA confirmed that the management certification of reporting templates did not refer to the accrual basis for their accounting nor the cash basis for their EITI reporting. Members of the Companies Forum consulted noted that they would be unwilling and unable to sign a management representation letter that stated that cash-based EITI disclosures were consistent with their accrual-based audited financial statements given that there was a wide gap between cash- and accrual-based accounting figures. They noted that most payments related to Q4-2013 would have been paid in Q1-2014 for instance.

Most stakeholders consulted conceived of the EITI Reports as a form of audit (a "quasi-audit"), albeit not a statutory audit in line with international standards, given that disclosures through EITI reporting templates were verified against original receipts, where possible, and physical flows. Several government representatives from CBN and FIRS considered NEITI data to be reliable given that the IA verified information disclosed in reporting templates against raw data of bank statements and with physical flows that supported the financial flows. An industry representative noted that the IA checked some receipts, but in other instances were satisfied with lifting schedules. In its ten-year review, NEITI highlighted the challenges within government to ensure consistent and reliable record keeping for EITI purposes: in the absence of complete records by OAGF, the IA relied on records of the CBN as the custodian of FGN bank accounts, whose records were not strictly maintained for the purpose of EITI reconciliation.⁵⁸⁴ A key challenge was government's record-keeping, according to an industry representative, which made it impossible to check all receipts since companies did not receive receipts for in-kind payments such as PPT or Profit Oil. While previous IAs had asked for all receipts, the fact that NNPC did not provide receipts for in-kind payments had prompted an evolution in the quality assurance procedures, with the IA now collecting bank statements as evidence of payments. A former Executive Secretary highlighted the challenges in tracking the use of NNPC's domestic crude allocations given that refineries maintained rolling inventories, which created challenges to quantify crude volume throughputs based on opening and closing storage balances. The former Executive Secretary considered the NEITI Reports to constitute an audit given that there were one or two levels of verifications of reporting entities' disclosures against either original receipts or physical crude flows. The representative noted that the investigation of discrepancies and multiple verifications were the best the NEITI could do, although the existence of discrepancies did not reflect deficiencies in data reliability, but rather highlighted the use of NEITI reporting. Representatives from one IOC noted that they considered the NEITI reports to be a form of audit, but raised their concerns that the scope of the NEITI Reports tended to veer into territories where

⁵⁸² p.18 of PwC Audit of NNPC, as cited in Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria',

http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁵⁸³ Natural Resource Governance Institute (August 2015), 'Inside NNPC Oil sales: a case for reform in Nigeria', http://www.resourcegovernance.org/sites/default/files/documents/nrgi_insidennpcoilsales_mainreport.pdf.

⁵⁸⁴ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?', <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

the auditors did not have expertise. A representative from a PSC-holder noted that the NEITI's recalculation of tax liabilities gave rise to a perception that this was an audit given that the IA did not only check actual payments but also compared these to their calculations of what should have been paid. An OAGF representative explained that, under the NEITI Act, NEITI Reports were sent to the OAGF for comment and that it considered the information contained to be "reliable enough". An international CSO noted that there were many different types of audit and that he did not consider the EITI Reports to be a source of reliable information, but rather were useful as pointing towards deviations from statutory rules in practice.

The IA stated that it considered the EITI Report to constitute an auditor's approach to reconciliation, rather than an audit. However, it noted that the quality assurance procedures were sufficient to ensure the reliability of EITI information given that reporting templates that were signed by reporting entities' management were then verified against primary sources such as payment receipts and physical flows, with reference to each entity's audited financial statements. The IA noted it had not identified any discrepancies between reporting companies' audited financial statements and their EITI reporting templates in the 2013 EITI Report. One CSO did not consider the NEITI Reports to constitute audits but rather a series of reconciliations. While the NEITI reporting relied on existing audited financial statements, the representative questioned how this was possible for all reporting entities when NNPC had not been audited to international standards since 2005. A representative from a company operating under PSC noted that he did not consider the NEITI Reports to be a form of audit, but rather a reconciliation given that the IA adopted a sampling approach to checking original receipts for specific payments, which was determined by the size of the payment and the degree of discrepancies between government and company disclosures. The IA confirmed it only checked receipts for single transactions above 0.5% of total government oil and gas revenues and for payments for which there were discrepancies. However, other industry representatives considered that the IA checked all receipts associated with payments disclosed in EITI reporting templates. One CSO noted that while the IA typically included a statement on the comprehensiveness and reliability of the EITI Report, it was qualified with several caveats that reduced the strength of the IA's overall assessment.

One international CSO expressed concerns over the actual authorship of different sections of the EITI Report, questioning whether the actual authors of the report were named. The CSO explained that it was unclear from their discussions with the IAs that they were actually the authors of all sections of the report.

Several CSOs noted that a major innovation since the 2012 EITI Report had been the review of past EITI recommendations, which was seen as key to ensuring that the Nigerian public could easily track progress in implementing EITI recommendations and increase pressure on government to implement reforms.

Solid minerals

Documentation of progress

Appointment of the Independent Administrator: The NSWG appointed a consortium of Moore Stephens and RoseWater Partners as the IA for the 2012 and 2013 EITI Reports on 11 August 2014.⁵⁸⁵ The

⁵⁸⁵ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

procurement process was launched on 27 March 2014.⁵⁸⁶ A total of 18 companies responded to the call for expressions of interest, which closed on 23 April 2014.⁵⁸⁷ The BTC shortlisted five of these 18 companies at its 10 June 2014 meeting and agreed to issue requests for proposals to shortlisted bidders⁵⁸⁸, a decision approved by the NSWG at its 25 June 2014 meeting.⁵⁸⁹ At its 23 July 2014 meeting, the BTC considered the three qualifying bidders and noted the significant improvement in the quality of technical proposals received over previous procurement rounds.⁵⁹⁰ It disqualified one of the three bidders given its auditing of two material companies (in contravention to Section 4 sub-section 5 of the NEITI Act) and assessed the technical proposals of the two remaining bidders. The financial proposals of the two bidders were opened on 30 July 2014.⁵⁹¹

While the NSWG decided to undertake repeat procurement of Moore Stephens as the IA for the 2014 EITI Report at its 16 December 2014 meeting in light of its satisfactory performance for the 2012-2013 EITI Reports⁵⁹², the BTC recommended the disqualification of Moore Stephens, on the grounds it would be its third successive appointment, at its 15 June 2015 meeting.⁵⁹³ The repeat procurement was cancelled by the NSWG at its 16 June 2015 meeting and decided to cease the practice of procuring IAs to produce EITI Reports covering several years.⁵⁹⁴

Terms of Reference for the Independent Administrator: The NSWG approved the ToR for the 2012 and 2013 EITI Reports, subject to input from the NEITI Secretariat and its legal director at its 27 March 2014 meeting.⁵⁹⁵ This followed the NSWG's technical committee's revisions to the draft ToR at its 25 March 2014 meeting.⁵⁹⁶ The ToR, which used the 2012 O&G EITI Report ToR and the EITI Standard as a guide⁵⁹⁷, is generally consistent with the Standard ToR agreed by the EITI Board and provides the detailed scope of the contextual information that should be included in the EITI Report as required by the EITI Standard, such as details on contribution of the extractives to the economy, production and export data, overview of the extractives sector, legal and regulatory framework, license allocations, license registers, contracts, beneficial ownership, revenue distribution, social expenditures and quasi-fiscal expenditures. The ToR introduced penalties for late delivery for the first time.

Agreement on the reporting templates: The NSWG agreed the reporting templates for the 2012 and 2013 SM EITI Reports at its 25 June 2014 meeting.⁵⁹⁸ This followed a workshop with reporting entities on the draft 2012-2013 reporting templates on 24 June 2014, where companies and government entities were able to provide input to the reporting templates⁵⁹⁹ and the NSWG's technical committee's approval of the

⁵⁸⁶ See minutes of NSWG meeting, 27 March 2014, unpublished, provided by NEITI Secretariat.

⁵⁸⁷ See minutes of the Board Tenders Committee meeting, 29 April 2014, unpublished, provided by NEITI Secretariat.

⁵⁸⁸ See minutes of the Board Tenders Committee meeting, 11 June 2014, unpublished, provided by NEITI Secretariat.

⁵⁸⁹ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁵⁹⁰ See minutes of the Board Tenders Committee meeting, 23 July 2014, unpublished, provided by NEITI Secretariat.

⁵⁹¹ See minutes of the Board Tenders Committee meeting, 11 June 2014, unpublished, provided by NEITI Secretariat.

⁵⁹² See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

⁵⁹³ See minutes of the Board Tenders Committee meeting, 15 June 2015, unpublished, provided by NEITI Secretariat.

⁵⁹⁴ See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

⁵⁹⁵ See minutes of NSWG meeting, 27 March 2014, unpublished, provided by NEITI Secretariat.

⁵⁹⁶ See minutes of NSWG's technical committee meeting, 25 March 2014, unpublished, provided by NEITI Secretariat.

⁵⁹⁷ See minutes of NSWG's technical committee meeting, 25 March 2014, unpublished, provided by NEITI Secretariat.

⁵⁹⁸ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁵⁹⁹ NEITI (June 2014), Workshop on audit template and public presentation of NEITI Reports, <http://www.neiti.org.ng/index.php?q=news/2014/06/27/workshop-audit-template-and-public-presentation-neiti-reports>.

templates the same day.⁶⁰⁰ Following approval of the reporting templates, the NEITI Secretariat undertook data collection in Q3-2014.⁶⁰¹ Following its appointment in August 2014, the IA noted the incompleteness of the original reporting templates (which lacked for instance details of payments per receipt), developed complementary reporting templates and guidelines and undertook a second round of data collection, as noted in Section 2.2 (p.14) of the 2013 EITI Report. Additional data collection was completed in time for the reconciliation phase on 3-12 November 2014, as noted in Section 2.3 (p.15). There is no evidence from meeting minutes of the NSWG's approval of the additional reporting templates.

Review of audit practices: The December 2014 inception report for the 2012-2013 EITI Report⁶⁰² provided an overview of statutory audit procedures for both companies and government entities (Sections 5.1 and 3.8 respectively) but did not clarify actual practices in 2012-2013. Section 3.2.1.ix (p.25) of the 2013 EITI Report provided a general summary of statutory government audit procedures.⁶⁰³ Section 3.5.1 (pp.30-31) described the statutory auditing procedures of solid mineral companies, namely that companies were required to prepare audited financial statements at the end of every financial year.⁶⁰⁴ The OAGF letter provided in Annex 13 (p.183) and referenced in Section 1.5 (p.12), certifying the completeness and accuracy of the extraction of payments data submitted in EITI reporting, stated that the audit procedures used were in line with international standards (ISSAI of INTOSAI). However, the OAGF's letter did not refer to whether material government entities' 2013 financial statements were audited to international standards. Likewise, there was no reference in the 2013 EITI Report to whether all material companies had their 2013 financial statements audited. Section 3.5.1 (p. 31) noted that companies' audited annual financial statements were not available to the general public except in the case of listed companies.⁶⁰⁵

Assurance methodology: Sections 1.5 (p.12) and 2.4 (p.15) described the assurance procedures for EITI reporting, with reporting templates authorised by a company or government entity official, not by a registered auditor. The OAGF was required to certify revenues submitted by the government agencies. The IA also required all payments to be supported by original official receipts (also noted in Section 2.2 (p.14)) for all transactions reported during a series of "validation" meetings during the reconciliation phase. Section 7.1.2 (p.70) noted that the instructions for completion of the original reporting templates during the NEITI Secretariat's data collection did not include any measures for the certification of the reporting templates. The IA recommended a more robust data quality assurance process, including letters from companies' external auditors and OAGF certification for government entities, in Section 7.1.2.

Confidentiality: There is no evidence of measures by the NEITI Secretariat to preserve the confidentiality of EITI disclosures pre-reconciliation. However, for the second round of data collection undertaken by the IA, Section 2.2 (p.14) noted that reporting entities were required to report and direct any questions to the

⁶⁰⁰ See minutes of NSWG's technical committee meeting, 24 June 2014, unpublished, provided by NEITI Secretariat.

⁶⁰¹ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

⁶⁰² Unpublished, provided by the NEITI Secretariat.

⁶⁰³ Section 3.2.1.ix noted that the OAGF was responsible for carrying out the audit of public accounts, in accordance with the International Organisation of Supreme Audit Institutions (INTOSAI) standards, while post-budget period audits were the responsibility of the Public Accounts Committee (PAC), which examined historical records for disbursements and budget performance.

⁶⁰⁴ Section 3.5.1 described the requirement under 1990 Companies and Allied Matters Act (CAMA) LFN Section 331 that all companies prepare regular financial statements in line with CAMA LFN 1990. All companies were required to appoint independent auditors (member of either Institute of Chartered Accountants of Nigeria or of Association of National Accountants of Nigeria) to audit their financial statements and form an opinion under Sections 357 and 358 of CAMA.

⁶⁰⁵ As the Securities and Exchange Commission (SEC) and the Nigeria Stock Exchange (NSE) require that audited financial statements of listed companies are made public. (no link provided in the 2013 Report to the audited financial statements of any listed solid minerals company.)

IA only.

Reconciliation coverage: The materiality threshold set in Section 1.4 (p.11) provided a reconciliation coverage of 90.49% of royalties received by MID. Section 4.2.1 (p.38) provided the different materiality options considered and their associated coverage ratios. Section 1.5 (p.12) noted that the seven non-reporting companies accounted for NGN 86 million, or 0.28% of total revenue declared by government entities.

Assurance omissions: Section 1.5 (p.12) stated that only 34 of the 65 reporting material companies provided reporting templates authorized by a company official. Section 7.1.3 (p.71) stated that none of the reporting entities (government and companies) initially submitted detailed schedules of payments to support their reporting templates, but rather only disclosed annual and sometimes monthly aggregate payment figures for each payment stream. However, it appears that receipts were provided during the reconciliation phase, as the only reference to the materiality of these omissions during initial data collection was that *“It would have been more efficient and would have saved a lot of time if all reporting entities were requested to send details of their payments along with their reporting templates.”*

The IA concluded in Section 2.4 (p.15) that all reconciled company payments had been checked against the original receipt. However, Section 7.1.1 (p.70) noted that “several” companies did not provide the detailed receipt numbers of payments made to FIRS, MCO, NCS and MID, and that “some” company reporting templates were filled out on an accrual (rather than cash) basis of accounting. The IA also noted in Section 7.1.1 (p.70) that some additional payments of a material size were reported as “Other” by companies with 2012 and 2013 information aggregated. The 2013 EITI Report also noted a number of omissions from government entities. Section 7.1.1 (p.70) noted that MID reported only aggregate figures for royalties and other service fees, while Section 7.1.1 (p.70) noted that FIRS did not report details of payments from all material companies.

Data reliability assessment The 2013 EITI Report did not assess the materiality of omissions in quality assurance from reporting entities and the names of non-compliant companies were not provided. The IA noted in the introduction (pp.6-7) that its work complied with applicable International Auditing Standards (ISRS 4400 Engagements) but not an audit or review in accordance with ISA or International Standards on Review Engagements. Section 2 (p.14) described the work undertaken by the IA, including preliminary analysis (Section 2.1, p.14), data collection (Section 2.2, p.14) and reconciliation and investigation of discrepancies (Section 2.3, p.15).

Sourcing of information: The contextual information appeared to be consistently sourced. The cover page (p.1) of the 2013 EITI Report indicated that the views expressed in the report were the IA’s and in no way reflected the official opinion of the NSWG.

Past recommendations: Section 7.1.8 (pp.73-74) of the 2013 EITI Report noted the lack of action on weaknesses identified in previous EITI Reports, despite the formation of the IMTT. Section 7.2 (pp.75-80) presented follow up on eight recommendations from the 2011 reconciliation as “ongoing”.⁶⁰⁶

⁶⁰⁶ The eight recommendations from the 2011 EITI Report that were being followed up on at the time of the 2013 EITI Report were training of MMSD, environmental and health impact assessments, MCO’s public announcement of non-payment of title fees, strict adherence to time limits for issuing licenses, review royalties procedures, review taxation framework, enhancing of institutional linkages and addressing export issues and illegal mining.

Current recommendations: Section 7.1 (pp.70-74) presented the lessons learned from the 2012-2013 reconciliation and the IA's nine recommendations.⁶⁰⁷ Meeting minutes reveal the NSWG's involvement in shaping EITI recommendations, such as at its 16 December 2014 meeting.⁶⁰⁸

The 2012 EITI Report provided an overview of statutory audit and assurance procedures (pp.23-24), but no clear statement on whether all reporting entities had their 2012 financial statements audited. The 2012 EITI Report required a simple sign-off from senior management, and only around half of the reporting companies provided this management representation letter. The OAGF did not certify government entities' reporting templates in the 2012 Report.

Stakeholder views

The IA for the 2012-2013 EITI Reports noted that it had been contracted only for the reconciliation phase of NEITI reporting, and that the NEITI Secretariat had undertaken the scoping work for the 2012-2013 EITI Reports and data collection by itself, before providing the completed templates to the IA upon appointment. The IA noted that the initial reporting templates appeared to still be based on the EITI Rules rather than the EITI Standard. The IA considered that it had undertaken a second round of data collection since it asked for more information from the same companies that had already reported (covering both payments and contextual information) and included additional companies. A past IA noted that the process for data collection had changed since the first two SM EITI Reports, when the IA would agree the reporting templates together with the secretariat's technical department and the NSWG ahead of data collection and would subsequently conduct data collection independently from the NEITI Secretariat. The IA for the 2012-2013 EITI Reports stated it did not have any concerns over the absence of provisions for safeguarding the confidentiality of reporting templates collected by the NEITI Secretariat, given that the IA had conducted data collection again following its appointment. While this represented a duplication of efforts, it also ensured that the information disclosed in the 2013 EITI Report had been collected directly by the IA, with appropriate mechanisms to safeguard the confidentiality of information as described in the 2013 EITI Report. Industry representatives said they appreciated the fact that they were free to amend the non-disclosure agreements signed with the NEITI Secretariat as they saw fit.

None of the industry representatives consulted considered it to be possible to provide input to the reporting templates ahead of data collection, although a MCO representative noted they were involved in providing input.

The IA noted it had not undertaken a review of actual audit practices given that the quality assurance procedures agreed with the NSWG did not include reference to audited financial statements. A past IA

⁶⁰⁷ The nine recommendations of the 2013 EITI Report were: Greater outreach by the NEITI Secretariat to reporting entities about the importance of timely disclosure; The NSWG to agree a more robust data quality assurance process, including letters from companies' external auditors and OAGF certification for government entities; To restructure reporting templates to avoid the use of wide-ranging terms like "other payments" and to include stamp fees and duties paid to FIRS and MID; To use a single reporting template rather than the current three (financial, physical, process); To establish legal enforcement of sanctions on entities failing to participate in EITI reporting; The MID to develop procedures and systems to collect and control production data declared by companies and regularly reconcile those figures with MMSD records; An imperative review of the tax reporting system to improve controls over extractive sector revenues, transparency and traceability of income; The FGN to implement the use of single Tax ID Numbers by all government entities; The NSWG and the FGN to take quick action to ensure that fiscal allocations and statutory disbursements to beneficiaries of subnational transfers from fiscal proceeds of extractive industries; The NEITI Secretariat to establish its own database of solid minerals companies on the basis of the 2013 NEITI Report, liaising with relevant government departments for regular updates thereafter. All current and previous reporting entities to name a single point of contact for EITI reporting and to inform the Secretariat.

⁶⁰⁸ See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

noted that Nigerian auditing standards diverged from international standards given that all companies did not follow IFRS.

A past IA also noted that discrepancies between accrual-based auditing and cash-based EITI reporting were bridged by examining the detail of payments, given that receipts referred to the period for which payments were made. Industry representatives consulted did not identify any challenges in reconciling payments under their accrual-based audited financial statements with their cash-based EITI reporting, since they could identify the dates of transactions in their systems.

While the IA stated that initial data collection undertaken by the NEITI Secretariat had not included a requirement for reporting templates to include a certification letter from material entities' management, the IA's second round of data collection had required such a management representation letter and the majority of material companies had provided the required management representation letter. Industry representatives consulted stated that they did not sign a management representation letter but considered that, since they provided hard copies of their original receipts, the EITI reporting process constituted a form of audit. The IA did not consider the 2012-2013 EITI Reports to constitute an audit, as it had described in the EITI Report itself. The IA stated it had checked receipts for only certain payments, particularly where they identified discrepancies or missing information. A past IA noted that they considered the SM EITI Report for which they were responsible to constitute a specialised type of audit in line with ISA 4400, but noted that the methodologies of different auditors differed. The past IA noted that they had adopted a sampling approach to verifying original receipts during the first two SM EITI Reports, compared receipts to the audited financial statements of material entities and re-calculated royalty liabilities based on sales records. Industry representatives considered the EITI Reports to constitute a form of audit, since they did not merely reconcile figures but also examined intra-government transfers. A MID representative noted that he considered the 2013 EITI Report to be comprehensive, given that payments were independently reconciled between companies' and government's disclosures, thereby avoiding any possibility of collusion. The IA noted that the certification of reporting templates did not ensure the reliability of data but provided some reassurance to users of the NEITI Reports, and thus did not consider the data in the 2013 EITI Report to be fully reliable. According to industry representatives, while the EITI Reports did not constitute an audit to international standards, the information they provided on solid minerals had never previously been disclosed and thus the EITI Reports represented an important starting point.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement.

The NSWG's involvement in drafting the ToR for the O&G and SM EITI Reports is covered under Requirement 1.4 on MSG oversight, but we note that reporting entities and stakeholders typically provide input at the level of reporting templates rather than the ToR. We also note significant deviations from the ToR for the IA in the final 2013 EITI Reports, particularly for oil and gas and quality assurance procedures, with no evidence of NSWG approval of these deviations in meeting minutes. The NSWG's agreement on quality assurance procedures also consistently precedes the IA's review of auditing procedures, both statutorily and in practice, and it is unclear from the EITI Reports whether all reporting entities had their financial statements for the year under review audited to international standards. For both oil and gas as well as solid minerals, the absence of mechanisms to ensure the confidentiality of information pre-

reconciliation within the NEITI Secretariat, which has undertaken data collection since the 2012 EITI Reports, is also a concern, although there is no evidence of any instances when the EITI disclosures were tampered with.

In oil and gas specifically, the ToR for the IA for the 2013 EITI Report deviates from the standard ToR approved by the EITI Board in omitting reference to transportation revenues and specifically excluding subnational governments from the scope of reporting. The 2013 O&G EITI Report provided an overview of statutory audit procedures for government entities, of the general quality assurance procedures for EITI reporting, an assessment of the reconciliation coverage, descriptions of quality assurance omissions by reporting entities clear sourcing of most contextual information, a review of follow-up on past EITI recommendations and a set of new recommendations. However, the 2013 EITI Report did not provide an overview of statutory audit procedures for companies, nor deviations in auditing practices for either companies or government entities. The procedures adopted to ensuring the reliability of data in the EITI Report were not described in detail and the 2013 EITI Report did not provide an assessment of whether the payments and revenues were subject to credible, independent audit, applying international auditing standards. Finally, the IA did not include an assessment of the overall reliability of information in the 2013 EITI Report and there are instances where contextual information does not appear to be clearly sourced.

In solid minerals, the 2013 EITI Report provided an overview of statutory audit procedures for both companies and government entities, described the quality assurance procedures for EITI reporting, provided the coverage of reconciliation, quantified the number of companies and listed the government entities that did not provide the required quality assurance procedures, consistently sourced the contextual information and included a review of follow-up on past EITI recommendations as well as a set of new recommendations. However, the 2013 EITI Report did not describe any deviations in practice from statutory audit procedures for either companies or government entities, did not list the reporting companies who omitted elements of the required quality assurance procedures nor assessed the materiality of omissions by either companies or government entities. Finally, the IA did not include a clear assessment of the reliability of information in the 2013 EITI Report.

In preparing its next EITI Reports, the NSWG should ensure that a review of actual auditing practices by reporting companies and government entities be conducted before agreeing procedures to ensure the reliability of EITI information. The NSWG should also ensure that the ToR for the IA is in line with the standard ToR approved by the EITI Board and that its agreement on any deviations from the ToR in the final EITI Reports be properly documented. The NSWG should also ensure that the IA include an assessment of whether the payments and revenues disclosed in the EITI Reports were subject to credible, independent audit, applying international auditing standards.

Table 4 - Summary initial assessment table: Revenue collection

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Comprehensiveness (#4.1)	In oil and gas, the 2013 EITI Report defined materiality thresholds for selecting material companies and	Meaningful progress.

	<p>revenue streams, listed material entities, described material revenue streams and identified omissions in reporting. However, there is no evidence of the NSWG's approval of a revised materiality threshold for companies and the 2013 EITI Report does not appear to provide a comprehensive list of material companies. Revenue streams listed under Requirement 4.1.b, such as signature bonuses, were excluded from reconciliation. The 2013 EITI Report did not include an assessment of the materiality of entities' reporting omissions, nor the IA's assessment of the comprehensiveness of the EITI Report. There were also gaps in government's full unilateral disclosure.</p> <p>In solid minerals, the 2013 EITI Report defined materiality thresholds for selecting revenue streams and companies, describes material revenue streams, lists material companies, identifies non-reporting companies (and assesses their materiality) and government entities and provides part of the government's full unilateral disclosure. However, it did not define a materiality threshold for discrepancies, nor include an assessment of the materiality of all government entities' omissions, nor the IA's assessment of the comprehensiveness of the EITI Report. Most of the government's unilateral disclosures were not provided disaggregated by revenue stream.</p>	
In-kind revenues (#4.2)	<p>In oil and gas, the 2013 EITI Report provides volumes collected, sold and proceeds generated from the state's share of in-kind revenues. It also provides significant additional information on the terms of sales and buyers of Nigeria's share of crude oil production. Despite the absence of a materiality threshold for in-kind revenues, these revenues are clearly material. However, the IA's divergence from provisions of its ToR requiring sales of in-kind revenues to be</p>	Satisfactory progress.

	reconciled is a concern. This requirement is not applicable in solid minerals.	
Barter and infrastructure transactions (#4.3)	In oil and gas, the 2013 EITI Report discloses terms and assesses performance of barter of crude oil for refined products. The information on infrastructure provisions appears to be social expenditures that have been mis-categorised. This requirement is not applicable in solid minerals.	Meaningful progress.
Transport revenues (#4.4)	In oil and gas, while the 2013 EITI Report describes arrangements for the transportation and storage of crude oil by JVs in which NNPC holds a majority stake, there is no evidence of the NSWG's assessment of the materiality of transportation revenues. This requirement is likely not applicable in solid minerals.	Inadequate progress.
Transactions between SOEs and government (#4.5)	In oil and gas, the 2013 EITI Report discloses SOE transactions with government including the remittance of proceeds of the sale of the state's in-kind revenues as well as NLNG dividends, highlighting deviations from statutory rules in practice. This requirement is likely not applicable in solid minerals.	Satisfactory progress.
Subnational direct payments (#4.6)	The EITI Reports provide material companies' unilateral disclosures of payments to state and local governments and the 2007-2011 FASD Report provided nine of Nigeria's 36 states' disclosures of their direct subnational revenues. However, the NSWG does not appear to have considered the materiality of subnational direct payments, did not set a materiality threshold for such payments and did not reconcile such payments with subnational governments' receipts.	Meaningful progress.
Level of disaggregation (#4.7)	Data in EITI Reports for both solid minerals and oil and gas is presented disaggregated by company, revenue stream and receiving entity, despite caveats noted related to omissions by certain reporting entities.	Satisfactory progress.
Data timeliness (#4.8)	While the EITI Board did not take a	Meaningful progress.

	<p>decision on Nigeria's request for a six-month extension to the reporting deadline for its 2013 EITI Reports, which was not endorsed by the NSWG, the 2013 EITI Reports were published more than five months after the 31 December 2015 deadline. There appear to have been consistent delays in Nigeria's EITI reporting.</p>	
Data quality (#4.9)	<p>There were deviations in the ToR for the IA from the standard ToR approved by the EITI Board. There is no evidence of the NSWG's approval of deviations from the ToR for the IA in the final 2013 EITI Reports. The NSWG's agreement on quality assurance procedures preceded the IA's review of auditing procedures, both statutorily and in practice, and it was unclear from the EITI Reports whether all reporting entities had their financial statements for the year under review audited to international standards.</p> <p>In oil and gas, the 2013 EITI Report provided an overview of statutory audit procedures for government entities, of the general quality assurance procedures for EITI reporting, an assessment of the reconciliation coverage, descriptions of quality assurance omissions by reporting entities clear sourcing of most contextual information, a review of follow-up on past EITI recommendations and new recommendations. However, it did not provide an overview of statutory audit procedures for companies, nor deviations in auditing practices for either companies or government entities. The procedures adopted to ensuring the reliability of data in the EITI Report were not described in detail and the 2013 EITI Report did not provide an assessment of whether the payments and revenues were subject to credible, independent audit, applying international auditing standards. Finally, the IA did not include an assessment of the overall reliability of information in the 2013 EITI</p>	Meaningful progress.

	<p>Report and there were instances where contextual information was not clearly sourced.</p> <p>In solid minerals, the 2013 EITI Report provided an overview of statutory audit procedures for both companies and government entities, described the quality assurance procedures for EITI reporting, provided the coverage of reconciliation, quantified the number of companies and listed the government entities that did not provide the required quality assurance procedures, consistently sourced the contextual information and included a review of follow-up on past EITI recommendations as well as a set of new recommendations. However, the 2013 EITI Report did not describe any deviations in practice from statutory audit procedures for either companies or government entities, did not list the reporting companies who omitted elements of the required quality assurance procedures nor assessed the materiality of omissions by either companies or government entities. Finally, the IA did not include a clear assessment of the reliability of information in the 2013 EITI Report.</p>	
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> 1. In preparing Nigeria's next O&G EITI Report, the NSWG should undertake an oil and gas scoping study to consider options for defining materiality thresholds. The NSWG should ensure that all revenue flows listed under Requirement 4.1.b are included in the scope of reconciliation and that the materiality threshold for selecting companies ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The list of material companies should also clearly be defined. The NSWG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. The NSWG should ensure that Nigeria's next O&G EITI Report includes the IA's assessment of the materiality of omissions, its statement on the comprehensiveness of the EITI Report and that full unilateral government disclosure of material revenues from non-material companies is included. 2. In preparing Nigeria's next SM EITI Report, the NSWG is encouraged to consider the IA's recommendation that it undertake a new solid minerals scoping study to assess different options for defining materiality. It should also agree a materiality threshold for discrepancies and ensure that the IA's assessment of the materiality of material entities' reporting omissions and its assessment of the comprehensiveness of the EITI Report be clearly included. Finally, the NSWG should ensure that full government unilateral disclosure of all material revenues from non-material companies be included, disaggregated by revenue stream. 3. In preparing its next EITI Reports, the NSWG should ensure that procurement of the IA is launched with sufficient time for completion ahead of the reporting deadlines. The NSWG may also wish to explore ways of publishing sections of its EITI reporting separately, particularly those related to contextual information, and to explore means of mainstreaming EITI reporting through reporting 		

entities' routine disclosures.

4. the NSWG should ensure that future EITI Reports include a review of actual auditing practices by reporting companies and government entities be conducted before agreeing procedures to ensure the reliability of EITI information. The NSWG should also ensure that the ToR for the IA is in line with the standard ToR approved by the EITI Board and that its agreement on any deviations from the ToR in the final EITI Reports be properly documented. The NSWG should also ensure that the IA include an assessment of whether the payments and revenues disclosed in the EITI Reports were subject to credible, independent audit, applying international auditing standards.
5. In preparing its next EITI Reports, the NSWG should consider the materiality of direct subnational payments and clarify whether the three direct subnational payment streams disclosed only for the solid minerals sector (business premises, annual surface rent and tenement fees) are also applicable to oil and gas companies. Should the NSWG consider that it is not possible to reconcile material direct subnational revenues in its annual EITI reporting, it should submit a request for adapted implementation with the EITI Board.
6. In preparing its next O&G EITI Report, the NSWG should assess the existence of infrastructure provisions during the scoping phase to ensure that companies' disclosures are categorised according to strict definitions. The NSWG should assess the materiality of any such transportation revenues and disclose such revenues should they be assessed as material.
7. In preparing future O&G EITI Report, the NSWG may wish to consider including buyers of Nigeria's in-kind revenues in the scope of reporting, in line with provisions of the 2013 O&G ToR and Nigeria's participation in the EITI's targeted efforts on transparency in commodity trading.
8. In preparing future EITI Reports, the NSWG may wish to consider what aspects of its EITI reporting could be undertaken at a project-level and the opportunities for US- and EU-listed companies to use EITI reporting in Nigeria as part of their compliance with US and EU legislation requiring domiciled companies to report project-level payments to government.

5. Revenue management and distribution

5.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

5.2 Assessment

Distribution of revenues (#5.1)

Oil and gas

Documentation of progress

Sections 8.8.1 (pp.320-321) and 8.13 (pp.338-339) described Nigeria's federal budget process. Section 2.8 (p.37-38) of the 2013 EITI Report stated that "most" extractives revenues were recorded in the FGN budget, noting the exceptions of direct payments to the Niger Delta Development Commission (NDDC) from oil and gas companies to cater for the oil producing states. Figures 3.2.1 (p.51), 3.2.5 (p.53) and 8.8.2B (p.325) provided diagrams and flowcharts of crude oil production, liftings and revenue streams, showing that all revenues collected by NNPC should flow to the Federation Account, aside from repayment for third-party financing (through MCAs). While the split between the CBN JP Morgan Account's remittances to the Federation Account and the share devoted to fund cash calls was not

specified, Sections 4.3.7-8 (pp.120-121) provided details of active MCAs and MCA transactions in 2013. (See *Requirement 2.1*). Section 3.2.1 (p.50) provided details of the transfer of proceeds from NNPC-COMD's sales through designated foreign and local bank accounts with JP Morgan Chase and CBN for each of the parties (FIRS, DPR, NNPC, etc.), while Sections 6.6.2 (p.133) and 6.6.3 (p.134) confirmed that cash calls in JVs and MCAs are budgeted. Table 8.7.2 (p.313) provided the accounts to which license fees were paid. The 2013 EITI Report described the allocation of extra-budgetary oil and gas revenues and disclosed companies' reporting of these payments, including the NDDC levy in Section 6.9 (pp.145-146), the NCDMB levy in Section 6.10 (pp.146-147), the NIMASA levies in Section 6.15 (pp.163-164), the NIWA levies in Section 6.16 (p.165) and the NESS fee in Section 6.17 (pp.165-167). The NEITI 2012 Oil and Gas Report provided a similar description of the budgeting process and the allocation of revenues outside of the budget.

Stakeholder views

A research analyst covering oil and gas at a major investment bank noted all oil and gas revenues were statutorily required to be transferred to the Federation Account, although JV funding commitments worth roughly USD 600 million a month were withheld from remittances to the Federation Account. Representatives from FIRS, CBN and several parastatals confirmed that all oil and gas revenues were statutorily recorded in the FGN budget, including levies such as NIMASA, NESS and NIWA levies. CSOs consulted did not express any particular views on whether all oil and gas revenues were recorded in the FGN budget, but considered the coverage of the 2013 EITI Report to be comprehensive.

Solid minerals

Documentation of progress

Section 3.2.2.i (pp.25-26) of the 2013 EITI Report stated that all solid minerals revenues collected by the FGN flowed to the Consolidated Revenue Fund (the Treasury Single Account), overseen by OAGF, but that six revenue flows collected by Local Government Councils were not. While the 2013 EITI Report referred to INTOSAI auditing standards for government agencies and departments, it did not refer to national or international revenue classification systems. The 2012 EITI Report provided the same level of description of budgeted revenue flows (p.8) and did not refer to national or international revenue classification systems either.

Stakeholder views

Both the current and former IAs confirmed that the six revenue flows collected by subnational entities were not recorded in the FGN budget. An MID representative noted that while the MMSD used to maintain its own private bank accounts prior to President Buhari's centralisation of all revenues to the Treasury Single Account, all of MMSD's revenues had still been recorded in the FGN budget. All stakeholders consulted noted that the majority of state governments did not have audited budgets and that their budgets were not publicly accessible. Stakeholders also highlighted that the 2007-2011 FASD Report had disclosed the use of subnational government revenues for nine pilot states. The IA noted that it had been unable to find information on a revenue classification system for solid minerals revenues and stated that it was only aware of a revenue classification system for oil and gas revenues. The IA confirmed that Nigerian revenue classification systems were not in line with international classifications such as GFS.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. The EITI Reports clearly stated which extractives revenues were recorded in the FGN budget, deviations in practice from statutory rules and the use of revenues collected by FGN entities not recorded in the FGN budget. However, the lack of publicly-available subnational budgets is a concern. In preparing its next EITI Reports, the NSWG may wish to consider clarifying which states prepare audited budgets and provide links to relevant financial reports where applicable.

Sub-national transfers (#5.2)

Oil and gas

Documentation of progress

Section 2.8 (pp.36-37) of the 2013 EITI Report described subnational transfers linked to oil and gas revenues, namely the derivation of 13% of FGN oil and gas revenues to the nine oil-producing states, and general subnational transfers through the Federal Accounts Allocation Committee (FAAC). The general formula for determining shares of the three tiers of government was provided⁶⁰⁹, but not the actual formula used for calculating transfers to individual states and local government areas (LGAs). Table 2.8A (p.37) provided a diagram of the Federation revenue vertical sharing model. Table 2.8C (p.38) provided the budgeted aggregate transfers for states, LGAs and oil-producing states, although these were not disaggregated by state and LGA. Subnational transfers were not reconciled in the 2013 EITI Report. The ToR for the 2013 IA explicitly excluded state governments from EITI reporting.⁶¹⁰ Section 2.8 (p.37) of the 2013 EITI Report referred to amnesty payments to former Niger Delta militants through the Presidency and the Federal Ministry of Niger Delta Affairs, although these were not described nor disclosed. The 2012 EITI Report (pp.38, 182) provided similar descriptions and disclosures of subnational and oil-derivation transfers.

The NSWG has undertaken work on reconciling subnational transfers in the past, through the 2007-2011 FASD Report published in 2014.⁶¹¹ The NSWG agreed at its 20 June 2013 meeting to include nine states from the six geopolitical zones⁶¹² in the scope of FASD reporting, rather than the nine oil-producing states as originally planned.⁶¹³ The FASD reporting templates for the 2007-2011 Report were originally agreed at a workshop in Calabar on 4 June 2013 and formally approved by the NSWG on 20 June 2013.⁶¹⁴ The NSWG was briefed on updates to the 2007-2011 FASD at its 12 December 2013 meeting⁶¹⁵ and approved the final FASD report at its 27 March 2014 meeting.⁶¹⁶ While the NSWG's technical committee had agreed at

⁶⁰⁹ All 36 state governments receive a combined 26.72% of (net) Federation Account revenues while the 774 local governments receive 20.6%.

⁶¹⁰ See p.22 of ToR for the Independent Administrator for the 2013 Oil and Gas EITI Report.

⁶¹¹ NEITI (2014), 'NEITI: Fiscal allocation and statutory disbursement audit, 2007-2011 summary report', http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-FASD-Audit-Report-2007-2011/NEITI-FASD-Audit-Summary-Report-2007-2011-300614-SS.pdf. [Note: while the date on the 2007-2011 FASD Report was July 2013, we understand this refers to the date of the initial draft report, not the version approved by the NSWG.]

⁶¹² The nine states covered in the 2007-2011 FASD Report were Akwa Ibom, Bayelsa, Delta, Gombe, Ondo, Imo, Kano, Nassarawa and Rivers States.

⁶¹³ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁶¹⁴ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁶¹⁵ See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

⁶¹⁶ See minutes of NSWG meeting, 27 March 2014, unpublished, provided by NEITI Secretariat.

its 5-6 December 2013 meeting that Nigeria should submit a request for adapted implementation to the EITI Board, seeking exemptions from reporting subnational direct payments and subnational transfers since these were covered in the 2007-2011 FASD Report⁶¹⁷, there is no evidence that the NSWG approved this proposal and the EITI Board did not receive such a request. While the NSWG discussed more effective engagement with state governments through the NSWG's geopolitical zone representatives at its 20 November 2014 meeting, the focus of engagements was on information dissemination rather than building state governments' capacity and interest in EITI reporting.⁶¹⁸ These meeting minutes related President Jonathan's direction for NEITI to use the FASD to track government transfers to the 774 LGAs and the Presidency followed up with a letter dated 23 June 2014 instructing NEITI to cover subnational transfers to LGAs.⁶¹⁹ A press release from the Civil Society Steering Committee on 12 June 2015 called on the FGN President to direct NEITI to undertake FASD reporting in all 36 states and 774 LGAs.⁶²⁰ However, there is no evidence that work on a second FASD Report had started as of 1 July 2016, despite the 2016 workplan referring to a second FASD Report covering 2012-2014.

Stakeholder views

All stakeholders consulted noted that, given the federal nature of the Nigerian Republic, there were no statutory mechanisms through which the FGN could compel subnational governments to participate in EITI reporting. There was a consensus that NEITI was a federal government entity. Several CSO and industry representatives consulted did not consider amnesty payments to former Niger Delta militants as subnational transfers since they were cash payments from FGN entities to private individuals. A RMFAC representative stated that the formula for calculating specific FAAC transfers to individual states and LGAs was publicly available, although it was not published on the RMFAC or any other government website, and that there were no barriers to NEITI disclosing the specific formula for calculating FAAC transfers to individual states and LGAs. Representatives from RMFAC, OAGF and the NEITI Secretariat confirmed that two NEITI Secretariat staff attended the monthly FAAC allocation meetings as observers. The RMFAC representative noted that there were always several discrepancies between the FAAC transfer figures published on the MoF website and the FAAC transfers reported in NEITI Reports, attributable to differences in the way FAAC transfers were reported. The RMFAC representative expressed a desire to clarify the reasons for the discrepancies during future rounds of FAAC allocation meetings and NEITI reporting. A representative from a FGN parastatal noted that state governments usually under-declared their receipt of FAAC transfers. Several CSOs raised concerns that state governments often did not remit the full amount owed to their respective LGAs and highlighted challenges in tracking such deviations given the lack of publicly-available budgets for most states. The Senior Advisor to the President on Economic Matters noted the 2016 Fiscal Sustainability Plan⁶²¹ between FGN and state governments, to which 35 of the 36 states had signed up (excluding Lagos), which provided for extra-budgetary funds for state governments contingent on the publication of audited budgets. The Senior Advisor highlighted this development as a potential means of ensuring disclosure of state governments' revenues from FAAC and

⁶¹⁷ See minutes of NSWG technical committee meeting, 5-6 December 2013, unpublished, provided by NEITI Secretariat.

⁶¹⁸ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

⁶¹⁹ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

⁶²⁰ NEITI Civil Society Steering Committee (12 June 2015), Communiqué issued at the end of a five-day capacity-building workshop on oil and gas sector governance by the Civil Society Steering Committee (CSSC) of NEITI, held from 8-12 June 2015, <http://www.neiti.org.ng/index.php?q=news/2015/06/12/communique-issued-end-five-day-capacity-building-workshop-oil-and-gas-sector-governance>.

⁶²¹ Ministry of Finance (May 2016), Fiscal Sustainability Plan: Fiscal Framework for Sub-National Governments in Nigeria, <http://newsdiaryonline.com/wp-content/uploads/2016/05/Fiscal-Sustainability-Plan-FINAL-1.pdf>.

from direct subnational payments.

Solid minerals

Documentation of progress

Section 3.2.2.i (p.26) of the 2013 EITI Report provided a diagram of the share of royalties collected by MID transferred to states and LGAs, transferred via OAGF and RMAFC. Sections 3.2.3 (p.27) and 6.4 (p.69) described subnational transfers in more detail, including the provision of 13% of revenue accruing from resources to the state earmarked for mineral-producing states. Section 6.4 (p.69) provided the general formula for calculating subnational transfers to the three tiers of government, but not the actual formula used for calculating transfers to individual states and LGAs. Sections 3.2.3 (p.27) and 6.4 (p.69) highlighted the lack of clarity on the mechanism for subnational transfers states that solid mineral subnational transfers were not effective in 2013.⁶²² Section 7.1.9 (p.74) noted RMAFC's confirmation that the sum of NGN 2,037,594,163.80 had not yet been allocated to beneficiaries. The 2012 EITI Report reached similar conclusions that statutory subnational transfers related to solid minerals revenues were not yet effective (p.32).

Stakeholder views

A MID representative confirmed that the 13% solid mineral derivation funds to producing states had accumulated at in FGN accounts ever since the enactment of the 2007 Solid Minerals Act. An RMAFC representative explained that the implementing regulation for the 2007 Solid Minerals Act related to the 13% derivations had yet to be issued and thus undisbursed funds had accumulated in CBN accounts. One of the challenges was that production figures at each state's level were not available according to the RMAFC representative, which meant that the formula for calculating 13% derivation transfers to each state could not be calculated on the basis of each state's individual production. While several government representatives agreed that NEITI could help them produce reliable state-level production figures, the timeliness of NEITI Reports hindered their usefulness for calculating monthly allocations since they were typically published several years after subnational transfers were due.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. The 2013 EITI Reports provided the general formula for calculating subnational transfers, but not the actual formula used for calculating transfers to individual states and LGAs. The EITI Reports did not describe that FAAC and derivation transfers to states and LGAs were first transferred to states, who were then expected to transfer their respective LGAs' shares from the aggregate sums received, even though this appears to be a source of concern for several CSOs. Furthermore, discrepancies between actual and calculated transfers were not disclosed in the EITI Reports. While the EITI Reports included a detailed description of FAAC and derivation transfers, they did not make reference to the NSWG's discussion of the materiality of subnational transfers. While the 2013 O&G EITI Report

⁶²² Based on RMAFC confirmation and available MMSD records, the 2013 EITI Report found that the sum of NGN 2,037,594,163.80 accrued from the solid minerals sector for the year ended 31 December 2013, although it is unclear whether this sum was accrued to a RMAFC bank account (given the reference to a November 2011 request for the OAGF to open a dedicated Solid Minerals Account at the CBN) or to another account.

referred to monthly FAAC reports, it did not provide guidance on how to access these reports, although we note that monthly FAAC reports, providing budgeted FAAC allocations and actual FAAC disbursements, are available with a four-month time-lag on the MoF website.⁶²³ Finally, amnesty payments to former Niger Delta militants appear to have been mis-categorised as subnational transfers in the 2013 O&G EITI Report since these are transferred from Federal Government entities (the Presidency and the Federal Ministry of Niger Delta Affairs) to private individuals directly and were not linked to extractive industry revenues. In preparing its next EITI Reports, the NSWG should assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers linked to extractives revenues (i.e. 13% derivation transfers) to individual states and LGAs, disclose any material subnational transfers and any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity. In light of NEITI Secretariat's participation in monthly FAAC allocation meetings as observers and the May 2016 Fiscal Sustainability Pact, the NSWG may also wish to consider reconciling subnational transfers and disclosing any material discretionary or ad-hoc transfers.

Additional information on revenue management and expenditures (#5.3)

Oil and gas

Documentation of progress

The 2013 EITI Report provided additional information on revenue management including descriptions of the 2004 Revenue Allocation Act in Section 2.8 (pp.36-37), the FGN budget-making process in Section 2.8 (p.39), the role of OAGF in Sections 8.8.1 (pp.320-321) and 8.13 (pp.338-339) and a simplified budget cycle diagram in Figure 2.8B (p.40). Links to the websites of the Budget Office of the Federation⁶²⁴ and the OAGF⁶²⁵ were provided. Production and revenue forecasts were not included, but additional information on crude oil and domestic natural gas pricing was provided. The 2012 Oil and Gas Report provided similar additional information on revenue management.

Stakeholder views

A CBN representative noted that the FGN prepared three-year revenue and expenditure projections under the Medium-Term Expenditure Framework, which included production and commodity price projections.⁶²⁶ Industry and CSO representatives consulted did not express any particular views on the coverage of the 2013 EITI Report or the pertinence of disclosing additional information on revenue management, although several CSOs noted that public demands for information were more focused on the three tiers of government's expenditures rather than revenues, since this was what affected Nigerians the most. Several stakeholders from government, CSOs and the NEITI Secretariat highlighted the public interest in information on expenditures disclosed in the 2007-2011 FASD Report.

⁶²³ See for instance the September 2015 FAAC report on the MoF website, <http://www.finance.gov.ng/images/faac/faac2015/faacrepAug2015.pdf>. We note however that FAAC monthly reports are only available for the last 18 months on the MoF website, even though these have consistently been published since 2005.

⁶²⁴ <http://www.budgetoffice.gov.ng/>.

⁶²⁵ <http://www.oaugf.gov.ng/>.

⁶²⁶ See for example the 2016-2018 Medium-Term Expenditure Framework and Fiscal Strategy Paper in December 2015, <http://yourbudgit.com/wp-content/uploads/2016/01/MTEF.pdf>.

Solid minerals

Documentation of progress

The 2013 EITI Report provided additional revenue management information on subnational transfers in Section 3.2.3 (p.27) and on the budget process in Section 3.2.1 (pp.23-25). No additional information on production or revenue projections was provided but the 2013 EITI provided some information on mineral prices. The 2012 Solid Minerals Report provided a similar level of additional revenue management information.

Stakeholder views

Stakeholders did not express particular views on management of solid mineral revenues specifically beyond those stated above.

Initial assessment

It is encouraging that the NSWG has made some attempt to including information on the federal budget-making process and links to some of the relevant FGN websites in the 2012 and 2013 EITI Reports. Such efforts are only encouraged and are not taken into account in assessing compliance. We note the existence of a publicly-accessible state and local government revenue projection tool⁶²⁷ funded by DfID under the Nigerian-UK State Partnership for Accountability, Responsiveness and Capability (SPARC).

Table 5 - Summary initial assessment table: Revenue management and distribution

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Distribution of revenues (#5.1)	The 2013 EITI Reports clearly stated which extractives revenues were recorded in the FGN budget, deviations in practice from statutory rules and the use of revenues collected by FGN entities not recorded in the FGN budget.	Satisfactory progress.
Sub-national transfers (#5.2)	The 2013 EITI Reports provided the general formula for calculating subnational transfers, but not the actual formula used for calculating transfers to individual states and LGAs. The EITI Reports did not describe that FAAC and derivation transfers to states and LGAs were first transferred to states, who were then expected to transfer their respective LGAs' shares from the aggregate sums received. Furthermore, discrepancies	Meaningful progress.

⁶²⁷ <http://www.sparc-nigeria.com/RPT/>.

	<p>between actual and calculated transfers were not disclosed in the EITI Reports. While the EITI Reports included a detailed description of FAAC and derivation transfers, they did not make reference to the NSWG's discussion of the materiality of subnational transfers. While the 2013 O&G EITI Report referred to monthly FAAC reports, it did not provide guidance on how to access these reports. Finally, amnesty payments to former Niger Delta militants appear to have been mis-categorised as subnational transfers in the 2013 O&G EITI Report.</p>	
Information on revenue management and expenditures (#5.3)	Information on the federal budget-making process and links to some of the relevant FGN websites were included in the 2012 and 2013 EITI Reports.	
<p>Initial conclusions and recommendations:</p> <ol style="list-style-type: none"> 1. In preparing its next EITI Reports, the NSWG should assess the materiality of subnational transfers and ensure that future EITI Reports provide the specific formula for calculating subnational transfers linked to extractives revenues (i.e. 13% derivation transfers) to individual states and LGAs, disclose any material subnational transfers and any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity. In light of NEITI Secretariat's participation in monthly FAAC allocation meetings as observers and the May 2016 Fiscal Sustainability Pact, the NSWG may also wish to consider reconciling subnational transfers and disclosing any material discretionary or ad-hoc transfers. 2. In preparing its next EITI Reports, the NSWG may wish to consider clarifying which states prepare audited budgets and provide links to relevant financial reports where applicable. 3. In preparing its next EITI Reports, the NSWG may wish to undertake a review of publicly-available information and applications that provide additional information on extractives revenue management and expenditures. 		

6. Social and economic spending

6.1 Overview

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

6.2 Assessment

Social expenditures (#6.1)

Oil and gas

Documentation of progress

Section 3.5.1 (p.106) of the 2013 EITI Report described social expenditures, defined as corporate social responsibility, without distinction between voluntary and mandatory social expenditures. There is no evidence in meeting minutes of the NSWG's discussion of the distinction in types of social expenditures. Table 3.5.1 (p.106) provided details of the 18 reporting companies' unilateral disclosure of total social infrastructure expenditures in 2012 and 2013.⁶²⁸ Appendix 3.6.1 (pp.112-132) provided details of these expenditures, disaggregated by project, beneficiary, location, total budgeted value, project completion status and amount expended as of 31 December 2013. However, the beneficiary names provided did not clearly indicate whether beneficiaries were LGCs or private entities, nor whether any social expenditures were provided in kind. The 2013 EITI Report categorised similar types of expenditures, such as construction of schools, as social expenditures, infrastructure provision and quasi-fiscal expenditures.⁶²⁹ While Section 3.5.1 (p.106) referred to certain social expenditures as in kind, Appendix 3.6.1 (pp.112-132) did not distinguish between cash and in-kind expenditures. The 2012 Oil and Gas Report also provided unilateral disclosures of companies' social expenditures, although it did not delineate mandatory from voluntary social expenditures nor cash from in-kind expenditures. While it also provided the names of beneficiaries, it did not identify non-governmental beneficiaries either.

Stakeholder views

A CSO member of the former NSWG noted that there had been no discussion of the definition of social expenditures prior to data collection for the 2013 EITI Report. An investment bank research analyst covering oil and gas noted that there were no mandatory social expenditures in oil and gas. Several CSOs consulted noted that they considered NDDC levies to represent the only form of mandatory social expenditures in oil and gas, although industry representatives consulted considered NDDC levies as a statutory levy. Representatives from companies operating under sole risk, PSC and JV arrangements confirmed there were no mandatory social expenditures in oil and gas, although PSC-holders' voluntary social expenditures agreed with NAPIMS as part of annual budgeting were cost recoverable. Representatives from the DPR considered Community Development Programmes (CDPs) to be a part of PSCs. All Companies Forum members consulted noted that companies signed CDPs, which were discussed with NAPIMS as part of the annual work programme budgeting discussions. While the CDPs were not considered mandatory, industry representatives noted a Supreme Court ruling in the 1990s that CDPs were "wholly necessary and exclusive for [companies'] operations to exist" and thus were not considered wholly voluntary either.

⁶²⁸ With a total of 407 projects valued at NGN 14,152,696,823 and USD 13,546,000 in 2013

⁶²⁹ An example of this was Mobil Producing Nigeria (MBNU)'s NGN 5.5 million construction of a six-classroom block with offices at Comprehensive Secondary School at Ekpri-Nsukara Offot in Uyo LGA, categorized as an infrastructure provision in Appendix 3.6.2 (pp.134); Niger Delta Petroleum Resources' NGN 71 million construction of a two-block school in Rumuekpe, categorized as a social expenditure in Appendix 3.6.1 (p.130); and Total E&P Nigeria's NGN 26.177 million construction of a six-classroom block at Ntit Oton, categorized as a quasi-fiscal expenditure in Appendix 3.6.3 (p.164).

Solid Minerals

Documentation of progress

Sections 6.3 (p.67) and 6.3.2 (pp.68-69) of the 2013 EITI Report stated that mandatory social expenditures existed and provided companies' unilateral disclosures, albeit only in aggregate per reporting company and not disaggregated by project. Section 4.1 (p.37) provided social expenditures disaggregated by cash and in-kind social expenditures, but not disaggregated by project. Of the seven reporting companies, three made mandatory social expenditures, four made voluntary ones and one company adjusted its initial disclosure to zero during reconciliation. The identities of beneficiaries of both mandatory and voluntary social expenditures were not provided. The 2012 EITI Report did not clarify the distinction between mandatory and voluntary social expenditures, although companies' unilateral disclosures of social expenditures were provided (pp.63-64).

Stakeholder views

The IA noted that it had requested for all material companies to distinguish cash from in-kind social expenditures and to disaggregate social expenditures by project and beneficiary, but that some reporting companies had not disaggregated their social expenditures and had only reported a lump sum. Several CSOs and Companies Forum members consulted noted that while there were clauses for mandatory social expenditures in the form of Community Development Agreements (CDAs) under the 2007 Solid Minerals Act, the lack of implementing regulations meant that these CDAs had not been established until 2016. Industry representatives noted that the draft CDA was still being finalised in July 2016, but that these agreements covered expenditures both in cash and in kind.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. We understand from stakeholders that this requirement is not applicable in the oil and gas sector, although the 2013 EITI Report did not explicitly state that mandatory social expenditures did not exist in the oil and gas sector. The disclosure of voluntary social expenditures in oil and gas is encouraging, although the mis-categorisation of certain social expenditures as infrastructure provisions and quasi-fiscal expenditures is of concern. In solid minerals, the 2013 EITI Report disclosed companies' unilateral disclosures of both mandatory and voluntary social expenditures, disaggregated between cash and in-kind payments, although the data was not disaggregated by project and the identity of beneficiaries was not disclosed. In preparing its next EITI Reports, the NSWG should clarify whether mandatory social expenditures exist in the oil and gas sector and ensure that reporting of mandatory social expenditures be disaggregated by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The NSWG may also wish to consider the feasibility of reconciling mandatory social expenditure disclosures.

SOE quasi fiscal expenditures (#6.2)

Oil and gas

Documentation of progress

Section 3.5.3 (p.107) of the 2013 EITI Report described quasi-fiscal expenditures, providing a general

definition that was broader than that provided in the EITI Standard.⁶³⁰ Appendix 3.6.3 (pp.145-169) provided details of quasi-fiscal expenditures reported by eight companies, including seven JVs in which NNPC holds a majority stake and one wholly privately-owned company operating under PSC (SNEPCO), disaggregated by expenditure and including project description, total 2013 budget and general remarks. According to Section 3.5.3 (p.107) information on quasi-fiscal expenditures was sourced from NAPIMS templates, rather than from the JV companies themselves. The identities of the beneficiaries (whether public or private) is not made clear. The 2013 EITI Report categorised similar types of expenditures, such as construction of schools, as social expenditures, infrastructure provision and quasi-fiscal expenditures.⁶³¹

The 2013 EITI Report provided significant information on subsidies in the downstream oil sector. Sections 7.2.1-3 (p170-172) described the fuel subsidy system, Figure 7.2 (p.171) provided a flow chart of PPPRA's system of authorities and procedures on subsidies, Section 7.2.4 (p.172) described the Petroleum Support Fund (PSF) and Section 7.13 (p.187) detailed the Sure-P (Subsidy Reinvestment and Empowerment Programme). The 2013 EITI Report also provided additional information on refined product quantities covered by subsidies and subsidies paid through Sovereign Debt Notes (SDNs).⁶³² The footnote to Table 3.3.19A (p.81) provided the value of 2013 subsidies recorded in the budget and approved by PPPRA⁶³³, while the footnote to Table 3.3.19A (p.81) provided the value of 2013 subsidies not recorded in the budget and deducted at source by NNPC.⁶³⁴ Table 3.3.19A (p.80) and Appendix 3.3.19 (p.93) provided the value of 2013 subsidy deductions at source from the Domestic Crude Receivable Control Account. Section 7.11 (pp.183-184) reconciled subsidy payments by the Federal Government⁶³⁵ with amounts received by importers, but the section noted limitations in access to bank statements from CBN, contradictory statements over whether subsidy payments were from Excess Crude Oil Naira Account at CBN or the PSF Account at CBN⁶³⁶, and the absence of time limit for redeeming SDNs, which created difficulties in determining the number of SDNs redeemed in 2013. Section 7.15.1 (p.189) detailed oil marketers' over-recovered subsidy claims, including an update on recovery efforts for amounts due from 2012.

The 2013 EITI Report also described instances of off-budget subsidies to private companies, although these were not categorised as quasi-fiscal expenditures. One example was the lack of enforcement of financial penalties for late payment of crude oil purchases to NNPC. Sections Section 3.3.9.1 (p.70) and 8.14.1.1.2 (pp.344) referred to certain buyers of NNPC's crude oil not complying with the 30-day payment limit with no evidence of late payment penalties. Another example was the ability of certain buyers of

⁶³⁰ The 2013 EITI Report's definition of quasi-fiscal expenditures was "expenditures, which are not directly related to the core business of NNPC as a petroleum company and industry concessionaire".

⁶³¹ An example of this was Mobil Producing Nigeria (MBNU)'s NGN 5.5 million construction of a six-classroom block with offices at Comprehensive Secondary School at Ekpri-Nsukara Offot in Uyo LGA, categorized as an infrastructure provision in Appendix 3.6.2 (pp.134); Niger Delta Petroleum Resources' NGN 71 million construction of a two-block school in Rumuekpe, categorized as a social expenditure in Appendix 3.6.1 (p.130); and Total E&P Nigeria's NGN 26.177 million construction of a six-classroom block at Ntit Oton, categorized as a quasi-fiscal expenditure in Appendix 3.6.3 (p.164).

⁶³² Product quantities for which subsidies under PSF were processed for payment in 2013 were provided in Section 7.3 (p.174), disaggregated by product type. Subsidies claimed by NNPC in 2013 were provided in Section 7.4 (p.175), subsidies paid on each product type in 2013 were provided in Section 7.5 (pp.175-176) and product volumes of (PMS) imported in 2013 were provided in Section 7.6 (p.176). Issuance of Sovereign Debt Statements (SDSs) by PPPRA for the payment of subsidies were detailed in Section 7.7 (p.177). Issuance of Sovereign Debt Notes (SDNs) by DMO for payment of subsidies in 2013 was detailed in Section 7.8 (pp.177-178). Actual petroleum subsidy payments (SDNs Redeemed at CBN) in 2013 were detailed in Section 7.10 (pp.180-182), disaggregated by company.

⁶³³ NGN 792,961,142,799.52.

⁶³⁴ NGN 138,487,103,205.59.

⁶³⁵ A total of NGN 602.385 billion was ready for redemption in 2013.

⁶³⁶ Section 7.14 (p.188) noted that the PSF's 2013 financial statements were not disclosed to the NEITI Report.

NNPC's crude oil to deviate from pricing procedures, as described in Appendices 8.14.1.1.2 (p.218) and 8.14.1.1.4 (pp.226-230) and Section 10.1.9 (p.393). Appendix 8.14.1.1.4 (pp.226-230) provided a schedule of transactions without pricing option selection date for 159 different invoices.

Stakeholder views

A CSO member of the former NSWG noted that there had been no discussion of the definition of quasi-fiscal expenditures prior to data collection for the 2013 EITI Report. The IA noted that the descriptions of specific revenue streams included in the reporting templates were not sufficiently specific, which explained why the categorisation of payments was effectively left to reporting entities' discretion. It noted that NNPC's NAPIMS had reported quasi-fiscal expenditures on behalf of its JV partners. All stakeholders consulted noted that they did not consider JVs in which NNPC held a majority stake to constitute SOEs. (*See Requirement 2.6*).

PPPRA representatives consulted noted that fuel subsidies had been recorded in the FGN budget, but that NNPC had upon occasion absorbed subsidy costs without being reimbursed by the FGN. However, while there were always discrepancies in subsidy payments compared to the original budget, NNPC's subsidy deductions at source were eventually reflected in the budget given that they were revealed in FAAC disbursements. NEITI has highlighted arrears in subsidy payments and NNPC discretion in withholding subsidy payments from domestic crude allocation proceeds, most notably in its ten-year review published in 2015.⁶³⁷ An international CSO stated categorically that subsidy payments processed by PPPRA only related to subsidies paid to private operators and that none of NNPC's subsidy payments were covered in the national budget but rather deducted at source from domestic crude oil allocations. The CSO noted instances where the FGN had required NNPC to use deductions at source from domestic crude allocations as transfers to PPPRA for it to cover subsidy payments to private operators.

NNPC representatives consulted stated that NNPC undertook different types of quasi-fiscal expenditures, such as providing security for its pipelines and maintaining strategic reserves, which would normally be the responsibility of government. Upon discussion, NEITI Secretariat technical staff stated that pipeline security expenditures undertaken by NNPC could potentially represent a form of quasi-fiscal expenditures. An international CSO stated that NNPC was the first institution the Presidency would turn to when it needed to secure significant amounts of money at short notice and that there were thus considerable amounts of quasi-fiscal expenditures that NNPC was responsible for. Confirming that such quasi-fiscal expenditures were not disclosed in NNPC's monthly reporting since August 2015, the CSO noted that the 2014 PwC audit of NNPC oil sales⁶³⁸ and the 2012 Presidential Petroleum Revenue Task Force⁶³⁹ had identified a large number of quasi-fiscal expenditures undertaken by NNPC including loans to foreign governments, payment for a presidential helicopter and payments for world cup-related travels for instance.

NNPC-COMD representatives stated that they had provisions for imposing late-payment penalties for crude oil buyers who exceeded the 30-day credit limit, equivalent to fees of LIBOR+2%. Secretariat

⁶³⁷ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?', <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

⁶³⁸ http://cloudflare.qurium.info/premiumtimesng.com/docs_download/Full%20report--20billion%20dollars%20missing%20oil%20money.pdf.?cf=1.

⁶³⁹ http://www.premiumtimesng.com/docs_download/Report_of_the_Ribadu_led_Petroleum%20Revenue%20Special%20Task%20Force%202012.pdf.

technical staff stated they did not consider the lack of penalty on some crude off-takers for late payment to constitute a form of quasi-fiscal expenditures, but simply as a loss for NNPC.

NNPC representatives expressed concern over the Nigerian public's misunderstanding of the reasons for its annual losses, noting they would favour better public understanding of the various non-commercial expenditures NNPC was forced to undertake.

Solid minerals

Documentation of progress

The 2013 EITI Report did not refer to quasi-fiscal expenditures, although SOEs in the solid minerals sector appear to have been inactive in 2013. (*See Requirement 2.6*).

Stakeholder views

All stakeholders consulted confirmed that solid minerals SOEs were inactive in 2013 and that there were no statutory requirements for these SOEs to undertake any form of quasi-fiscal expenditures.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. This requirement is not applicable in solid minerals. While the 2013 O&G EITI Report provided NNPC-NAPIMS' disclosures of quasi-fiscal expenditures undertaken by NNPC JVs (and one wholly-private company), none of the stakeholders consulted considered these JVs to be SOEs. These expenditures appear to be social expenditures that have been mis-categorised. While the 2013 EITI Report also disclosed subsidy payments for refined products, it discloses the share covered by the FGN budget, the share retained at source by NNPC but not the share of subsidies absorbed by NNPC without compensation. Finally, the NSWG does not appear to have considered whether the lack of penalty for late payment of NNPC oil sales, certain buyers' discretion in selecting the price at which they purchased NNPC oil and other expenditures such as pipeline security and maintaining strategic national reserves constituted quasi-fiscal expenditures. In preparing its next O&G EITI Report, the NSWG should undertake a review of all quasi-fiscal expenditures undertaken by NNPC and its subsidiaries. This is a particularly important issue given ongoing reforms at NNPC and the SOE's interest in improving public understanding of its non-commercial activities.

Contribution of the extractive sector to the economy (#6.3)

Oil and gas

Documentation of progress

Section 2.4 (p.30) of the 2013 EITI Report provided the oil and gas sector's *share of GDP* in 2013 (13%) sourced from the CBN, but not the sector's size in absolute terms. While Table 2.4A (p.30) provided real sector growth rates and share of GDP⁶⁴⁰, it did not provide the value of 2013 GDP that would allow for the

⁶⁴⁰ quarterly from Q4-2011 to Q4-2013.

calculation of the sector's nominal size. Section 8.5.9 (pp.281-287) described informal activities such as crude oil theft.⁶⁴¹

Section 2.4 (p.31-38) provided the value of 2013 oil and gas *government revenues* in absolute terms and as a share of total government revenue, sourced from CBN.⁶⁴²

Table 3.3.8 (p.66) provided the value of crude oil *exports* in absolute terms. The value of 2013 oil and gas exports as a share of total exports was not provided, with Section 8.6.8 (p.301) only noting generally that upstream oil and gas accounts "for over 90% of the country's exports". The 2013 EITI Report did not disclose the value of natural gas exports, either in absolute terms or as a share of total exports, nor the value of Nigeria's total exports. (*See Requirement 3.3*).

Section 2.4 (p.30) provided oil and gas *employment* as 582 staff, accounting for 0.01% of the 10.97 million Nigerians in formal employment in 2013. This figure was sourced from a Vanguard⁶⁴³ press article, which drew on figures from the National Bureau of Statistics.

Section 8.6.4 (pp.295-299) provided the geographical *location* of oil and gas reserves.⁶⁴⁴ Figure 8.7.1 (p.311) listed the geographical distribution of awarded blocks (by state of operation) and Table 8.4.1E (pp.229-230) disaggregated 2013 export figures by region.

The 2012 EITI Report also provided the oil and gas sector's size as a share of GDP but not in absolute terms (p.30), the sector's share of government revenues in absolute and relative terms (p.31), an estimate of informal activities (p.30), the sector's exports in absolute terms but not as a share of total exports (p.137) and an overview of key areas where location was concentrated (p.26). It did not provide oil and gas employment figures in absolute or relative terms.

Stakeholder views

An industry representative noted that the contribution of the oil and gas sector to GDP declined following the rebasing of GDP figures in 2013 but that its contribution to government revenues had remained constant regardless of GDP rebasing. Several CSOs consulted considered the estimate of oil and gas employment to be too low. Several industry representatives noted that the number of employees directly employed by upstream oil and gas companies on a permanent basis was in the low thousands, but also considered this undervalued the sector's total contribution to employment given that a large share of oil and gas workers were short-term contractors. However, in light of the sharp decline in the oil and gas sector since 2014, these representatives noted that the majority of contractors had been laid off. One government representative considered that the National Bureau of Statistics would be in a position to supply accurate statistics on the sector's size, contribution to exports and employment. A CBN representative noted that the CBN's Trade and Exchange Department could supply export statistics.

⁶⁴¹ Sections 8.5.9A-J (pp.282-287) provided disaggregated crude oil theft figures for each JV and NNPC, although the source is not consistently provided. Section 8.5.9.1 (pp.287-288) provided the volumes and value of 2013 domestic crude oil losses on flow lines from crude oil terminals to refineries. Section 8.5.9.3 (pp.291-292) described economic, environmental, social, health and governance impacts of oil theft.

⁶⁴² Table 2.4B (p.31) provided these figures quarterly for Q4-2011 to Q4-2013, while Table 2.4C (p.32) provided components of oil and gas revenues in absolute terms quarterly for Q4-2011 to Q4-2013. Table 2.8B (p.38) detailed the 2013 Federation Account Allocation Statement.

⁶⁴³ <http://www.vanguardngr.com/2014/06/unemployment-oil-sector>.

⁶⁴⁴ Figure 8.6.4A (p.297) provided a low-definition map of Nigeria showing sedimentary basins (from a DPR presentation) and Figure 8.6.4B (p.297) provided a low-definition map of the oil fields and blocks as well as the main oil and gas basins.

Solid minerals

Documentation of progress

The 2013 EITI Report provided the *value* of the solid minerals sector in absolute terms (NGN 459 billion) in 2013 in Section 3.1.4.i (p.18) and as a share of GDP in (0.73%) in Sections 1.1 (p.10) and 4.2.3 (p.40). The same figures were provided (p.19) for re-based GDP figures following the 2013 rebasing of GDP, at NGN 535 billion and 0.67% respectively. Section 4.2.2 (p.39) noted the prevalence of ASM and the 2013 EITI Report included two buying centres in the scope of reporting.

Section 1.2 (p.8) provided total 2013 *government revenues* from solid minerals (NGN 31,001 million), although the sector's share of total government revenues was not provided. Section 3.2.2 (p.25) noted that FIRS only disaggregated government revenues as oil and non-oil, without further disaggregating non-oil revenues into specific components.

Sections 3.1.4.ii (p.19) and 1.3 (p.11) provided the value of solid minerals *exports* in 2012 and 2013, while Section 1.2 (p.10) provided their share of total 2013 exports (0.09%).

Section 1.2 (p.10) provided the solid minerals *employment* as a share of total 2013 employment (0.3%), but not in absolute terms. While Section 3.1.4.iii (p.20) provided sufficient information to calculate employment in solid minerals in absolute terms based on 2010 data, it was not possible to calculate the sector's nominal employment for 2013. Section 7.1.1 (p.70) noted that most material companies did not report their employment levels, but Annex 1 (pp.82-83) provided employment figures from reporting companies, disaggregated by company and origin (foreign/local).

While Section 3.1.1 (p.16) described the history of coal and tin mining in Plateau and Enugu states, Section 7.1.1 (p.70) noted that most material companies did not report the *location* of their operations and Annexes 8.1 and 8.2 (pp.103-104) provided reporting companies' production data disaggregated by mineral and by state.

The 2012 EITI Report provided the solid minerals sector's size as a share of GDP but not in absolute terms (p.19), a description of ASM (p.36), government revenue from the sector in absolute but not relative terms, employment and export data in absolute and relative terms and regions with significant mineral deposits (p.37). Minutes from the NSWG's 16 December 2014 meeting reflect the NSWG's direction to the IA to include more information on ASM in the 2012 Report, including on the new legal regime for the sector.⁶⁴⁵

Stakeholder views

One industry representative highlighted that the low contribution of mining revenues to the economy, at only around 0.5% of GDP, reflected the fact that many solid minerals companies did not pay their fair share of royalties. A member of the National Assembly emphasised the importance of diversification away from oil and gas, highlighting the potential of solid minerals to drive this diversification and the importance of reliable figures on the economic contribution of extractive industries to the national economy. The IA noted that the FIRS' lack of disaggregation of non-oil revenues meant that it was not possible to source a reliable figure on the share of solid minerals in total government revenues. An MID representative noted that the contribution of solid minerals revenues to total government revenues was

⁶⁴⁵ See minutes of NSWG meeting, 16 December 2014, unpublished, provided by NEITI Secretariat.

very low given that the industry was still at an early stage of development, although he did not have a figure for the sector's share of government revenues. CSOs did not express any particular views on the solid mineral sector's contribution to the economy, only noting that the sector's currently low contribution highlighted the importance of government efforts to develop the sector as a means of diversifying away from oil and gas.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. In oil and gas, the 2013 EITI Report provided the sector's size relative to GDP, but not in absolute terms, its contribution to government revenues in absolute and relative terms, the value of exports of crude oil, but not of natural gas, and an estimate of its share of total exports and an estimate of sector employment in absolute and relative terms. It also provided an overview of informal activities and of the location of activities. However, the low estimate of sector employment is a concern in light of stakeholders' comments. In solid minerals, the 2013 EITI Report provided the sector's size in absolute terms and relative to GDP, its share of government revenues in absolute but not relative terms, its share of exports in absolute and relative terms as well as its share of employment in relative but not absolute terms. It also provided an overview of informal activities and some information on the location of mining activities. In preparing its next EITI Reports, the NSWG should liaise with relevant government entities to provide the size of the oil and gas sector in absolute terms, the solid mineral sector's share of government revenues in relative terms, the value of oil and gas exports in absolute and relative terms and the size of solid minerals employment (for the year(s) under review) in absolute terms. The NSWG may also wish to agree a definition of oil and gas employment, considering whether to include non-permanent staff for instance.

Table 6 - Summary initial assessment table: Social and economic spending

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Social expenditures (#6.1)	This requirement appears to be non-applicable in the oil and gas sector. In solid minerals, the 2013 EITI Report disclosed companies' unilateral disclosures of both mandatory and voluntary social expenditures, disaggregated between cash and in-kind payments, although the data was not disaggregated by project and the identity of beneficiaries was not disclosed.	Meaningful progress.
SOE quasi fiscal expenditures (#6.2)	This requirement is not applicable in solid minerals. In oil and gas,	Meaningful progress.

	<p>while the 2013 EITI Report provided NNPC-NAPIMS' disclosures of quasi-fiscal expenditures undertaken by NNPC JVs (and one wholly-private company), none of the stakeholders consulted considered these JVs to be SOEs. These expenditures appear to be social expenditures that have been mis-categorised. While the 2013 EITI Report also disclosed subsidy payments for refined products, it disclosed the share covered by the FGN budget, the share retained at source by NNPC but not the share of subsidies absorbed by NNPC without compensation. Finally, the NSWG does not appear to have considered whether the lack of penalty for late payment of NNPC oil sales, certain buyers' discretion in selecting the price at which they purchased NNPC oil and other expenditures such as pipeline security and maintaining strategic national reserves constituted quasi-fiscal expenditures.</p>	
<p>Contribution of the extractive sector to the economy (#6.3)</p>	<p>In oil and gas, the 2013 EITI Report provided the sector's size relative to GDP, but not in absolute terms, its contribution to government revenues in absolute and relative terms, the value of exports of crude oil, but not of natural gas, and an estimate of its share of total exports and an estimate of sector employment in absolute and relative terms. It also provided an overview of informal activities and of the location of activities.</p> <p>In solid minerals, the 2013 EITI</p>	<p>Meaningful progress.</p>

	<p>Report provided the sector's size in absolute terms and relative to GDP, its share of government revenues in absolute but not relative terms, its share of exports in absolute and relative terms as well as its share of employment in relative but not absolute terms. It also provided an overview of informal activities and some information on the location of mining activities.</p>	
<p>Initial conclusions and recommendations:</p> <ol style="list-style-type: none"> 1. In preparing its next EITI Reports, the NSWG should clarify whether mandatory social expenditures exist in the oil and gas sector and ensure that EITI reporting of mandatory social expenditures be disaggregated by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The NSWG may also wish to consider the feasibility of reconciling mandatory social expenditure disclosures. 2. In preparing its next O&G EITI Report, the NSWG should undertake a review of all quasi-fiscal expenditures undertaken by NNPC and its subsidiaries. This is a particularly important issue given ongoing reforms at NNPC and the SOE's interest in improving public understanding of its non-commercial activities. 3. In preparing its next EITI Reports, the NSWG should liaise with relevant government entities to provide the size of the oil and gas sector in absolute terms, the solid mineral sector's share of government revenues in relative terms, the value of oil and gas exports in absolute and relative terms and the size of solid minerals employment (for the year(s) under review) in absolute terms. The NSWG may also wish to agree a definition of oil and gas employment, considering whether to include non-permanent staff for instance. 		

Part III – Outcomes and Impact

7. Outcomes and Impact

7.1 Overview

This section assesses implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

7.2 Assessment

Public debate (#7.1)

Documentation of progress

Communications: NEITI has a communications strategy and a dedicated communications team charged

with implementing it, as well as a communications committee in the NSWG.

NEITI's revised communication strategy aims to "Motivate and inspire stakeholders to meaningfully participate in the ongoing dialogue pertaining to the use ... of Nigeria's extractive resources to support the entrenchment of transparency and accountability in the extractive industries in Nigeria."⁶⁴⁶ Through raising awareness, educating, providing insights and analysis and enable stakeholders to respond to the findings of the reports, the strategy seeks to "create a platform around the NEITI audits that routinely demonstrates the impact and importance of the audit in order to engender trust and ensure sustained participation by the various stakeholders through dialogue and direct participation in the quest for transparency and accountability." The Communications strategy is reviewed regularly.⁶⁴⁷

The NSWG Board Charter establishes the creation of a Communications Committee (CC) to advise the NSWG, facilitate communication with stakeholders and supervise the implementation of communications activities (article 8.3.4). Committee membership is listed in Annex A below. Meeting minutes made available to the Secretariat show that the CC meets on an *ad hoc* basis and reports to the NSWG. The last record of meetings provided to the Secretariat is dated June 2014.

NEITI has an 8-staff in-house Communications Department that also manages relations with civil society. The CD coordinates NEITI's relations with the constituencies,⁶⁴⁸ publishes regular press releases, statements, publications and monthly newsletters, coordinates outreach to legislators, creates regular news reviews on NEITI-related issues, arranges regular media appearances and interviews, and engages actively in social media platforms.⁶⁴⁹

While the 2013 EITI Reports were only published in May 2016, these have been disseminated since then primarily to stakeholders in the capital Abuja. The two EITI Reports were launched at a stakeholder dialogue held at the Nigerian Air Force Conference Centre in Abuja on 23 May 2016.⁶⁵⁰ The NEITI Secretariat also produced simplified EITI Reports for both solid minerals⁶⁵¹ and oil and gas⁶⁵², which were published at the same time as the full EITI Reports. Dissemination of the EITI Reports had thus far focused on key government stakeholders including the EFCC, which established a task force to follow up on the 2013 EITI Reports' findings⁶⁵³, the National Assembly, with the Senate establishing an *ad hoc* committee for similar purposes⁶⁵⁴, and key government entities like NNPC. The 2012 EITI Reports were launched in

⁶⁴⁶ The communication strategy continues: "For this communication objective to be fully effective, these sub-objectives come into play: Create and sustain awareness for the NEITI initiative, program and objectives, To build trust and understanding between NEITI and its various stakeholder groups, Define and manage perception of different stakeholders, To promote buy-in into NEITI's ideals, actions and purposes" <http://www.neiti.org.ng/sites/default/files/documents/uploads/revise-communications-strategy-document.pdf>.

⁶⁴⁷ For example, a workshop to review the communications strategy was organised by GIZ on 29 June to 2 July 2015. See http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-AAR-2015.pdf.

⁶⁴⁸ Through the Civil Society Steering Committee, the Inter-Ministerial Task Team and the newly created Company Forum.

⁶⁴⁹ "Communications Department: an overview of key functions". Presentation by Dr. Orji Ogbonnaya, Director of Communications. A copy is available at the Secretariat.

⁶⁵⁰ NEITI (10 June 2016), NEITI convenes stakeholders dialogue on the 2013 EITI Audit Reports, <http://www.neiti.org.ng/index.php?q=news/2016/06/10/neiti-convenes-stakeholders-dialogue-2013-audit-report>.

⁶⁵¹ NEITI (May 2016), 2013 NEITI Solid Minerals Audit Report, simplified, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-SMA-REPORT-2013/2013-SMA-Report-Simplified.pdf.

⁶⁵² NEITI (May 2016), 2013 NEITI Oil and Gas Audit Report, simplified, http://neiti.org.ng/sites/default/files/pdf_uploads/Simplified%202013%20Oil%20and%20Gas%20Audit%20report%20new.pdf.

⁶⁵³ NEITI (June 2016), 2013 Audit Reports: NEITI takes case to EFCC, <http://www.neiti.org.ng/index.php?q=news/2016/06/17/2013-audit-reports-neiti-takes-case-efcc>.

⁶⁵⁴ NEITI (June 2016), NEITI applauds Senate's decision to act on its report findings and recommendations,

December 2014 for solid minerals⁶⁵⁵ and March 2015 for oil and gas⁶⁵⁶, with simplified versions of the two EITI Reports produced several months after their initial publication (in July 2015).⁶⁵⁷ While there did not appear to be a formal launch conference for the two 2012 EITI Reports, the NEITI Secretariat used other conferences in Abuja to disseminate information from these reports, such as at a June 2015 oil and gas conference.⁶⁵⁸

While the 2016 workplan includes activities for dissemination of the 2013 EITI Reports in all six geopolitical zones, these had yet to be undertaken as of August 2016. This was also the case for the 2012 report: while the NEITI Secretariat was meant to conduct six town hall meetings, in each of the six geopolitical zones, between May and December 2015, focusing on outreach and dissemination of the 2012 EITI Reports, there is no evidence that these took place and the 2015 annual progress report merely stated these were “in progress”. The last town hall-style meetings outside the main urban centres of Abuja, Lagos and Port Harcourt appear to date from 2013 based on attendance charts provided by the NEITI Secretariat.

The NEITI Secretariat published the first FASD Report on the NEITI website and presented it to the Presidency and general public in Q2-2014.⁶⁵⁹ The NSWG has discussed ways of increasing subnational dissemination of the FASD Report in the past, with one NSWG member calling for FASD zonal representatives to lead roadshows to each of the states covered in the FASD report at its 25 June 2014 meeting.⁶⁶⁰ At its inaugural meeting on 11 March 2016, the new NSWG encouraged NSWG representatives from the six geopolitical zones to present a strategy for engaging their zones and be introduced to the State Governors in their respective zones, supported by the NSWG Chair.⁶⁶¹

The NEITI Secretariat has also started publishing policy briefs since 2016, with the inaugural brief in May 2016 focused on “The Need to Know Who Owns What in Nigeria’s Extractive Sector”⁶⁶² in anticipation of the London Anti-Corruption Summit. A press release on the challenges by anonymous companies was published in conjunction with the policy brief⁶⁶³, which was covered by a large number of national news media.⁶⁶⁴ NEITI’s 2016 workplan includes planned policy briefs on metering infrastructure and the

<http://www.neiti.org.ng/index.php?q=news/2016/06/20/neiti-applauds-senate-s-decision-act-its-reports-findings-and-recommendations>.

⁶⁵⁵ <http://www.neiti.org.ng/index.php?q=news/2014/12/30/neiti-releases-year-2012-audit-report-solid-minerals-sector>.

⁶⁵⁶ <http://www.neiti.org.ng/index.php?q=news/2015/03/31/nigeria-earned-629-billion-oil-revenues-2012-neiti-releases-2012-oil-gas-audit-repor>.

⁶⁵⁷ See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

⁶⁵⁸ <http://www.neiti.org.ng/index.php?q=news/2015/06/10/neiti-calls-use-its-audit-reports-recommendations-guide-reforms-oil-and-gas-sector>.

⁶⁵⁹ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁶⁶⁰ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁶⁶¹ See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

⁶⁶² NEITI, May 2016, “The Need to Know Who Owns What in Nigeria’s Extractive Sector” Policy Brief Issue 01, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-Policy-Brief.pdf.

⁶⁶³ NEITI, 9 May 2016, “Anonymous Companies, Threat to Nigeria’s Economy and Security – NEITI”, <http://www.neiti.org.ng/index.php?q=news/2016/05/09/anonymous-companies-threat-nigeria-s-economy-and-security-neiti>.

⁶⁶⁴ This Day Live (14 May 2016) <http://www.thisdaylive.com/index.php/2016/05/14/natural-resources-neiti-applauds-buharis-pledge-to-more-disclosures/>, Today Nigeria (10 May 2016) <https://www.today.ng/news/national/120102/anonymous-companies-threat-nigerias-economy-security-neiti>, Vanguard Nigeria (10 May 2016) <http://www.vanguardngr.com/2016/05/neiti-tells-fg-compel-companies-disclose-real-owners/>, Leadership Nigeria (10 May 2016) <http://leadership.ng/business/525135/neiti-seeks-law-unmask-real-owners-oil-firms>, Daily Nigerian News (14 May 2016) <http://www.dailynigerianews.com/2016/05/14/london-anti-corruption-summit-neiti-hails-pmbs-pledge-to-disclosures/>, Nigerian Nation (10 May 2016) <http://money.nigeriannation.com/2016/05/10/neiti-seeks-law-to-unmask-real-owners-of-oil>

economic and environmental impact of small scale mining in select states.⁶⁶⁵

NEITI features regularly in national media. The 2015 annual progress report noted NEITI's media engagement in 2015 including appearances on national TV and radio programs⁶⁶⁶ and an interview appearance by Zainab Ahmed, former NEITI Executive Secretary, on Aljazeera's "Counting the Cost"⁶⁶⁷. NEITI is also regularly interviewed by national papers.⁶⁶⁸ Radio jingles on the NEITI Reports have also been organised in partnership with CISLAC/Oxfam on the national radio stations Kapital FM, Vision FM-Brugami, Hot FM-People Assembly and Love FM-Berekete (2015 APR, p. 10).

The NEITI Secretariat has consistently called for closer cooperation with the media, most recently in June 2016.⁶⁶⁹ The NEITI Secretariat disseminates a daily news review to over 1,000 subscribers, which include articles related to the extractive industries, NEITI press releases and other relevant articles, as well as a newsletter published monthly. Media representatives are regularly invited to NEITI events, such as the roundtable on the Review of NEITI Act on 3 August 2015 which was covered by the Nigeria Premium Times⁶⁷⁰. The NEITI Secretariat supported the establishment of an NGO for media covering its activities called the Media Initiative for Transparency in the Extractive Industries (MITEI), on 15 August 2012.⁶⁷¹ A bi-annual magazine called "Open Audit" was launched by the Communications Department in June 2011 "to serve as a rallying point in mobilizing informed opinions, grassroots appeal required to promote extractive industries revenue transparency".⁶⁷² Although there are no new editions available since May 2013, the current draft workplan includes publication of an Open Audit Magazine among the NSWG's planned activities.⁶⁷³

NEITI has been engaging with the public through social media with regular posts on Facebook⁶⁷⁴ and by

[firms/](http://theeagleonline.com.ng/anonymous-companies-threat-to-nigerias-economy-security-neiti/), The Eagle Online (10 May 2016), <http://theeagleonline.com.ng/anonymous-companies-threat-to-nigerias-economy-security-neiti/>, Nigeria Oil and Gas Intelligence (13 May 2016) <http://www.nigeriaoilandgasintelligence.com/neiti-calls-buhari-administration-publish-beneficial-owners-extractive-industry-companies/>, Sweet Crude Reports (18 May 2016) <http://sweetcrudereports.com/2016/05/18/anonymous-ownership-of-oil-firms-threat-to-national-security-neiti/>, Africa Network for Environment and Economic Justice (13 May 2016) <http://www.aneej.org/2190-2/>.

⁶⁶⁵ http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-2016-Narative-Workplan-230716.pdf.

⁶⁶⁶ Such as the Nigerian Television Authority program "Good Morning Nigeria", the African Independent Television program entitled "Money Show", the "Open Audit" programme on the Nigerian Kapital FM in partnership with the Civil Society Advocacy Centre (CISLAC) and Oxfam. See Coverage of NEITI by Nigerian Television Authority (<http://www.nta.ng/tag/neiti/>), including "NEITI Partners EFCC on Graft" 17 June 2017 (<http://www.nta.ng/news/finance/20160617-neiti-partners-efcc-on-graft/>) and "NNPC Opens Bid for Award of Fresh Offshore Processing Arrangements", 16 October 2015 (<http://www.nta.ng/news/20151016-nnpc-opens-bid-for-award-of-fresh-offshore-processing-arrangements/>), African Independent Television (<http://aitonline.tv/search?searchterm=neiti>), and <http://www.neiti.org.ng/index.php?q=news/2015/10/23/open-audit-debuts-kapital-fm>.

⁶⁶⁷ Al Jazeera, 19 August 2015, <http://www.aljazeera.com/programmes/countingthecost/2015/08/corruption-blights-nigeria-oil-industry-150818132048576.html>.

⁶⁶⁸ This Day Nigeria for example mentioned NEITI 50 times in the period 1 February 2016 – 1 July 2016. See Coverage of NEITI by This Day live, <http://www.thisdaylive.com/?s=neiti>.

⁶⁶⁹ NEITI (27 June 2016), NEITI seeks closer media partnership, collaboration, <http://www.neiti.org.ng/index.php?q=news/2016/06/27/neiti-seeks-greater-media-partnership>

⁶⁷⁰ Nigeria Premium Times, "Nigeria extractive industry watchdog, NEITI, seeks more powers" 19 September 2015, <http://www.premiumtimesng.com/business/business-interviews/190302-nigeria-extractive-industry-watchdog-neiti-seeks-more-powers.html>

⁶⁷¹ https://www.facebook.com/worldbanknigeria/photos/?tab=album&album_id=451249108248401

⁶⁷² <http://www.neiti.org.ng/index.php?q=publications/open-audit-magazine>.

⁶⁷³ http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-2016-Narative-Workplan-230716.pdf.

⁶⁷⁴ Nigeria Extractive Industries Transparency Initiative Facebook Page, <https://www.facebook.com/nigeriaeiti/>

organising live Q&A sessions on Twitter.⁶⁷⁵ As of 20 July 2016, NEITI's Facebook page,⁶⁷⁶ created in 2003, had 2076 likes while NEITI's Twitter moniker @nigeriaeiti, started in December 2011, had 2487 followers for its 709 tweets. The hashtag #NEITIAuditReports started on 17 June 2014. The Internet Archive provides site captures of NEITI's website back to August 2008⁶⁷⁷, although the website was originally established in 2004. The NEITI Secretariat estimates that it has roughly 3,000 unique hits to its website every month. While NEITI has long had a social media presence, it has increased the frequency of its postings from 2016. DfID's FOSTER has supported work on a social media strategy, contracting a consultant to provide capacity building to the secretariat in May 2016.

In its social networks NEITI highlights a number of "nuggets of otherwise difficult to obtain information that should interest citizens and policy-makers" resulting from NEITI's reports including missing remittances from NNPC, losses due to oil theft and vandalism, under-assessment of royalties due to differing pricing methodologies, non-remittance of NLNG dividends and missing metering infrastructure.⁶⁷⁸

With support from Oxfam, CISLAC undertook a Public Perception Survey on NEITI implementation in Nigeria in December 2015, with the aim of establishing a baseline of data on public perceptions of NEITI activities. The study was undertaken over a one-month period in December and focused only on respondents in the Federal Capital Territory of Abuja, which meant that the response rate was lower than expected and the sample size was limited. The NEITI Secretariat has planned to undertake an expanded public perceptions survey together with NOIPolls⁶⁷⁹ although the timeframe for completing this survey remained unclear as of July 2016.

Outreach: The NEITI Secretariat has led outreach efforts for years, primarily focused on Abuja-based stakeholders such as government entities. A NEITI National Conference was held in February 2012.⁶⁸⁰ Although meant to be the first of a series, there is no evidence of national conferences since then. Outreach to the National Assembly appears to have expanded, particularly since 2012, and there is evidence of close collaboration between the NEITI Secretariat, NSWG members and the National Assembly.⁶⁸¹ More recently, Executive Secretary Waziri Adio presented the findings of the 2013 EITI Reports to the Senate on 15 June 2016, leading to the establishment of ad hoc committee of nine members to examine and follow up on the 2013 EITI Reports.⁶⁸² The National Assembly (Public Accounts

⁶⁷⁵ Nigeria Extractive Industries Transparency Initiative Twitter Profile, <https://twitter.com/nigeriaeiti>

⁶⁷⁶ <https://www.facebook.com/nigeriaeiti>

⁶⁷⁷ https://web.archive.org/web/20080401000000*/http://www.neiti.org.ng

⁶⁷⁸ "An outstanding USD 3.8 billion yet to be remitted to the Federation by NNPC and its subsidiaries; losses to the federation amounting to USD 5.966 billion...; under-assessment/under-payment of petroleum profit taxes and royalties by oil and gas companies as a result of different pricing methodologies by the government and the companies amounting to USD 599.98 million; non-remittance of NLNG dividends to the government by NNPC for eight years amounting to USD 12.9 billion; total subsidy on petroleum products amounting to NGN 1.3 trillion; lack of metering infrastructure, more than ten years after this was flagged in the first NEITI audit reports". See

<https://www.facebook.com/nigeriaeiti/photos/a.538927239503315.1073741826.245460682183307/1192686487460717/?type=3&theater>.

⁶⁷⁹ <http://noi-polls.com/>

⁶⁸⁰ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁶⁸¹ This was particularly the case on the issue of the PIB. Over the summer of 2012 the NEITI Executive Secretary briefed a joint PIB hearing to the House and Senate, where the Chairman of the Senate Committee on the PIB had requested close ongoing collaboration with NEITI. See minutes of NSWG meeting, 19 September 2013, unpublished, provided by NEITI Secretariat.

⁶⁸² NEITI, 20 June 2016, <http://www.neiti.org.ng/index.php?q=news/2016/06/20/neiti-applauds-senate-s-decision-act-its-reports-findings-and-recommentations>. Nigerian Television Authority, 16 June 2016,

Committee of the Senate) had also conducted a hearing on both 2007-2011 FASD and the 2011 SM EITI Reports in Q3-2014.⁶⁸³

A subnational EITI was attempted in Bayelsa state,⁶⁸⁴ but according to NRGi it has been dormant since June 2010.⁶⁸⁵

A panel discussion at the new NSWG's April 2016 induction retreat noted that NEITI Report data should be translated into terms more easily understood by common Nigerians, for instance by expressing losses in terms of number of schools or length of railway lines that could have been built, rather than in USD billions that are more difficult to understand.⁶⁸⁶ The panel also noted that NEITI needed to broaden its work with CSOs through more institution-specific advocacy, given that it "is the CSOs that will help translate the audit reports into advocacy tools through public debates and actions to influence change." It was recommended that NEITI work with the government to link the EITI's qualitative and quantitative data to the development agenda.⁶⁸⁷

Stakeholder views

Conversations with taxi drivers illustrated the extent to which NEITI is recognised as a semi-independent government auditing agency for the extractive industries across all levels of Nigerian society. All stakeholders consulted considered that EITI implementation had generated public debate in Nigeria, although more at the national level than at the level of communities hosting extractive industries. Radio shows and newspapers were highlighted as the most important sources of information on NEITI and its findings.

Several CSOs explained that the relative lack of dissemination of the 2013 EITI Reports was due to the fact that the Civil Society Steering Committee had not been reconstituted since the new NSWG took office in February 2016. All CSOs consulted noted funding constraints on their ability to disseminate information from EITI Reports. For their part, all industry representatives except one noted that they did not consider it to be their role to contribute to dissemination of EITI Reports. One IOC representative noted that his company had participated in dissemination events in the past, although only in areas where it had operations in the Niger Delta. Several industry representatives noted that the newly-established

<http://www.nta.ng/news/investment/20160616-senate-sets-up-committee-to-examine-2013-neiti-audit-report/>.

⁶⁸³ See minutes of NSWG meeting, 20 November 2014, unpublished, provided by NEITI Secretariat.

⁶⁸⁴ <http://bayelsa.gov.ng/beiti> (not operational).

⁶⁸⁵ In February 2008 the recently-elected governor of Bayelsa State, Timipre Sylva, discussed establishing a subnational EITI implementation with NRGi (then RWI). The state government established a secretariat and RWI supported two local NGOs (Bayelsa NGO Forum (BANGOF) and the Niger Delta Citizens and Budget Platform (NDCBP)) to take part in the MSG, whose scope was expanded from revenue transparency to providing information on expenditures. The reconciliation process was expected to capture information on four streams including revenues, allocations, expenditures and resource flows. The State Ministry of Justice drafted a BEITI Bill with support from RWI although it was never enacted and work on a BEITI Report was contracted to S.S. Afemikhe and Co. (the same IA as for the first two NEITI O&G Reports) but never completed. The MSG developed a three-year work plan from January 2009 to March 2012 with two key objectives (to enact a BEITI law and to produce the first reconciliation report). As of late July 2011, the BEITI bill had its first reading in Bayelsa's House of Assembly but there does not appear to have been any progress since. Revenue Watch Institute (February 2012), An uphill struggle: oil wealth and the push for transparency in the Niger Delta,

http://www.resourcegovernance.org/sites/default/files/documents/nigeria_subnational_case_study1.pdf.

⁶⁸⁶ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

⁶⁸⁷ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

Companies Forum would potentially provide one channel for industry participation in EITI dissemination.

Most industry representatives consulted expressed significant concern over the way in which the 2013 O&G EITI Report was covered in the media: while the full 2013 O&G EITI Report had struck a balanced tone on the issue of differences in pricing of crude oil, media reports had tended to highlight that companies owed money to the government rather than reflecting the fact that the dispute was being resolved. Some industry representatives spoke of filling in NEITI's reporting templates with "fear and apprehension" because they were unsure how the findings would be interpreted in NEITI's public discourse. A representative from an international development agency and a representative from an international civil society organisation regretted that NEITI did not have better technical understanding or methodological backing for some of the conclusions they had raised as a result of NEITI Reports. As a result, they said, NEITI's press releases were sometimes too simplistic. A member of the secretariat noted that in the past wherever NEITI had misrepresented or quoted someone out of context, the Communications Department had published a public retraction and apology.⁶⁸⁸

Government representatives did not express any particular view on dissemination of EITI information, although they noted they only tended to participate in dissemination events as observers and consumer of information. A former NSWG Chair considered the NSWG's most daring challenge to be the limited resources to enable dissemination to be carried out in the geopolitical zones.

The President of the Senate and the Chairman of the EFCC expressed strong support for NEITI and welcomed the opportunity to work closer with the NSWG to follow up on NEITI's findings. Both identified the absence of remediation as the greatest challenge NEITI faced and they expressed an interest in using their respective organisations to help address it.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. The NSWG has taken steps to ensure that the EITI report is comprehensible, actively promoted and publicly accessible. Through the organisation of dissemination events and workshops, NEITI has ensured that the EITI has also contributed to public debate, particularly at the national levels in Abuja. Public debate has been generated by specific data from EITI Reports, such as information on state participation, sales of in-kind revenues and license transfers, but the EITI has also provided a platform for discussions and debates about how the oil and gas sector is managed.

To continue improving, NEITI should consider ways to ensure that other stakeholders are encouraged to participate more actively in the upstream development of communications strategies instead of only downstream dissemination activities. NEITI and civil society should return to reaching out to local communities and to the geopolitical regions, especially those where there are extractive activities. The NSWG may wish to consider establishing more formal mechanisms for subnational consultations to provide input to national EITI discussions, to ensure discussions at the local level are reflected.

⁶⁸⁸ See for example <http://www.neiti.org.ng/index.php?q=news%2F2016%2F04%2F25%2Fneiti-clarifies-statement-attributed-nnpc-ged-transfer-oil-blocks-npd>.

Data Accessibility (#7.2)

Documentation of progress

The NEITI Secretariat produced simplified 2013 EITI Reports for both solid minerals⁶⁸⁹ and oil and gas⁶⁹⁰, which were published at the same time as the full EITI Reports. Simplified summary EITI Reports have been published for all EITI Reports since 2006-2008, although these have tended to be published with some delay.⁶⁹¹

The NSWG has also undertaken work to make EITI data more accessible through other channels than hard-copy publications. The NEITI Secretariat has prepared summary data templates for the 2012 and 2013 O&G and SM EITI Reports, although these are not available on the NEITI website. FOSTER has also supported cooperation with the Lagos-based NGO BudGIT to produce infographics on the basis of the EITI Reports.⁶⁹² In 2013, DfID also launched an initiative called Follow the Data⁶⁹³ to support the design of mobile phone apps to help people in EITI countries such as Nigeria to understand EITI data through questions and answers.⁶⁹⁴

The NSWG has undertaken work on automating the data collection process with a view to streamlining the lengthy reporting procedures and linking to other federal government data portal initiatives.⁶⁹⁵ The 2016 draft workplan budgeted NGN 62 million for the development of the automation system, of which NGN 40 million would come from the World Bank.⁶⁹⁶ On 27 July 2015, the NEITI Secretariat published an invitation for bids for the development of an IT system to automate EITI reporting⁶⁹⁷, with the opening of bids taking place on 25 August 2015, and the project was awarded to a US-based consortium of Global Infosystems Co. Ltd and DotGov Solutions LLC.⁶⁹⁸ The IMF has supported the implementation of the data

⁶⁸⁹ NEITI (May 2016), 2013 NEITI Solid Minerals Audit Report, simplified,

http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-SMA-REPORT-2013/2013-SMA-Report-Simplified.pdf.

⁶⁹⁰ NEITI (May 2016), 2013 NEITI Oil and Gas Audit Report, simplified,

http://neiti.org.ng/sites/default/files/pdf_uploads/Simplified%202013%20Oil%20and%20Gas%20Audit%20report%20new.pdf.

⁶⁹¹ Meeting minutes show the NSWG's frustration at delays in printing and distributing hard copies of simplified versions of the 2009-2011 O&G and 2007-2010 SM EITI Reports, at its 11 December 2013 meeting with the reports only printed following the NSWG's 20 November 2014 meeting. The NEITI Secretariat had already started disseminating the two EITI Reports to the National Assembly, State Governments, CSOs and others in Q2-2014 and Q3-2014. Production of the simplified EITI Reports was undertaken with support from DfID's FOSTER, which also supported production of the simplified FASD Report published in Q3-2015, as noted at the NSWG's 20 November 2014 meeting and its 16 June 2015 meeting.

⁶⁹² <http://neiti.org.ng/index.php?q=news/2016/04/19/data-simplification-neiti-deepens-partnership-budgit>.

⁶⁹³ <http://www.cchubnigeria.com/follow-the-data-extractives-hack/>.

⁶⁹⁴ International Institute for Environment and Development (2014), 'Localising transparency: exploring EITI's contribution to sustainable development', <http://pubs.iied.org/pdfs/16555IIED.pdf> and

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213915/anti-corruption-strategy-ng.pdf.

⁶⁹⁵ The NSWG first mooted the idea of the data automation project, or NEITI Industry Audits Data Base Management System (NIADBMS), in 2011 and the NSWG made public appeals for external funding for the project in 2014. See Zainab Ahmed (21 March 2012), Presentation to the IMF mission: NEITI, the prospects, issues and challenges, <https://www.imf.org/external/np/seminars/eng/2012/kinshasa/pdf/za.pdf> and The Nation (11 February 2014), NEITI seeks funding to automate data collection, <http://thenationonlineng.net/neiti-seeks-funding-to-automate-data-collection/>.

⁶⁹⁶ The 2015 EITI workplan budgeted NGN 26.542 million for the development of the automation system due for completion in 2015 of which NGN 10.871 million was provided from the MDTF. See Vanguard (1 July 2014), NEITI sets 2015 target for audit automation project, <http://www.vanguardngr.com/2014/07/neiti-sets-2015-target-audit-automation-project/> and NEITI 2015 workplan, http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-2015-Workplan-070415.pdf.

⁶⁹⁷ FGN (July 2015), Invitation for Bids: Supply and installation of IT infrastructure,

http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-Invitation-Bids-240715.pdf.

⁶⁹⁸ See minutes of NSWG technical committee meeting, 18 November 2014, unpublished, provided by the NEITI Secretariat.

automation project in its annual Article IV consultations⁶⁹⁹ while NRG identified the project's interconnections between various government agencies' IT systems as the key objective for technology and capacity reforms for the Buhari administration.⁷⁰⁰ The project was delayed and was not completed prior to the closure of the World Bank's MDTF. Executive Secretary Waziri Adio reiterated NEITI's plans to develop the data automation platform in interviews with the Nigerian press in June 2016.⁷⁰¹

Stakeholder views

Stakeholders from all three constituencies expressed concerns over the accessibility of EITI Reports, which were too large and difficult to grasp. A member of the donor community said that this made the reports impossible to read, which in turn meant that there were numerous inaccuracies in the text that nobody had noticed or bothered to address. At the same time, stakeholders also considered the simplified 2013 EITI Reports to mark an important improvement given that the data visualisations were more appealing and the fact that they were published concurrently with the full EITI Reports. While government and industry stakeholders stated that they did not tend to use EITI information in their normal work, CSOs considered the information of significant use for their advocacy and outreach efforts. Members of the Companies Forum noted that while the OPTS did not use the EITI information to produce any industry reports, they considered that individual companies were using EITI Reports to ensure that reporting of their disclosures was accurate.

Several CSOs considered that the timeliness of Nigeria's EITI Reports was a major challenge in terms of both usefulness and relevance of information. NNPC representatives consulted also noted that EITI reporting would be more useful if it was more timely, for instance in disclosing transactions between NNPC and NPDC that could be useful for NNPC's group management. Representatives from NNPC were also concerned over the public's potential misunderstanding over the period covered by NEITI Reports, given that the 2013 O&G EITI Report published in May 2016 was interpreted in the press as indicting the current NNPC management rather than management under the previous government. The NNPC representatives criticised the fact that the 2013 O&G EITI Report had not mentioned current NNPC reforms and raised concerns that such reforms would only be covered in the 2015 EITI Report published in 2017 or 2018. Solid minerals industry representatives consulted also considered Nigeria's EITI Reports to be outdated upon publication. Like all companies consulted, they studied the reports primarily to check the veracity of what was said about their operations. One company representative added that the NEITI reports helped them do a *post-hoc* audit of their payments to government.

An investment bank analyst covering extractive industries said he frequently used NEITI Reports and noted that all bank analysts he knew also used EITI information. He noted that while oil and gas NEITI Reports tended to be more widely read than those covering solid minerals, both were of use given the gaps in granular information on the sector, in particular to gain a better understanding of how NNPC worked. He noted that NEITI Reports published on an annual basis would be more useful, although even with the current timeliness of data the NEITI Reports provided information on periods where the situation

⁶⁹⁹ See for example Section 31 (p.23) of IMF (March 2015), 'Nigeria 2014 Article IV Consultation', <https://www.imf.org/external/pubs/ft/scr/2015/cr1584.pdf>.

⁷⁰⁰ The project concept note planned to link the NIADBMS to the development of a National Data Repository (NDR) for the DPR, supported by the Norwegian Government, to establish a centralised database of oil and gas assets and information collected from DPR, NNPC, CBN, OAuGF, FIRS and companies. NRG (8 July 2015), Nigeria Oil Sector Reforms: An Agenda for the Buhari Administration, <http://www.resourcegovernance.org/blog/nigeria-oil-sector-reforms-agenda-buhari-administration>.

⁷⁰¹ The Sun (24 June 2016), My plans for NEITI – Adio, <http://sunnewsonline.com/my-plans-for-neiti-adio/>.

remained unclear.

Civil society organisations did not express any strong concerns or fears that NEITI reports were not being actively disseminated. There was a generalised belief that reports were being disseminated to local communities by civil society and the representatives of the geopolitical zones, even if there was no documentary evidence of this since 2014. While the 2006-2008 O&G EITI Report was translated into the three major local Nigerian languages (Hausa, Ibo and Yoruba), members consulted in NEITI's Communications Department noted that the public had demonstrated more interest in the English-language reports than local-language versions given that these local languages were primarily oral languages and were not typically seen in written form.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. EITI Reports, and particularly their simplified versions, are accessible, provided in machine readable format, and actively disseminated. To continue improving, NEITI could consider publishing NEITI Reports in a timelier manner. The NSWG is encouraged to further entrench extractive sector transparency in government systems, and take steps to move towards more frequent production of EITI information on a routine basis. The NSWG may consider undertaking a study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats could also be explored.

Lessons Learned and follow-up on recommendations (#7.3)

Documentation of progress

The NSWG has consistently discussed the findings and recommendations from Nigeria's EITI reporting at its meetings. Members of the NSWG and the NEITI Secretariat have also used public forums ranging from press releases to conferences to call for the FGN to implement EITI recommendations.

An Inter-ministerial task team (IMTT) consisting of the heads of government, petroleum, mining and financial departments was established in 2005 under President Obasanjo with a mandate to address recommendations identified in NEITI Reports. The IMTT was reconstituted under President Jonathan.⁷⁰² The IMTT is chaired by the MSG Chair and functions as an external committee of the MSG, ensuring that remedial issues are adequately addressed by taking responsibility for "the custody, management, monitoring and regulation of extractive industries revenues with the primary mandate of developing an efficient interface framework to address remedial issues."⁷⁰³ Its main responsibilities include ensuring prompt recovery of outstanding revenues identified through EITI reporting, identify challenges to implementing EITI recommendations and advice the Federal Executive Council on related issues.⁷⁰⁴ The

⁷⁰² NEITI, Annual Activity Report 2013, <http://www.neiti.org.ng/sites/default/files/news/uploads/eiti-neiti-activity-report-2013-final.pdf>.

⁷⁰³ Nigeria 2013 annual activity report.

⁷⁰⁴ Upon publication of the EITI Reports, the NEITI Secretariat categorises recommendations and outlines a remediation plan with specific responsibilities for individual agencies. The final remediation plan is submitted to the IMTT, which then follows up on its implementation.

IMTT met seven times in four years, although the pace of meetings appears to have slowed since 2013, when the IMTT was reconstituted.⁷⁰⁵ The NSWG’s 21 March 2013 meeting noted that the IMTT had been meeting quarterly and that improved mechanisms had been established to promote information sharing between NEITI and IMTT.⁷⁰⁶ Newspaper articles published in October 2013 state that the IMTT had been reconstituted because “Recommendations by NEITI are never implemented” and “the agency... had not been able to get government to implement or enforce its recommendations, particularly as they relate to sanctions against erring institutions and companies operating in the sector”.⁷⁰⁷

There is also evidence of follow-up meetings with individual government entities such as the EFCC and ICPC in 2012⁷⁰⁸ and 2013.⁷⁰⁹ As mentioned above, in June 2016 the EFCC set up a joint task force with the NEITI on the basis of the 2013 Oil and Gas and Solid Minerals NEITI Reports.⁷¹⁰

While implementation of all EITI recommendations has been uneven (see overview of past EITI recommendations under *Requirement 4.9*), follow-up by the IMTT was successful in recovering a total of over USD 2.5 billion, primarily on the basis of O&G EITI Reports covering 1999-2011.⁷¹¹ According to NEITI’s 2015 annual activity report, the implementation of the 2015 remedial plan was in progress (p.14) with “continuous implementation” of recommendations from all previous EITI Reports including the FASD Report (p.8). The report also noted outreach on recommendations with all relevant government ministries, departments and agencies. NEITI’s role in securing the recovery of missing funds was one of the reasons why Nigeria was awarded “best extractive industry transparency implementing country” at the EITI’s 6th Global Conference in 2013.⁷¹²

In reviewing the lessons learned from EITI implementation, NEITI published an assessment on “10 years of NEITI reports – What have we learnt?”⁷¹³ in 2015, which highlighted the use of EITI Reports in providing summary information as well as detailed quantitative and qualitative data on the extractive industries. In July 2016 the NEITI Secretariat issued a press release where all the NSWG Chair relayed calls from all stakeholders for government agencies to implement the recommendations of the two 2013 EITI Reports.⁷¹⁴ The EFCC established a task force to follow up on findings of EITI Reports and planned to

⁷⁰⁵ it met three times in 2012 (in February, May and November), but only once in 2013 (October), twice in 2014 (February and August), and once in 2015 (June). See minutes of NSWG meetings of, 27 March 2014 and 20 November 2014, unpublished, provided by NEITI Secretariat.

⁷⁰⁶ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat. Yet (at least three) successive IMT meetings were postponed in 2014 and 2015, as noted in minutes of NSWG meetings on 16 December 2014, 12 March 2015 and 16 June 2015. See minutes of NSWG meeting, 16 December 2014, 12 March 2015 and 16 June 2015, unpublished, provided by NEITI Secretariat.

⁷⁰⁷ <http://www.premiumentimesng.com/business/146960-jonathan-reconstitutes-neiti-implementation-team.html>.

⁷⁰⁸ See minutes of NSWG meeting, 21-22 November 2012, unpublished, provided by NEITI Secretariat.

⁷⁰⁹ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁷¹⁰ NEITI (17 June 2014), 2013 Audit Reports: NEITI takes case to EFCC, <http://www.neiti.org.ng/index.php?q=news/2016/06/17/2013-audit-reports-neiti-takes-case-efcc>.

⁷¹¹ This included recoveries of USD 1 billion based on the 1994-2004 EITI Report, USD 550 million on the 2005 EITI Report, USD 440 million on the 2006-2008 EITI Report and USD 416 million on the 2009-2011 EITI Report. EITI (2016), 2016 Progress Report: From Reports to Results, <https://eiti.org/files/progressreport.pdf>.

⁷¹² See <http://neiti.org.ng/index.php?q=news/2013/05/30/nigeria-wins-best-eiti-implementing-country-award>.

⁷¹³ See <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

⁷¹⁴ NEITI (14 July 2016), Stakeholders call for implementation of NEITI Reports, <http://www.neiti.org.ng/index.php?q=news/2016/07/14/stakeholders-call-implementation-neiti-reports>. The key findings highlighted in the June 2016 press release were: “the total revenue losses to the Federation and outstanding revenues from NNPC and its subsidiaries totalling over USD 3 billion; losses incurred due to offshore processing arrangements, crude oil theft valued at about USD 6 billion; divestments or transfers of the Federation equity holdings in OMLs by the NNPC to its subsidiary

formalise its cooperation with NEITI through a MoU in H2-2016. The Senate of the National Assembly established an ad hoc committee to follow up on findings of the 2013 EITI Reports in June 2016.

Following enactment of the NEITI Act in 2007, the government established a Technical Unit on Governance and Anti-Corruption Reforms (TUGAR) housed in the NEITI Secretariat, to support the work of the Inter-Agency Task Team (IATT) comprising 22 core anti-corruption and accountability institutions. TUGAR was established as a dedicated institution to monitor anti-corruption and governance initiatives, evaluate their structures and outputs, channel public feedback and generate empirical data as a basis for policy-making and reforms. TUGAR's activities are included in NEITI's workplans. At the new NSWG's inaugural meeting on 11 March 2016, the Executive Secretary noted that status of TUGAR needed clarification in future.⁷¹⁵

Stakeholder views

All stakeholders consulted agreed that there had been significant discussion related to following up on EITI recommendations, but raised concerns over the fact that the government had not fully implemented all recommendations. Several CSOs and a former Chair of the NSWG questioned the degree of political commitment to the EITI in the absence of full follow-up on recommendations. Most stakeholders' main concern seemed to be not only the implementation of recommendations but rather on the prosecution of companies under the NEITI Act – what was generally described as “remediation”. There was a general lack of understanding among stakeholders, including secretariat staff, of the role that TUGAR had or could have in coordinating how recommendations are followed up.

Most stakeholders consulted, including all government representatives, stated that they believed the Buhari administration was more intent on following up on recommendations. Minister Fayemi said that his appointment as Chair of the NSWG should be understood in this light. Former Executive Secretary Minister Ahmed said that many of the reforms of the Buhari government were drawn from recommendations from the NEITI process, including the proposed breakup of NNPC. The Executive Secretary said that he understood that remediation was a priority of the new NSWG and highlighted the pace of activity by entities like the EFCC, the Senate and the office of the Auditor General since publication of the 2013 EITI Reports in May 2016. In January 2016, the then-acting Executive Secretary noted the lack of full implementation of EITI recommendations despite significant follow-up, raising concerns over the delegation of attendance at IMTT meetings to low-level officials that hindered the IMTT's ability to implement recommendations.

Stakeholders from all constituencies highlighted the role that NEITI had played in promoting the failed PIB. Although opinions were split about the PIGB's desirability as a substitute, stakeholders took it for granted that NEITI would play an important role in its development as well.

Whereas company representatives and representatives of the state-owned NNPC also said that lack of remediation was an important challenge, some expressed concern that not all of the recommendations were equally well thought out. In particular they were concerned about recommendations concerning metering, which they feared were too simplistic.

NPDC, with only USD 100 million of the USD 1.8 billion paid; and subsidy payments, management of cash calls, as well as process and governance issues.

⁷¹⁵ See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. While recommendations of EITI Reports are not consistently implemented, the NSWG has held consistent debates over the recommendations and made efforts to ensure that recommendations are implemented by relevant government entities. The government has also established the IMTT to steer implementation of remediation plans while legislators have formed an ad hoc committee to follow up on specific recommendations. To continue improving the NSWG, in consultation with government stakeholders in particular, may wish to consider ways of using TUGAR as a mechanism to ensure coordinated follow-up on EITI recommendations. The NSWG may also wish to consider ways of moving the discussion beyond the equation of remediation with prosecution of companies and instead consider how the EITI process can improve the governance of the sector as a whole.

Outcomes and impact of implementation (#7.4)

Documentation of progress

There is evidence of the NSWG using the annual activity reports as a means of benchmarking its strategic decisions to its overall record of achievements, to identify shortcomings and to look at future projections.⁷¹⁶ The 2015 Annual Progress Report (APR) was published on the NEITI website on 30 June 2016⁷¹⁷, having been approved by circular by the NSWG on 29 June.⁷¹⁸ Some of the main achievements highlighted were regular and timely reporting, reviews of the reports and findings, data collection by the NEITI Secretariat to reduce costs, initiation of company reporting automation and implementation of the remedial plan for EITI report recommendations. The report also outlined the mandate of the IMTT and listed the remedial issues⁷¹⁹ being addressed by the IMTT from EITI Reports covering 2006-2012. It noted the findings related to each recommendation and progress made, although despite referencing the IMTT's remediation plan, it did not provide a link or guidance on how to access the remediation plan itself. The report did not include all recommendations from the 2013 NEITI Reports, nor did it refer to recommendations from the previous Validation. Both the broader strategic goals and the work plan objectives were outlined along with the activities undertaken to achieve these goals. A detailed table outlined the workplan, the level of progress for each activity and an overall 2015 workplan performance evaluation scorecard showing that 71.3% of workplan activities were completed, 14.8% were in progress and 13.9% had not yet started. This slight decrease in the share of completed activities on the previous year was explained by the lack of domestic and foreign funding, uncertainties around the presidential election and change of government and dissolution of the NSWG.

The 2014 annual activity report was published on 30 June 2015, having been approved by the NSWG at its

⁷¹⁶ See minutes of NSWG meeting, 19 September 2013, unpublished, provided by NEITI Secretariat.

⁷¹⁷ Nigeria EITI 2015 Annual Activity Report www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-AAR-2015.pdf.

⁷¹⁸ The report provided a summary of activities in Section 1 and assessed progress in meeting and maintaining compliance with the seven EITI Requirements in Section 2, although it did not substantially address sub-requirements.

⁷¹⁹ The remedial issues were related to financial and non-financial flows, oil swap agreements, NNPC divestments and subsidies, NLNG dividends to NNPC, tax underassessment, lacking provisions in PSC related to gas production, crude oil measurement for basis of royalties, oil pipeline losses and theft.

16 June 2015 meeting.⁷²⁰ At that meeting the NSWG agreed to print hard copies of summaries of the annual report focusing on remediation issues for public distribution.⁷²¹ While the 2014 report assessed the progress in completing workplan activities (p.9 and Annex 1), the workplan's lack of measurable indicators meant that the annual activity report did not assess the impact of EITI implementation. The 2014 report also outlined NEITI's efforts to strengthen implementation through closer collaboration with the IMTT (pp.31-32).

The NSWG discussed the 2013 annual activity report at its 25 June 2014 meeting, a draft of which had been prepared by the NEITI Secretariat.⁷²² The NSWG revised the draft by moving the remedial actions undertaken by IMTT to the front of the report, highlighting amounts recovered by the Federation as a result of NEITI findings, and highlighting the impact of NEITI through contributions to the draft PIB and the innovation of the FASD report.⁷²³

The NEITI Secretariat highlighted the outcomes and impacts of EITI implementation in Nigeria at the new NSWG's induction retreat in April 2016.⁷²⁴ These included increased public demands for reforms, submission of the PIB to the National Assembly, restructuring of NNPC and the proposal of the Natural Resource Governance Law.

Stakeholder views

Stakeholders from all constituencies consulted said that the main outcome of NEITI had been to instil in the conscience of companies the knowledge that someone would look through their books, which in their opinion had a preventive effect in itself. In this note, a past IA noted that the EITI had had an impact in terms of company reporting, which had increased in recent years, and in the reduction in gas flaring, both of which had been key EITI recommendations. Members of the Companies Forum noted that there had been a tangible impact of EITI implementation in Nigeria in that a handful of companies that had not paid their tax dues had been forced to pay their outstanding balances. However, they also noted this was not a sufficient impact, given that government had been slow to act on the findings of NEITI Reports. Many CSOs highlighted the more than USD 2.5 billion in recovered funds as a result of follow-up on NEITI recommendations. The CSOs also highlighted the increased public awareness and citizen demands for reform and accountability and the introduction of the PIB as key impacts of EITI recommendation. A former NSWG Chair added that one of the main impacts of EITI implementation had been that many more people had access to information that they found useful. He noted that the National Assembly had started using EITI information much more since 2012, for instance in the work of the Fuel Subsidy Committee established by the National Assembly. Several CSOs noted they had also found NEITI information useful for their budget monitoring.

However, the former NSWG Chair also noted that more information and transparency were only means to an end, which was the country's development. He raised concerns that there were no working mechanisms for transparency to lead to accountability and good governance. The former Chair expressed

⁷²⁰ It provided a summary of EITI activities undertaken in 2014 (p.6), progress against each EITI Requirement and steps taken to exceed them (pp.13-17), follow up on recommendations (pp.18-26) and the operations of the NSWG and NEITI Secretariat. <https://eiti.org/files/NEITI%20Annual%20Activity%20Report%202014.pdf>.

⁷²¹ See minutes of NSWG meeting, 16 June 2015, unpublished, provided by NEITI Secretariat.

⁷²² See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁷²³ See minutes of NSWG meeting, 25 June 2014, unpublished, provided by NEITI Secretariat.

⁷²⁴ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

concerns that the EITI could in the end serve to legitimise developing countries' lack of industrialisation, in that it promoted a conception that countries could develop purely on the basis of extracting natural resources. A different former NSWG Chair noted that as a result of EITI implementation the public now had access to data and information that were previously unavailable. The former Chair also noted that all stakeholders were now using the EITI information and that all stakeholders were engaged in the implementation of recommendations.

Several IOC representatives noted that the main impact had been in improving and streamlining government's record-keeping, which had helped improve companies' ability to explain payments to government, since it was easier to track individual payments. They also noted that the EITI had in some cases been instrumental in building trust and confidence, although they considered EITI data to be simply a revalidation of what companies were already disclosing.

The secretariat provided evidence that the annual progress report had been sent to the NSWG for comments before its approval. Industry and civil society representatives outside the NSWG said that they had not been asked by their representatives to review or otherwise provide input to the report, but they did not appear to see this as a problem. No concerns were raised by stakeholders about the content of the report.

Initial assessment

The International Secretariat's initial assessment is that Nigeria has made satisfactory progress in meeting this requirement. NEITI uses the Annual Progress Reports to benchmark its strategic decisions to its overall record of achievements, identify shortcomings and look at future projections. Stakeholders consulted felt that the EITI was having a positive outcome. To continue improving, constituency representatives could to a greater extent use the Civil Society Steering Committee and the newly-formed Company Forum to provide all stakeholders an opportunity to provide feedback on the EITI process and the impact of the EITI. The NSWG may wish to undertake an impact assessment with a view to identify opportunities for increasing the impact of implementation.

Table 7 - Summary initial assessment table: Outcomes and impact

EITI provisions	Summary of main findings	Validator's recommendation on compliance with the EITI provisions (to be completed for 'required' provisions)
Public debate (#7.1)	The NSWG has taken steps to ensure that EITI reports are comprehensible, actively promoted and publicly accessible.	Satisfactory progress
Data accessibility (#7.2)	EITI Reports, and particularly their simplified versions, are accessible, provided in machine readable format, and actively disseminated.	
Lessons learned and follow up on	While recommendations of EITI Reports are not consistently implemented, the NSWG has held consistent debates over the	Satisfactory progress

recommen- dations (7.3)	recommendations and made efforts to ensure that recommendations are implemented by relevant government entities.	
Outcomes and impact of implement- ation (#7.4)	NEITI uses the Annual Progress Reports to benchmark its strategic decisions to its overall record of achievements, identify shortcomings and look at future projections.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> 1. The NSWG should consider ways to ensure that other stakeholders are encouraged to participate more actively in the upstream development of communications strategies instead of just downstream dissemination activities. NEITI and civil society should return to reaching out to local communities and to the geopolitical regions, especially those where there are extractive activities. The NSWG may wish to consider establishing more formal mechanisms for subnational consultations to provide input to national EITI discussions, to ensure discussions at the local level are reflected. 2. The NSWG could consider publishing information in a timelier manner and not just through annual reports. The NSWG is encouraged to further entrench extractive sector transparency in government systems, and take steps to move towards more frequent production of EITI information on a routine basis. The NSWG may consider undertaking a study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats could also be explored. 3. To continue improving the NSWG, in consultation with government stakeholders in particular, may wish to consider ways of using TUGAR as a mechanism to ensure coordinated follow-up on EITI recommendations. The NSWG may also wish to consider ways of moving the discussion beyond equating results with prosecution of companies and instead consider how the EITI process can better be used to improve the governance of the sector as a whole. 4. To continue improving, constituency representatives could to a greater extent use the Civil Society Steering Committee and the newly-formed Company Forum to provide all stakeholders an opportunity to provide feedback on the EITI process and the impact of the EITI. The NSWG may wish to undertake an impact assessment with a view to identify opportunities for increasing the impact of implementation. 		

8. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

Documentation of progress

Impact: According to an analysis carried out by NEITI after ten years of implementation, the greatest benefit that NEITI has contributed to the country was to “promote a culture and consensual framework for making the extractives sector more transparent and accountable” where “in the past, information on

revenue and physical flows of oil and gas in Nigeria was treated as confidential.”⁷²⁵ NEITI is credited with having recovered more than USD 2.4 billion for the FGN on the basis of findings of NEITI Reports.⁷²⁶

Nigeria’s 2015 EITI annual progress report highlighted that EITI information had empowered Nigerians to demand accountability in the revenues derived by the government, which had attracted greater scrutiny from industry experts, other stakeholders and international investors and generated further public demands for reform. The annual progress report also emphasized that the extension of EITI reporting to the solid minerals sector since 2011 had highlighted the sector’s potential to contribute to the national economy. On a broader level, the report notes that NEITI activities have led to greater collaboration between the legislative, civil society, companies and government for better governance in the extractive industry sector, in particular in oil and gas.

In the 2016 EITI Progress Report⁷²⁷, former NEITI Executive Secretary and current Minister of State for Budget and Planning Zainab Ahmed noted that the NEITI Act had led to other reforms such as the PIB, which provided a sound policy roadmap for a legal and regulatory framework for the oil and gas sector. The reforms at NNPC since 2015 (related to offshore processing agreements, swaps (RPEAs), subsidies and NLNG dividends) were also highlighted in this context, as “largely informed” by EITI recommendations. Other examples of ongoing internal reforms among government agencies that manage the extractive industry revenues brought upon by EITI implementation include the introduction of the Software Application Project by the NNPC and the development of the Upstream Operational Manual by the Federal Revenue Service, both of which are due to recommendations to the government agencies from findings in NEITI Reports.⁷²⁸

Sustainability: Beyond annual FGN funding ensured under the 2007 NEITI Act, the NSWG has sought to raise additional financial support for EITI implementation from various development partners.

The World Bank approved a third tranche of MDTF support for EITI implementation in Nigeria, USD 900,000 earmarked for capacity building and support for the Fiscal Allocation Statutory Disbursement (FASD) scoping study, in early 2013.⁷²⁹ The agreement was counter-signed by the Accountant General to the Federation in Q3-2013.⁷³⁰ The UK DfID’s FOSTER programme ended in April 2016 and was succeeded by FOSTER 2 starting in May 2016. The latter will have a focus on capacity building and implementation of the knowledge gained from FOSTER 1. There is a possibility that the remit of FOSTER 2 will encompass the solid minerals sector. FOSTER has commissioned numerous research papers on crude oil governance, industry restructuring and the Petroleum Industry Bill, sector revenue management, impact on local communities, scenarios on declining oil prices, oil theft and illegal refining, privatisation of refineries, beneficial ownership, roadmap for oil sector governance, and many others. FOSTER has documented various options for blocking leakages in the oil sector and is constantly looking for champions to drive their implementation.⁷³¹ While the African Development Bank had indicated interest in early 2013 in

⁷²⁵ See <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

⁷²⁶ Estimated at USD 1 billion on 1994-2004 NEITI Reports, USD 550 million on the 2005 NEITI Report, USD 440 million on the 2006-2008 NEITI Reports and USD 416 million on the 2009-2011 NEITI Reports. See EITI (2016), 2016 Progress Report: From Reports to Results, <https://eiti.org/files/progressreport.pdf>.

⁷²⁷ EITI (2016), 2016 Progress Report: From Reports to Results, <https://eiti.org/files/progressreport.pdf>.

⁷²⁸ See http://neiti.org.ng/sites/default/files/pdf_uploads/NEITI-AAR-2015.pdf

⁷²⁹ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁷³⁰ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁷³¹ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries

providing financial support to capacity building related to oil bidding rounds⁷³², it subsequently declined funding for NEITI in Q2-2013 due to unavailability of funds.⁷³³ The United Nations Office on Drugs and Crime (UNODC) also expressed interest in supporting some NEITI activities in early 2013⁷³⁴. The NEITI Secretariat subsequently worked with UNODC in Q2-2013 to ensure that potential support for NEITI was aligned with UNODC work under relevant EU projects.⁷³⁵ The NEITI Secretariat met with EU Ambassadors on 12 March 2013 to discuss possible funding for specific NEITI activities.⁷³⁶ The NSWG Chair also reached out to the Norwegian Embassy in mid-2013 for financial support for specific NEITI activities.⁷³⁷

The NEITI Secretariat and NSWG has also consistently liaised with the Secretary to the Government of the Federation. The NSWG Chair wrote to the Presidency through the SGF requesting additional funds and undertook visits to the offices of DG Budget and SGF to explain NEITI activities and explain the request for additional funding in Q2-2013.⁷³⁸ The NSWG established a four-member working group on NEITI funding at its 19 September 2013 meeting.⁷³⁹ The SGF agreed to lobby the Coordinating Minister for the Economy on funding for NEITI in Q4-2013, following an unfavourable response from DG Budget.⁷⁴⁰ The NSWG directed its Finance and General Purpose Committee to establish a framework for donors to be able to pool their financial support for NEITI, at its 11 December 2013 meeting.⁷⁴¹

The NSWG has also considered means of cutting costs since 2014. Minutes show that the idea of moving the NEITI Secretariat to the new offices of the Petroleum Training Development Fund (PTDF) was mooted at the NSWG's 27 March 2014 meeting but despite regular updates at NSWG meetings,⁷⁴² there was no resolution of this issue. At its 11 March 2016 meeting, the NSWG noted that payment for 2016 rent had not yet been paid for the current offices.⁷⁴³ In total, NEITI had paid a total of over NGN 300 million in office rental as of April 2016.⁷⁴⁴ At its April 2016 induction retreat, the new NSWG discussed the possibility of NEITI becoming financially independent of the government of Nigeria and concluded that this would require changes to the 2007 NEITI Act.⁷⁴⁵

Innovations and actions beyond EITI Provisions: Nigeria's EITI Oil and Gas Reports, which from the outset included financial, physical and process audits, went beyond the minimum EITI criteria and were considered the 'Gold standard of global EITI' by the World Bank.⁷⁴⁶ The physical report tracks volumes of

Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

⁷³² See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁷³³ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁷³⁴ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁷³⁵ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁷³⁶ See minutes of NSWG meeting, 21 March 2013, unpublished, provided by NEITI Secretariat.

⁷³⁷ See minutes of NSWG meeting, 19 September 2013, unpublished, provided by NEITI Secretariat.

⁷³⁸ See minutes of NSWG meeting, 20 June 2013, unpublished, provided by NEITI Secretariat.

⁷³⁹ See minutes of NSWG meeting, 19 September 2013, unpublished, provided by NEITI Secretariat.

⁷⁴⁰ See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

⁷⁴¹ See minutes of NSWG meeting, 11 December 2013, unpublished, provided by NEITI Secretariat.

⁷⁴² On 25 June 2014, 20 November 2014, 12 March 2015 and 16 June 2015.

⁷⁴³ See minutes of NSWG meeting, 11 March 2016, unpublished, provided by NEITI Secretariat.

⁷⁴⁴ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

⁷⁴⁵ NEITI (15 April 2016), Induction Retreat for the National Stakeholders Working Group of the Nigeria Extractive Industries Transparency Initiative, Programme Report, unpublished, provided by the NEITI Secretariat.

⁷⁴⁶ World Bank (August 2011), 'Political Economy of the Petroleum Sector in Nigeria',

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1916541 and International Institute for Environment and Development (2014), 'Localising transparency: exploring EITI's contribution to sustainable development', <http://pubs.iied.org/pdfs/16555IIED.pdf>.

production, lifting and exports, reconciling figures between figures from companies, NNPC and the Federal Government. The process report covers how agencies manage the sector, including licensing, pricing of government equity oil, the management of the government's interest in joint ventures (JVs), crude oil supplies to refineries and oil imports. The financial report reconciles company payments and government revenues, including the financial revenue flows from state-owned enterprises to the Federal Government. In addition to large amounts of detailed quantitative and qualitative information about the oil and gas industry, the NEITI Reports also highlighted challenges and formulated recommendations for reform.⁷⁴⁷

Stakeholder views

As part of the International Secretariat's assessment of the impact of the EITI in Nigeria in its eleven years of implementation, all stakeholders were asked why Nigeria was implementing the EITI. Several CSOs noted that before the EITI (pre-2004), no communities knew how much money the government was getting from the sector. People now had access to this type of reliable information and the level of national debate over the governance of the extractive industries had improved. This was partly seen to be due to NEITI's work and partly to the boom in commodity prices as well as a series of scandals uncovered independently of the EITI. The number of NGOs focused on transparency has also grown, and transparency is now a regular topic of discussions among parliamentarians, companies and government officials. CSOs also noted the government used Nigeria's compliance status as a sign of prestige, even if they were concerned over the lack of meaningful support for the process and disclosures required under the EITI Standard under the former government and amongst mid-level bureaucrats. Civil society also considered that the EITI provided them with a crucial platform for discussing issues and raising concerns about sector laws and their implementation, as well as in shaping planned reforms like the PIB or the PIGB. Several CSOs considered that Nigeria was implementing the EITI to ensure appropriate public oversight of the government's management of extractives revenues and improve relations between companies and host communities.

Several government stakeholders confirmed the impact of EITI implementation in generating informed public debate and in providing an independent source of analysis and recommendations that was useful for policy-making. Several government stakeholders noted that Nigeria had decided to implement the EITI in 2003 when the extractive industries were opaque and at a time when the government was negotiating debt relief with the international community, which was finalised in October 2005. Demonstrating the government's desire for proper accounting of its oil and gas revenues during these negotiations was seen as a government priority. The EITI was thus seen as a tool for improving governance of Nigeria's oil and gas sector, particularly ahead of oil and gas block bidding rounds in 2005, 2006 and 2007.

Most industry stakeholders viewed EITI implementation through the prism of compliance, although a few representatives noted the importance of EITI in rectifying the public's understanding of the industry's contribution to the national economy, highlight inefficiencies in government management of the sector and improve relations with host communities. Most industry stakeholders agreed that EITI implementation had generated public debate but expressed concern over some aspects of NEITI's analysis that they considered misinformed, for instance in areas of crude oil pricing and crude-for-refined oil swaps (RPEAs). This was also a concern raised by a specialized international civil society organization and

⁷⁴⁷ NEITI (2015), 'Ten years of NEITI Reports: what have we learnt?', <http://www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf>.

a representative of the donor community.

Several stakeholders from government and civil society also highlighted the enactment of standalone EITI-specific legislation as one of the most important impacts of EITI implementation, which had led to other sector-specific reforms.

According to EITI Board member and former NEITI Executive Secretary Minister Zainab Ahmed, NEITI Reports have become a reference material for public demand for transparency, accountability and reforms of the oil and gas as well as the mining sectors. Many of the present reforms in the Nigerian oil sector – including the discontinuation of the oil swap arrangements, the review of fuel subsidies, the restructuring of the national oil company, the review of contracts and the management of the joint ventures – are recommendations from the NEITI reports.⁷⁴⁸

Conclusions, lessons learnt and recommendations

The implementation of EITI in Nigeria has had important impacts, even if there is agreement amongst stakeholders that the impact could have been even greater. Among the main impacts that stakeholders consistently pointed to were increased awareness of the sector's revenues to the government and having a deterrent effect on corporate malfeasance through the annual auditing of financial data.

At the same time Nigeria is in some ways a victim of its own success. As information has been made increasingly available, stakeholders start to ask themselves what next. As NRGi wrote in a 2015 briefing, "the biggest obstacle that EITI implementation is yet to overcome in Nigeria is its inability to deliver poverty reduction, reduce conflict and guarantee sustainable development as anticipated in the concept that gave birth to it".⁷⁴⁹ If there was one thing that all stakeholders could agree on it was that more accountability was needed as a result of NEITI's process.

Given the level of trust that it has developed as an independent institution, NEITI could – through TUGAR or otherwise – play a coordinating role amidst all the other reporting agencies and initiatives in the sector. Deeper coordination with agencies like the EFCC and other specialised task forces could in turn help identify additional data points that could be disclosed through EITI Reports. Building on the foundation that it has already set up, NEITI could concentrate on ensuring that government agencies, companies and NNPC in particular regularly provide useful data points in a manner that ensures the quality of the data. This would imply moving away from large annual reports that are too complex for easy accessibility and that are often delayed, towards a more regular publication of data through strengthened government and industry reporting systems.

⁷⁴⁸ EITI (2016), 2016 Progress Report: From Reports to Results, <https://eiti.org/files/progressreport.pdf>.

⁷⁴⁹ See <http://goxi.org/profiles/blogs/overcoming-the-limits-of-eiti-in-nigeria-by-dauda-garuba>.

Annexes

Annex A - List of MSG members and contact details

NSWG members 2016-2019

1. The Chairman– Honourable Minister of Solid Minerals Development, Dr. Kayode Fayemi kfayemi@gmail.com
2. Mr. Waziri Onibiyo Adio Executive Secretary wadio@neiti.org.ng
3. Permanent Secretary Federal Ministry of Finance- Dr. Mahmoud Isa- Dutse, midutse@fmf.gov.ng, miduste@gmail.com
4. Mr. Bernard B.A Verr – Representative, North-Central Geo-Political Zone,bernardverr@gmail.com
5. Mr. Lawan Gana Lantaiwa – Representative, North- East Geo-Political Zone lantewa@yahoo.com
6. President, Miners Association of Nigeria- Mr. Sani Shehu, sanimailalle@yahoo.com
7. President, Nigeria Mining and Geosciences society- Professor O.A. Okunlola, gbengaokunlola@yahoo.co.uk
8. Mrs. Anne Adaeze Onyekwena – Representative, South- East Geo- Political Zone.aonyekwena@yahoo.com
9. Mr. Emmanuel Chiejina- Representative, South-South Geo-Political Zone emmanuel.chiejina@ashbardenergy.com
10. President Nigeria Union of Petroleum and Natural Gas Workers (NUPENG), headoffice@nupeng.org
11. Mr. Gbenga Onayiga, Representative, South-West Geo- Political Zone, otunbagbengaonayiga@yahoo.com
12. Mr. Kola Banwo, Representative of the Civil Society Organization favourmee@yahoo.com
13. Ibe Kachiwku -Group Managing Director Nigeria National Petroleum Corporation (NNPC)
14. Hannatu Musa Musawa –Representative, North-West Geo- Political Zone
15. Representatives of Extractive Industries Companies

NEITI Secretariat staff list, updated January 2016 -

<http://neiti.org.ng/sites/default/files/documents/uploads/neiti-staff-list-updated-220116.pdf>.

NSWG Committee members, 2016-2019

1. FINANCE AND GENERAL PURPOSE COMMITTEE.

- Dr. Kayode Fayemi - Chairman
- Dr. Ibe Kachikwu
- Dr. Mahmoud Isa-Dutse
- Chairman of OPTS
- Waziri Adio
- Secretary - DFA

TOR – As in NSWG Charter

2. TECHNICAL COMMITTEE

- Prof O.A. Okunola – Chairman
- Dr. Ibe Kachikwu
- Chairman OPTS
- Alh. Sani Shehu
- Com. Dr. Achese Igwe
- Dr. Bernard Verr
- Waziri Adio
- Secretary- DTech

TOR - As in NSWG (Board) Charter

3. DUE PROCESS COMMITTEE

- Alh. Lawan Gana Lantewa – Chairman
- Kola Banwo
- Ms. Hanatu Musawa
- Dr. Bernard Verr
- Mr Waziri Adio
- Secretary - Asst. Director Procurement

TOR – As in NSWG (Board Charter)

4. HUMAN RESOURCES/ETHICS COMMITTEE

- Mr. Emmanuel Chiejina Chairman
- Comrade Dr. Achese Igwe

- Mrs. Anne Onyekwena
- Alh Sani Shehu
- Mr. Waziri Adio
- Secretary – DFA

TOR – As in NSWG (Board) Charter

5. COMMUNICATION COMMITTEE

- Mr. Gbenga Onayiga Chairman
- Ms. Hanatu Musawa
- Alh. Sani Shehu
- Mrs. Anne Onyekwena
- Mr. Emmanuel Chiejina
- Mr. Waziri Adio
- Secretary – DComms.

TOR – As in NSWG (Board) Charter

6. AUDIT AND RISK COMMITTEE

- Dr. Bernard Verr Chairman
- Prof. O.A. Okunola
- Alh. Lawan Gana Lantewa
- Mrs. Anne Onyekwena
- Mr. Gbenga Onayiga
- Mr. Waziri Adio
- Secretary- Internal Auditor

TOR- As in NSWG Board Charter

7. CIVIL SOCIETY STEERING COMMITTEE

- Mr. Kola Banwo Chairman
- Comrade Dr. Achese Igwe
- Ms Hanatu Musawa
- Mr. Genga Onayiga
- Mr Waziri Adio
- Civil society members

NSWG members 2012-2015

Chairman - Ledum Mitee

Zainab Ahmed, NEITI Executive Secretary & Secretary, NSWG

Dom Nwachukwu

Faith Nwadishi

Bassey Ekefre

Abiola Ige

Mark Ward

Babatunde Ogun

Kate Okpareke

Andrew Yakubu

Isaac Boyi

Musa Nashumi

Maryam Ladi Ibrahim

Patrick Udomfang

Abubakar Balarabe Mahmoud (SAN)

Members of the NEITI civil society steering committee (2013 - August 2015)

S/N	NAME	ORGANIZATIONS	THEMATIC AREAS
1	Faith Nwadishi	NSWG Member	Extractive Revenues Transparency/ Governance
2	Comrade Babatunde Ogun	NSWG Member/PENGASSAN	Petroleum Industry Union
3	Bassey Ekefre	NSWG Member	Mining
4	Dr. Peterside Sofiri	Centre for AdvanceSocial Sciences	Academia
	Dr. Saidu Baba	Nigeria Mining & Geosciences Society (NMGS)	Professional Body (Solid Minerals Sector)
6	Emeka Onanmadu	CCIODESOR	Accountability and Transparency

7	Ezenwa Nwagu	Centre for Transparency & Accountability	Accountability & Transparency
8	Collins Olayinka	Media Initiative for Transparency in the Extractive Industries	Media
9	Prince Barbs Pawuru	Host Communities Network	Host Communities
10	Ada Agina	Women Forum on EITI/ GADA	Gender/ Transparency & Accountability
11	Taiwo Otitolaye	Publish What You Pay/ CODWA	Transparency & Accountability
12	Maife Lincoln	Student Forum on EITI	Youth/Student
13	Odunbaku Nureni	Association of National Accountants of Nigeria (ANAN)	Professional Body
14	Barr. Grace Igyo	Nigeria Bar Association (NBA)	Professional Body
15	Precious O. Otite	NUPENG	Petroleum Industry Union

Annex B – NSWG meeting attendance, 2012-2015

Constituency	Name	Title	Meeting 2 2012	Meeting 3 2012	Meeting 4 2012	Meeting 1 2013	Meeting 2 2013	Meeting 3 2013	Meeting 4 2013	Meeting 5 2013	Meeting 6 2013	Meeting 1 2014	Meeting 2 2014	Meeting 3 2014	Meeting 4 2014	Meeting 1 2015	Meeting 2 2015
Government	Ledum Mitee	Chairman	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Government	Zainab Ahmed	Executive Secretary	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Government	Andrew Yakubu / Joseph Dawha (Proxy: Joseph Oluwatosin)	GMD	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Government	Kate Okpareke	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
Government	Abiola Ige	Member	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Government	Patrick Udomfang	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y

Validation of Nigeria: Report on initial data collection and stakeholder consultation

Government	Isaac Boyi	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Government	Abubakar Mahmoud	Member	N	N	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N
Government	Haj Maryam Ibrahim Ladi	Member	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y
Companies	Mark Ward / Elizabeth Proust (Proxy: Toba Akinmoladun)	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y
Industry expert	Bassey Ekefre	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Industry expert	Musa Nashuni	Member	Y	Y	Y	Y	N	N	Y	Y	Y	N	N	N	N	N	N
Industry expert	Dom Nwachukwu	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Civil Society Organisations	Faith Nwadishi	Member	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Civil Society Organisations	Babatunde Ogun	Member	Y	Y	Y	Y	N	N	N	Y	N	Y	Y	Y	N	N	Y

Annex C – Cost of NEITI Reports

Year	Oil and Gas or Solid Minerals EITI Report	Cost inc. VAT (NGN)
2009-2011	Oil and Gas	226,000,000
2012	Oil and Gas	94,336,500
2013	Oil and Gas	95,866,250
2014	Oil and Gas	93,028,750
2007-2010	Solid Minerals	137,000,000
2012-2013	Solid Minerals	98,285,875
2007-2011	Fiscal Allocation and Statutory Disbursement	154,798,125
<i>Source: NEITI Secretariat</i>		

Annex D - List of stakeholders consulted

Government

Central Bank of Nigeria, Jack Ukitetu, Assistant Director, Head International Funds Office

Corporate Affairs Commission, Garba Abubakar, Deputy Director, Registrar General's Office

Department of Petroleum Resources Ayewle J. M.

Department of Petroleum Resources Faruk S. I.

Department of Petroleum Resources Giwa J. B.

Department of Petroleum Resources Ogundare O. O., Manager – Lease Management

Department of Petroleum Resources Okonkuro Obiaraeze

Department of Petroleum Resources Okwah Augustine, Office of the Director

Department of Petroleum Resources Olo Francis

Department of Petroleum Resources Wole Akinyosoye, Assistant Director

Department of Petroleum Resources, Iheukulimere Ogechi

Economic and Financial Crimes Commission Abdul Azeez Elayo

Economic and Financial Crimes Commission Abdulrasheed Bawa

Economic and Financial Crimes Commission Dr. David Wodi Tukura

Economic and Financial Crimes Commission Ibrahim Magu, Executive Chairman

Economic and Financial Crimes Commission Michael Wetkas

Economic and Financial Crimes Commission Modibbo Hammantukur, Head of External Cooperation

Economic and Financial Crimes Commission Nweke Cyril Chidi

Economic and Financial Crimes Commission Umar Abbu Mohammed

Federal Inland Revenue Services Adediran Olufunlola

Ministry of Budget and National Planning, Zainab Ahmed, Honourable Minister of State

Ministry of Mines and Steel Development Dauda Awojobi, Director

Ministry of Petroleum Sule B. J.

Ministry of Solid Minerals Development, Dr. Kayode Fayemi, Honourable Minister and NSWG Chair

Nigerian Mining Cadastre Office Salau L. S., Assistant Director, Registry

NIMASA Affan Ahmed Usman, Secretary to the Director General

NIMASA Dr. Dakuku Peterside

NIMASA Emmanuel Alfred, Director General

NIMASA Eric Oji, Registrar of Ships

Office of the Accountant General of the Federation Ojoye Dauda

Office of the Auditor General of the Federation Rotimi Dada

Office of the Vice President, Dr. Adeyemi Dipeolu, Special Advisor to the President on Economic Matters

Revenue Mobilisation Fiscal Allocation Committee Rakiya Haruna

Revenue Mobilisation Fiscal Allocation Committee Uche Nwagbara

Office of the Secretary to the Government of the Federation, David Babachir Lawal, Permanent Secretary

Office of the Secretary to the Government of the Federation, Olimogbo D. N. S

Office of the Secretary to the Government of the Federation, Obasa Margaret

Office of the Secretary to the Government of the Federation, Igwe Promises

Office of the Secretary to the Government of the Federation, Okere Chinne

Office of the Secretary to the Government of the Federation, Kalu Mija

Office of the Secretary to the Government of the Federation, Abdulrahim Abba

Office of the Secretary to the Government of the Federation, Suleiman S. Alfa

National Assembly

Senate of Nigeria, Hon. Gbenga Makanjuola, Deputy Chief of Staff/special Advisor Admin & Finance to the President of the Senate

Senate of Nigeria, Sen. Dr. Abubakar Bukola Saraki, President of the Senate

Nigeria National Petroleum Corporation (NNPC)

NNPC, 'Segun Osineye, FCA, ACTI

NNPC, Abiri Idris

NNPC, Bello Rabiou, Group Executive Director/COO, Upstream

NNPC, C.O. Momah

NNPC, Chidi Momah, Corporation Secretary

NNPC, Chief Kimashinor Nwakalo-Imu, GM, Regulatory Compliance and Monitoring

NNPC, Dr. Maikanti Kachalla Baru, Group Managing Director

NNPC, Dr. Sam U. Eno

NNPC, Eghobamien, Victor

NNPC, Eliza Sola Ogunnaike

NNPC, Garba Deen Muhammad, Group General Manager, Group Public Affairs Division,

NNPC, Gloria Y. Finbong, Manager, Regulatory Liaison (R&PC)

NNPC, Godwin Okonkwo, Group General Manager, Debt Management and Federation Account

NNPC, Hussaina Hamzah

NNPC, Joseph Oluwatosin, COMD, NAPIMS, PPMC

NNPC, Kai Captain
NNPC, Kayale Adebisi
NNPC, Mele Kolo Kyari
NNPC, Michael Okefor
NNPC, MK Beru
NNPC, Morrison D. Tariah
NNPC, Ndu Ughamadu
NNPC, Nkese A. Umoren
NNPC, Ojedokun O. A
NNPC, Olamide, M. D.
NNPC, Olaoye Nathaniel Oluremi, Manager Energy Intelligence
NNPC, Osineye Olusegun
NNPC, Saidu Mohammed
NNPC, Sodipo, B. A.
NNPC, Suleiman Damola
NNPC, Suleiman, D.
NNPC, Umer Ajiya

Industry

Addax Petroleum, Dr. Ken Uwalaka
Addax Petroleum, Oladipo Maiye, Manager, Tax and Lifting
Addax Petroleum, Omowunmi Hassan, Senior Accountant
Amni International Petroleum Development Company Limited, Emmanuel Marcus, Deputy Manager, Finance,
Amni International Petroleum Development Company Limited, Tayo Obasanya, DGM, Strategy and Planning
CCECC Nigeria Ltd., Boniface Owuiké, C.N., Senior Manager, Public Affairs,
Chevron, Obafemi Bamidele
Conoil Producing Ltd., Akeem Adekunbi
Conoil Producing Ltd., Jonathan Igburuke
Dangote, Oluwaseyi Akinseye,
Ethan Stones Mining, Adedeji Abiola
Exxon-Mobil, Tolu Oriyomi, Manager Joint Interest Accounting,

Julius Berger Norbert Kossman, Corporate Affairs Department,
Lafarge Africa Plc., Lawrence Garrick, Senior Legal Counsel (Land) and Litigation,
Lafarge Africa Plc., Obi Christopher, Public Affairs Manager,
Midwestern Oil and Gas, Olayodea Bukola
Miners Association of Nigeria, Alh. Sani Shehu, National President,
Oil Producers Trade Section, Bunmi Toyobo, Executive Director,
Oriental Energy, Segun Owokade
Oriental Energy, Zainab Aliyu
Shell Nigeria Exploration and Production Company Limited, Olusola Olabode, Business Finance Manager, SNEPCo Corporate Services &SEPA,
Shell Petroleum Development Company of Nigeria Limited, Jonathan Anolu, Controller,
Shell Petroleum Development Company of Nigeria Limited, Oyebowale Raji, NAPIMS Focal Point – Cashcall,
Statoil Benedith Hadomeh Onyeka, Senior Accountant Tax
Statoil Charles Nwoko, Head of Finance and Control
Total E&P Nigeria Ltd., Modeleola Jegede
Walter Smith, Abdul Isa

Civil Society

Africa Network for Environmental Justice, David Ugolor
Centre for Advance Social Sciences, Dr. Joab-Sofiri Peterside
Centre for Democracy & Development, Idayat Hassan
Citizens Centre for Integrated Development and Social Rights Emeka Ononamadu, Executive Director
Civil Society Legislative Advocacy Centre (CISLAC), Kolawole Banwo, Senior Program Officer (Extractive, Environment and Security)
Civil Society Legislative Advocacy Centre (CISLAC), Rafsanjani Auwal, Executive Director
Commuters Rights and Development Foundation, Chukwudi Arum
Democratic Action Group Muhammed Mustapha
Global Witness Barnaby Pace
Natural Resource Governance Institute, Dr. Garuba Dauda
Natural Resource Governance Institute, Sarah Muyonga, Nigeria Manager
Niger Delta Budget Monitoring Group, George-Hill Anthony, Executive Director
Nigeria Mining & Geoscience Society, Dr. Saidu Baba

Planning and Alternative Action, Jaye Gaskia, Coordinating Director, Pan African Centre for Strategic Reflection

Protest to Power, Jaye Gaskiya

Publish What You Pay Nigeria Faith Nwadishi, Executive Director

Publish What You Pay Nigeria Paul Ogwu, Program Officer

Responsible Citizenship and Human Development Initiative Dudu Manuga

Say No Campaign, Ezenwa Nwagu

Social Development Integrated Center, Social Action, Isaac Botti

West African Civil Society Forum, Uche Madueke, Media Relations Officer

Zero Corruption Coalition, Lukman Adekunle

Representative of Geopolitical Zones

Lawan Gana Lantewa, Managing Partner, Lantis Management Consulting Limited (North East)

Anne Adaeze Onyekwena (South-East)

Independent administrators

Haruna Yahaya & Co., Haruna Yahaya, Managing Partner,

Haruna Yahaya & Co., Olorundaisi Franklin Perez, Senior Manager

Lawan Gana Lantewa, Lawan Gana Lantewa, Managing Partner

Moore Stephens, Radhouane Bouzaiane, Senior Manager

S.S. Afemikhe & Co., Abdulkareem Momoh, Chartered Accountant

S.S. Afemikhe & Co., Samuel Afemikhe, Managing Partner

Taju Audu and Co., Tajudeen Audu, Managing Partner

Development partners

DFID Facility for Oil Sector Transparency (FOSTER), Dr. Michael Uzoigwe, Programme Manager

Embassy of Switzerland, Babatunde Ajala, Political and Economic Officer

Embassy of the United States of America, Ajibola Andrew Akeju, Economic Specialist

European Union Delegation to Nigeria and ECOWAS, Filippo Amato, Counsellor, Head of Trade and Economics Section

High Commission of Canada, Peter Unger, First Secretary and Senior Development Officer

USAID, Augusta Akparanta-Emenogu, Civil Society and Media Specialist

World Bank Masami Kojima, Lead Energy Specialist

Media

Daily Trust Hamisu Mohammed

Sun Dennis Mernyi

The Nation John Ofikhenua

The Guardian, Collins Olaiya Olayinka

This day Chineme Okafor

Vanguard Media Ltd., Michael Eboh

Former NSWG Members not mentioned above

Professor Asisi Asiobe, Former NSWG Chair

Ledum Mitte, Former NSWG Chair

Obiagelli Ezekwesili, Former NSWG Chair

Olusegun Adeniyi, Former NSWG Member (Media)

Toba Akinmoladun, Former NSWG Member (Industry)

Others

Ecobank, Dolapo Oni, Head of Energy Research

Wood Mackenzie, Gail Anderson, Research Director

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- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 23 August 2012
- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 18 October 2012
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- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 2 May 2013
- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 20 June 2013
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- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 11 December 2013
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- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 25 June 2014
- Minutes of the meeting of the National Stakeholders Working Group (NSWG), 20 October 2014
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- Minutes of the meeting of the NSWG's Communications Committee, 13 November 2012
- Minutes of the meeting of the NSWG's Communications Committee, 18 June 2013
- Minutes of the meeting of the NSWG's Communications Committee, 21 June 2013
- Minutes of the meeting of the NSWG's Communications Committee, 18 September 2013
- Minutes of the meeting of the NSWG's Communications Committee, 12 December 2013
- Minutes of the meeting of the NSWG's Communications Committee, 12 March 2014
- Minutes of the meeting of the NSWG's Communications Committee, 18 March 2014
- Minutes of the meeting of the NSWG's Communications Committee, 10 June 2014
- Minutes of the meeting of the NSWG's Communications Committee, 11 June 2014
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- Minutes of the meeting of the NSWG's Communications Committee, 10 March 2015
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