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Indicator		Score
4.1.1	Context	

4.1.1 Context

4.1.1.050: Has the government created a special fund or natural resource fund that concentrates revenue directly from oil, gas or mineral extraction?

Score: A B C

Comments:

The creation of Sovereign Wealth Fund for Nigeria was approved by the Legislature in May 2011. The SWF received seed money of US$ 1 billion from the Federation. The SWF was created to overcome the legal and constitutional challenges raised by the Excess Crude Oil Account (which was created in 2004 as a fiscal stabilisation instrument - the ECA is discussed in 2.2.024 and assessed here in the following questions).

The SWF will receive a high proportion of monthly oil revenues above the budget price benchmark, which is to be distributed among its three components, namely: the Future Generations Fund, the Infrastructure Fund, and the Stabilisation Fund.

Although some state governors initially opposed the creation of the SWF, there is now political consensus on its importance to the country. The SWIA is presently being set up and staffed, and the Minister of Finance has stated that its operations will start in May (see news article above).

References:

Nigerian Sovereign Investment Authority Act (2010)

Kunle Aderinokun, This Day (Lagos), 'Nigeria: SWF Begins Operation in May, Says Okonjo-Iweala', http://allafrica.com/stories/201202280800.html, 28 February 2012.

4.1.1.051: What authority is responsible for the natural resource fund?

Score: A B C D E

Comments:

Structurally, the Central Bank and Finance Ministry should oversee the Excess Crude Account. In practice, however, the Presidency has wide discretion over withdrawals. Nigeria's 36 state governors regularly pressure the Presidency to share funds from the ECA, due in part to a dispute over the constitutionality of withholding funds in the account.

As for the SWF, according to Sections 1 to 6 of the SWIA Act, the Sovereign Wealth Fund is managed by an independent Sovereign Wealth Investment Authority (SWIA). The SWIA is legally mandated to acquire, hold and sell assets in the course of its operations. But as stated in the previous question, the SWIA is not yet operational.

References:

http://www.revenuewatch.org/training/resource_center/sovereign-wealth-fund-requires-legal-standing-binding-rules-and-transparenc

Peer Review Comments:

However, the legal setup of the fund and its vulnerability to constitutional challenge leave it open to interference from the Presidency and the 36 state governors. See Act of the fund and RWI press release on this issue:
http://www.revenuewatch.org/training/resource_center/sovereign-wealth-fund-requires-legal-standing-binding-rules-and-transparenc

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Indicator		Score
4.2.1	Comprehensive reports	0
4.2.2.056	Audited reports	34

4.2.1 Comprehensive reports

4.2.1.052: Are the rules for the fund's deposits and withdrawals published, including the formula(s) for deposits and withdrawals?

Score: A B C (B circled)

Comments:

There are no published rules for the Excess Crude Account. Because the Account was established by presidential decree, it appears that no detailed rules governing its operations exist.

The SWIA Act (Sections 31-32) stipulates the formula for sharing excess oil revenues above the budget oil price between the Future Generations, Infrastructure and Stablisation components of the SWF.

References:

See sources in 3.2.1.051.

Nigerian Sovereign Investment Authority Act Sections 31 -32 (attached in 3.2.1.050)

4.2.1.053: Does the fund management or authority in charge of the fund publish comprehensive information on its assets, transactions and investments?

Score: A B C D E

Comments:

No reports on the Excess Crude Account are published.

As stated earlier, the SWF has been established by law but is not yet operational.

References:

See sources in 3.2.1.051

4.2.1.054: Are the reports containing information on the fund's assets and transactions understandable?

Score: A B C D E

Comments:

No reports on the Excess Crude Account are published.

References:

See sources in 3.2.1.051

4.2.1.055: How often are financial reports published by the fund management or authority in charge?

Score: A B C D E

Comments:
No reports on the Excess Crude Account are published.

References:
See sources in 3.2.1.051

4.2.2.056 Audited reports

4.2.2.056a: Are the fund s financial reports audited?

Score: A B C D E

Comments:
Nigeria's Auditor-General of the Federation reviews inflows and outflows from the Excess Crude Account as part of its annual audit exercise. The AudGF frequently complains that sufficient information from the relevant agencies is not forthcoming.

References:
Nigerian Auditor-General of the Federation, 2007 Audit Report.

4.2.2.056b: Are the audited financial reports published?

Score: A B C

Comments:
No audited reports for the Excess Crude Account are published.

References:
See sources in 3.2.1.051

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Indicator		Score
4.3.1	Legal Framework and Practice	17

4.3.1 Legal Framework and Practice

4.3.1.057: Are the rules governing deposits into the fund defined by legislation?

Score: A B C

Comments:

The Excess Crude Account was created by an executive order. While the overall practice has been to deposit into it oil revenues above an annual budgeted benchmark price, no law requires this.

The rules governing deposits into the SWF are stated in Sections 29-32 of the SWIA Act. A proportion of excess oil revenues (above the budget oil price) is to be paid into the three constituent Funds - the Future Generation, Infrastructure and Stabilisation Fund.

While the Fund has received US$1 billion as seed money, no other deposits have been made, until it starts operations in May 2012.

References:

See sources in 3.2.1.051.

4.3.1.058: In practice, does the government follow the rules governing deposits to the natural resource fund?

Score: A B C D E

Comments:

While the Excess Crude Account, by executive order, is supposed to receive all federally-collected oil revenues above an annual budgeted benchmark price, in practice the main agencies that collect oil revenues on Government's behalf—particularly the Nigerian National Petroleum Corporation—withhold large amounts to finance their operations and costly subsidy programs. Rules governing these withholdings are likewise unclear.

References:

KPMG, Project Anchor: A Review of the Operations of the Nigerian National Petroleum Corporation, 2011.

4.3.1.059: Are the rules governing withdrawal or disbursement from the fund defined by legislation?

Score: A B C

Comments:

The legislature has not passed any detailed rules governing withdrawals or disbursements from the

Excess Crude Account. Past attempts to do so failed.

Sections 34-35 of the SWIA Act provide the rules regarding the distribution of uninvested income held by the SWF, which should be transferred to the Federation Account and distributed among the three tiers of government according to the statutory revenue allocation formula. Sections 47-48 permit the Minister of Finance to periodically make withdrawals from the Stabilisation Fund to fund revenue shortfalls.

Once again, this law has not been put to test as the SWF is not yet operational.

References:

See sources in 3.2.1.051.

4.3.1.060: In practice, does the government follow the rules governing withdrawal or spending from natural resource fund?

Score: A B C D E

Comments:

Again, no detailed legal or policy framework governs withdrawals and spending from the Excess Crude Account.

References:

See sources in 3.2.1.051

4.3.1.061: Are withdrawals or spending from the fund reserves approved by the legislature as part of the budget process?

Score: A B C

Comments:

Excess Crude Account withdrawals and spending are not subject to legislative oversight, as the ECA is discretionary used by the Executive, although as stated in previous questions, the government includes transfers to the ECA as part of the revenue distribution process when presenting budget estimates to the Legislature.

Withdrawals and spending from the SWF are guided by provisions of the SWIA Act, which has been approved by the National Legislature (see 3.2.3.059 above). However, as stated throughout this sub-section, the SWF is not yet operational.

References:

See sources in 3.2.1.051

4.3.1.062: Are officials of the natural resource fund required to disclose information about their financial interest in any oil, gas or mining projects?

Score: A B C

Comments:

The Code of Conduct has been earlier mentioned in 1.3.016, 2.3.028, 3.1.3.047. All public officers, including the officials of the SWF, since it is a public company, are expected to publicly declare their assets, including any beneficial ownership or interest in oil and gas. No special disclosure provisions govern the Excess Crude Account, however.

In the case of the SWF, the combination of the external controls placed by the Code of Conduct and the provisions of the SWIA Act, are robust in checking widespread conflicts of interest related to decisions by officials of the Fund. As stated earlier, weak institutions reduce the efficacy of the Code of Conduct and similar laws to address public sector corruption.

References:

Sovereign Wealth Investment Authority Act (2010), Schedule 1: Supplementary Provisions relating to the Board of Directors, No.3 (see attachment in 3.2.1.050)

See sources in 1.3.016 and 2.3.028

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Indicator		Score
5.1.1	Context	

5.1.1 Context

5.1.1.063: Do central governments transfer resources to subnational authorities based on extraction of mineral resources?

Score: A B C D E

Comments:

Nigeria is a federal republic comprised of federal, states and local governments, which manage their fiscal affairs independently. Sub-national governments receive statutory revenue allocations, and specific derivation payments (for oil-producing states)

Section 162 of the Nigerian constitution provides for a 'Distributable Pool' account (also known as the Federation Account), into which oil and non-oil revenues are collected, and distributed among the three tiers of government - the federal government, 36 states and the Federal Capital Territory, and 776 local governments, according to a stipulated revenue allocation formula. Oil revenues are critical to the Nigerian government, and constitute around 85% of total Federation revenues.

Sub-national governments are also statutorily entitled to other Federation oil revenues, including revenues held in the Excess Crude Account (ECA), and the incoming Sovereign Wealth Fund (also using the revenue allocation formula). The only exceptions are the revenues retained by the Federal government outside the Federation Account for special purposes, such as the Ecological Fund, Education Tax Fund, Petroleum Trust Fund, and the Joint Venture cash call payments.

The crisis in Nigeria's Niger Delta oil-producing region warranted political concessions to compensate the region for decades of neglect, poverty and environmental ruin. Historically, regions were allowed to retain a high proportion of revenues arising from the exploitation of their natural resources - in accordance with the principle of derivation, but as a result of fiscal centralisation under military rule and ethnic competition, the derivation principle was eventually abandoned. After the return to democracy in 1999, the struggle for 'resource control' and reinstatement of the derivation principle was taken up by Niger Delta politicians, civil society activists and militants.

In 2002, the Nigerian Supreme Court passed a definitive judgement that oil producing states were entitled to 13% of on-shore oil revenues accruing to the Federation, according to the derivation principle. Thus, the nine oil producing states receive, in addition to their statutory revenue allocations, 13% of total oil revenues, which are distributed according to individual oil output, on a monthly basis. The Federation Account Allocation Committee (FAAC), which is made up of the Minister of Finance and 36 state finance commissioners, is the major mechanism for the distribution of revenues between the federal and sub-national governments.

References:

Constitution of the Federal Republic of Nigeria (1999) Section 169 (attached in question 1.1.001)

Allocation of Revenue (Federation Account, etc.) Act Cap. A15 LFN 2004 (not available online)

Derivation Principle: Supreme Court Judgement 2002, http://www.nigeria-law.org/Attorney-General of the Federation V Attorney-General of Abia State & 35 Ors.htm

5.1.1.064: Are conditions imposed on subnational government as part of revenue sharing regime?

Score: A (B) C

Comments:

See comments in 3.3.1.063

As a federal republic - Nigeria's states and local governments are fiscally independent and are entitled to receive a share of Federation revenues, without any conditions or earmaking of funds. In most cases, the sub-national governments rely exclusively on these statutory allocations to finance their activities.

References:

See sources in 3.3.1.063

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Indicator		Score
5.2.1	Disclosure	80

5.2.1 Disclosure

5.2.1.065: Are the rules for revenue transfers from central to sub national governments published, including the formula(s) for revenue sharing?

Score: A B C

Comments:
The 1999 Constitution (Section 153) establishes the Revenue Mobilisation, Allocation and Fiscal Commission (RMAFC) is a commission under the Nigerian Presidency responsible for determining the revenue allocation formula, and determining monthly allocations to the three tiers of government. The RMAFC monitors Federation Account operations.

The RMAFC has a website (see link above), but the reports on the revenue allocation formula are not available for public download. I have found an academic paper that provides a detailed discussion of revenue allocation and fiscal federalism in Nigeria. The current revenue allocation formula can be found in the appendix of the paper. The press release from the Ministry of Finance shows revenue allocations for February 2012, and the sharing ratios for the federal, states, and local governments.

References:
Constitution of the Federal Republic of Nigeria (1999), Section 153 (attached in question 1.1.001)
Allocation of Revenue (Federation Account, etc.) Act Cap. A15 LFN 2004 (not available online)
Revenue Mobilisation, Allocation and Fiscal Commission
http://www.rmafc.gov.ng/http://www.rmafc.gov.ng/report/home.htm
FG, States, LGs shared N620.738 billion for the month of February
http://www.fmf.gov.ng/component/content/article/72-fg-states-lgs-shared-n620738-billion-for-the-month-of-february.html
Salami, A. (2011) 'Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, Challenges and Policy Options', Economic Annals, Volume LVI, No. 189 / April – June 2011.

5.2.1.066: Does the central government publish comprehensive information on transfers of resource related revenues to sub-national governments?

Score: A B C D E

Comments:
Several government institutions in Nigeria publish information on sub-national revenue transfers:

Nigeria's Ministry of Finance publishes details of revenue allocations to states and local governments after the monthly Federal Account Allocation (FAAC) meetings. These details include oil revenues, and non-oil revenues including company tax, income tax and VAT. This is a commendable practice that was started in 2004 during the first stint of Dr. Ngozi Okonjo-Iweala as Finance Minister. The transparency of subnational expenditures is perhaps the most critical issue in Nigeria today, and the publication of these revenue figures has enabled the public to know exactly how much their states and local governments receive from the treasury.

The Ministry of Finance issues press releases on the monthly FAAC revenue allocation (see example in previous question). Although there are download links on the Ministry website, most of these are dead, and the most recent report that can be downloaded is for August 2011.

The Office of the Accountant-General has monthly FAAC reports for download, and the most recent report is for January 2012 (see link above).

The CBN publishes information on disaggregated revenue flows to the states and local governments, and overall sub-national finances in its reports (annual and in-year - see 2.2D.020b). The CBN reports are detailed and comprehensive, and include sub-national share of transfers to and from the Excess Crude Account, foreign exchange gain, non-oil tax revenue, and internally generated revenue.

References:

Federal Ministry of Finance http://www.fmf.gov.ng/
Office of the Accountant-General of the Federation http://www.oagf.gov.ng/
Central Bank of Nigeria Annual and In-year reports (all attachments in 2.2D.020b)

5.2.1.067: Are the reports containing information on transfers of resource related revenues to sub-national governments understandable?

Score: A B C D E

Comments:

See previous comments in 3.3.2.066

The FAAC reports which contain information on revenue transfers to the states and local governments are detailed and comprehensive. The reports are very understandable for the average Nigerian seeking to hold public officers to account.

Likewise, the CBN's published information on sub-national revenue transfers is also comprehensive, particularly for the Annual Report and Annual Statistical Bulletin which include notes on statistical methods, and general description of fiscal policy management in Nigeria.

References:

See sources in 3.3.2.066 above

5.2.1.068: How often does the central government publish information on transfers of resource related revenues to sub-national governments?

Score: A B C D E

Comments:

See comments in 3.3.2.065 and 3.3.2.066 above

As explained in previous questions, reports on revenue transfers to states and local governments are published every month by the Ministry of Finance (and the Accountant-General of the Federation) following meetings of the Federation Account Allocations Committee.

The Central Bank provides comprehensive details of sub-national revenue transfers in its monthly, quarterly and annual reports.

References:

See sources in 3.3.2.065 and 3.3.2.066 above

5.2.1.069: Do sub-national governments publish information on transfers received from central governments?

Score: A B C

Comments:

See the discussion of the Federation Account Allocation Committee (FAAC) revenue allocation mechanism, and publication of sub-national revenues by the Ministry of Finance in 3.3.2.065 and 3.3.2.066

States do not publish information on monthly revenue receipts from the federal government per se. However, in the context of fiscal federalism in Nigeria, the 36 state commissioners of finance are members of the FAAC, which distributes revenues between the three tiers of government on a monthly basis. This means that the published sums are agreed by all parties before publication by the Ministry of Finance. There has been no incident of a state receiving a different amount from that published by the Federal government.

In general, there is very low transparency in sub-national revenue and expenditure management, and corruption is rife at sub-national levels. Sub-national governments are basically unaccountable, due to their constitutionally protected fiscal independence, and a political culture that promotes distributive patronage. The attached paper describes the general setting for sub-national fiscal profligacy and corruption in Nigeria, and the urgent need for reforms that entrench fiscal prudence, fiscal transparency and accountability.

There are several vibrant grassroots CSOs (such as the Niger Delta Citizens' and Budget Platform, link above) that publish information on state budgets and fiscal transparency in general, which includes estimates of statutory revenue receipts.

References:

See sources in 3.3.2.065 and 3.3.2.066
Niger Delta Citizens' and Budget Platform http://citizensbudget.org/
Ushie, V. (2010), Implementing the Fiscal Responsibility Act at the State-Level in Nigeria, CSEA Working Paper WPS/10/002, October 2010.

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Indicator		Score
5.3.1	Legal Framework and Practice	100

5.3.1 Legal Framework and Practice

5.3.1.070: Are arrangements (including formulas and responsible institutions) for resource revenue sharing between central and sub-national governments defined by legislation?

Score: A B C

Comments:

As discussed in the preceding questions in this sub-section (3.3.1.063 and 064, 3.3.2.065 and 066), the federal, states and local governments share revenues in accordance with Section 162 of the constitution. This provision also spells out the criteria for such allocations (e.g. population density, land mass and horizontal equality). Section 153 creates a Revenue Mobilisation, Allocation and Fiscal Commission with the responsibility of deriving the revenue allocation formula.

The current revenue allocation formula has been in place since 2004 (backed by the legislative Act, above) and is well publicised by government websites and independent academic reports and in the media.

Revenue allocation is a highly politicised issue in Nigeria and subject to intense ethno-regional struggles. The allocation formula has been changed constantly in the past 40 years to accomodate political demands. Presently, there is a raging debate to revise the formula by giving more revenues to the states. States in Northern Nigeria that produce solid minerals are to receive the 13% derivation payment on revenues generated from their resources. However, the scale of public corruption and fiscal profligacy at the sub-national level has led to increased public awareness and engagement on oil revenue management in Nigeria.

References:

Constitution of the Federal Republic of Nigeria (1999) Sections 153, 162 (attached in question 1.1.001)
Revenue Mobilisation, Allocation and Fiscal Commission http://www.rmafc.gov.ng/abt.htm
Allocation of Revenue (Federation Account, etc.) Act Cap. A15 LFN 2004 (not available online)

5.3.1.071: In practice, does the government follow the rules established by resource revenue sharing legislation?

Score: A B C D E

Comments:

See the discussion in 3.3.1.063 and 064, 3.3.2.065 and 3.3.2.066, 3.3.3.070

Nigeria is a federal republic and the sub-national units are constitutionally entitled to Federation revenue. The Federal government cannot deny the states their entitled revenue, and cannot ignore or set aside the substantive revenue allocation formula without the proper legislative processes. The political environment is also highly sensitive to revenue allocation issues, and the federal government is wary of aggravating ethno-regional struggles over 'sharing the national cake'. Thus, the federal government, by default, complies with the rules governing revenue allocation.

The more problematic area is the fiscal relationship between the states and local governments (LGs). Since LG revenue is paid into jointly owned accounts with the states, it has been relatively easy for state governors to hijack local goverment statutory allocations and divert them to other uses. Many local government councils are dysfunctional and only exist as stooges to collect whatever breadcrumbs are released by the extremely powerful state governors. Perhaps the lowest level of transparency in Nigeria relates to local government administration and fiscal policy management.

References:

See sources in 3.3.1.063 and 064, 3.3.2.065 and 3.3.2.066, 3.3.3.070

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Nigeria - RWI Index Questionnaire

Context

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Indicator		Score
1.1	Context	

1.1 Context

1.1.001: Does the country have a clear legal definition of ownership of mineral resources?

Score: A B C D E

Comments:
The Nigerian constitution, and legislation overseeing oil and gas extraction vests ownership of all natural resources in the state (see cited legislation above). Historically, the struggles over ownership of natural resources and allocation of derived natural resource revenues have been a permanent fixture of post-independence Nigeria. The Nigerian Constitutions of 1960 and 1963 made provisions for distribution of 50% of the revenues accruing from the resources of each region of the Federation to that region. However, after the end of Nigeria´s civil war in 1970, this position gradually changed with the promulgation of the Petroleum Act in 1969, which vested the ownership of all mineral resources in the Federal Government and abrogated provisions relating to the allocation of revenue to the regions based on the principle of derivation. This provision was retained by the 1979 and 1999 Constitutions in different forms, and today forms the basis for 'agitation for resource control' by indigenes of the Niger Delta. Currently, the 1999 constitution provides for 13% of derived oil and gas revenues to be paid to oil-producing states in the Niger Delta.

The Nigerian government is in the process of re-introducing the much delayed Petroleum Industry Bill (PIB) to the Legislature for approval. The PIB is expected to replace and consolidate all the disparate laws governing the oil and gas sector into a single piece of legislation. However, all drafts of the PIB retain the concept of state ownership of natural resources within the territory of Nigeria (in the opening clause), and it is unlikely that this will be abandoned in the final legislation.

References:
Constitution of the Federal Republic of Nigeria Section 44(3)

Land Use Act 1979, Section 1 http://www.nigeria-law.org/Land%20Use%20Act.htm

Petroleum Act, 1969 [amended 1998] Section 1

Petroleum Act Cap. 350, 1990 http://www.nigeria-law.org/Legislation/LFN/Petroleum%20Act.htm

Minerals and Mining Decree No. 34 1999, Section 1 http://www.nigeria-law.org/MineralsAndMiningDecree1999.htm

1.1.002: Who has authority to grant hydrocarbon and mineral rights or licenses?

Score: A B C D E

Comments:

The Minister of Petroleum Resources has the authority to grant licenses for the exploration of oil in Nigeria. The Department of Petroleum Resources (DPR) is the technical arm of the Ministry of Petroleum Resources, and oversees the licensing process and all upstream oil operations. However, DPR's independence from the state oil company, the Nigerian National Petroleum Corporation (NNPC) is questionable. This situation could be described as 'regulatory capture'. Due to inadequate funding and low technical capacity, DPR relies on the resources of the NNPC. Furthermore, DPR's licensing procedures are heavily influenced by the influential Minister of Petroleum, and specifically, the process for granting of licenses and permits is fraught with influence peddling by powerful interests in the sector, ranging from the Minister of Petroleum and the NNPC, to the Nigerian presidency, political parties, and furthermore, private oil companies.

References:

The Ministry of Petroleum Resources http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=20&Itemid=4
The Department of Petroleum Resources http://www.dprnigeria.com/licenses.html, http://ndr.dprnigeria.com/ndr_apps_how.htm
Petroleum Act (1969) [amended 1998] Section 2 (see attachments for Q 1.1.001)

1.1.003: What licensing practices does the government commonly follow?

Score: A B C D E

Comments:

The Petroleum Act Section 2(3) gives general guidance on how oil exploration, oil prospecting and oil mining licenses will be granted by the Minister of Petroleum, while the DPR is charged with overseeing the actual licensing process.

The licensing regime under Nigeria's military dictators was secretive and subject to pervasive political interference, which allowed elements of the political elite to gain control of oil acreage, through licenses for marginal fields, and by setting up 'briefcase companies' that facilitated increased foreign participation in the sector. In general, there are high stakes surrounding the licensing process due to the lucrative nature of oil licenses as an instrument of state patronage. After the return to civil rule in 1999, under the Obasanjo presidency, the licensing rounds in 2005, 2006 and 2007 were designed to be open and competitive. The licensing process was based on the auction format, and the rules for the pre-qualification of companies and the bidding process were clear, transparent and well publicised. However, President Obasanjo (who also served concurrently as the Minister of Petroleum) retained discretionary control over the outcome of the process. Several of the licenses were later revoked, and others became the subject of court litigation. In 2008, the Federal House of Representatives conducted a inquiry into the 2007 licensing round and discovered series of irregularities and evidence of political interference by the Obasanjo presidency. Subsequently, due to the uncertainty around the passage of the Petroleum Industry Bill (PIB), Nigeria was unable to hold a licensing round. Between 2010 and 2012, the Minister of Petroleum has renewed individual leases for multinationals such as Exxon Mobil and Shell, and also overseen the transfer of ownership of relinquished oil acreage to the NNPC and its subsidiary the NPDC. The Minister continues to exercise wide discretion in the award or renewal of oil leases, and the Presidency and ruling party in turn influence the Minister's decisions. The government has stated its intention to hold a licensing round this year, although the early passage of the PIB will reflect its seriousness to attract and retain foreign investment and reposition the oil and gas sector.

References:

Petroleum Act (1969) [amended 1998] Section 2(3) First Schedule (attached in Question 1.1.001)
ThisDay, 05 March 2012, 'Finally, FG to hold oil licensing round this year' http://allafrica.com/stories/201203050087.html
Vanguard, 23 Feb 2012, 'Oil production: more leases to be renewed', http://odili.net/news/source/2012/feb/23/339.html

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1.1.004: What is the fiscal system for mineral resources?

Score: A B C D E

Comments:
There are several fiscal arrangements being used in the oil and gas sector, as follows:

1 Concession arrangements (granting oil prospecting licenses, OPLs and oil mining licenses OMLs to private oil companies) - pre-1973
2 Joint Venture arrangements: whereby the state oil company (NNPC) partners with multinational oil companies to operate oil concessions
3 Joint Venture Arrangements (with alternative financing): a new form of JV that was introduced in the last five years due to the NNPC's severe cash shortages. This involves full financing of JV operations by multinationals and in-kind payments by the NNPC to meet capital costs by way of additional crude oil produced.
3 Production Sharing Contracts: Due to funding issues for the NNPC,since 1993, this has been the preferred option for upstream oil activities. The private operator manages the oil concession on behalf of the NNPC and is allocated a portion of production to recover costs, and taxes and royalties are paid to the government based on specific fiscal terms. After these deductions are made, the NNPC and operator share produced oil according to contractual terms.
4 Service Contracts: Similar to the PSC - the operator bears all the costs. However, the contract is limited to a period of five years, may cover multiple OPLs and the operator has no title to the crude oil but is reimbursed sunk costs plus a premium and interest. Only one service contract currently in operation.
5 Independents/Sole Risk contract: applies only to indigenous operators. The operators incur all costs, and the government has no revenue or equity holdings. When the concession becomes viable, the operator pays tax and royalties to the state, and is allowed to grant a maximum of 40% equity to foreign investors.
6 Marginal fields contract: As part of the government's local content initiative, marginal acreage that is considered unprofitable for the IOCs and bigger oil firms is farmed out to small indigenous operators. Similar terms to the sole risk contract, but the concession is granted for 5 years, must be developed within the first 12 months, and will be renewed if up to 70% of agreed work programme is attained. Only few local companies have shown productive returns, though the marginal fields are a useful tool for distributive patronage.

All six fiscal regimes are listed here due to confirmation that the Nigerian government has received revenue from these arrangements, following a detailed interview with Alhaji Bello of the BOF for a FOSTER project. However government websites and other publications may not reflect all of these alternatives. See also the NNPC Powerpoint presentation.

References:
National Petroleum Investment Management Services (NAPIMS) official website http://www.napims.com/dynamic.html
'Investing in Nigeria's Oil and Gas Industry' Client Note prepared by Gbenga Biobaku & Co, Lagos, Nigeria, 2008. see pp. 8-10.
Interview with Alhaji Bello, Director, Revenue Department, Budget Office of the Federation, FOSTER TBI Project, June 13, 2011. Abuja, Nigeria
NNPC (2011) Processing and Monitoring Crude Oil and Gas Production and Proper Accounting of Sales,

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1.1.005: What agency has authority to regulate the hydrocarbon and mineral sector?

Score: A B C D E

Comments:
The Department of Petroleum Resources (DPR) is the regulatory authority for the oil and gas sector. DPR monitors upstream and downstream oil operations, compliance by private companies on the payment of rents and royalties to the Nigerian government, and managing information on production, reserves and other oil and gas statistics. See comment to question 1.1.002 above - DPR is largely ineffective due to capacity and funding gaps, and political interference. It is overshadowed by the NNPC, and subject to discretionary influence by the powerful Minister of Petroleum, which results in a poorly

regulated oil and gas sector.

A subsidiary of the NNPC, named NAPIMS monitors budgets, contracts and operating agreements related to the various fiscal arrangements on behalf of the Federal government (the joint ventures, production sharing contracts etc). It is responsible for managing investment by the NNPC in the JVs (through the 'cash call' process). NAPIMS' mandate includes granting approval for contracts worth over $250,000. Contract approval could take up to 24 months, due to bureaucratic delays, and NAPIMS officials are seen to play a 'gatekeeper' role that allows them to extract kickbacks in return for granting contract approvals.

References:

The Department of Petroleum Resources www.dprnigeria.com
National Petroleum Investment Management Services http://www.napims.com/aboutus.html

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Disclosure

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Indicator		Score
1.2.006	Information on licensing process	50
1.2	Contract transparency	0
1.2.008	Environmental and social impact assessments	25
1.2	Access to information and legislation	84

1.2.006 Information on licensing process

1.2.006.a: What information does the government publish on the licensing process before negotiations?

Score: A B C D E

Comments:

The Petroleum Act lays out the general guidelines for award of oil licenses by the Minister of Petroleum Resources, and the DPR is charged with publishing guidelines for the oil licensing process. However, the DPR does not provide specific information related to upstream oil awards on its website. The information on oil licenses appears to be restricted to the downstream sub-sector. If the government successfully holds an auction later in 2012, perhaps more information will be provided by DPR and the Ministry of Petroleum Resources in due course.

The last oil licensing rounds in 2005, 2006 and 2007 involved an auction of licenses to bidders who had met stipulated criteria. As noted in comments for question 1.1.003, this process was fraught with irregularities in the auction of awards, and political interference, resulting in litigation over award decisions, revocation of awarded licenses, and a legislative inquiry.

References:

Petroleum Act (1969) [amended 1998] Section 2(3) First Schedule - see attachments for question 1.1.001
Department of Petroleum Resources http://www.dprnigeria.com/licenses.html, http://ndr.dprnigeria.com/ndr_apps_how.htm

1.2.006.b: What information does the government publish on the licensing process after negotiations?

Score: A B C D E

Comments:

Nigeria has not held an oil licensing round since 2007. Some information on the outcome of the 2007 oil licensing process was published in the media - for instance, see quoted newspaper sources above.

However, the DPR itself did not provide comprehensive details on the outcome of the licensing round in the public or on its website, of the winning companies, and terms agreed to before and after the licensing process. Local and foreign media reports appear to have been independently published. The government has stated its desire to conduct a licensing round in 2012, and it is expected that the DPR and Ministry of Petroleum will provide specific guidelines on the award process. The 2007 oil licencing round left a controversial legacy - it became the subject of a legislative probe, and several court litigations. The large oil multinationals reportedly abstained from the auctions because they perceived the process as being severely politically compromised. See also, comments for question 1.1.003 above.

References:

Vincent Nwanma, Dow Jones Newswires, 'Oil Majors Absent at Nigerian Licensing Round, Newcomers Lead' http://www.rigzone.com/news/article.asp?a_id=45095. Monday, May 14, 2007
Ifeanyi Izeze, Nigeria Exchange, 'May 2007 Bid Round: Politics Of Revocation Of Oil Bloc Licenses', http://www.ngex.com/news/public/article.php?ArticleID=732. October 22, 2007
Yusuf Alli, Nigeriabusiness.com, 'How Obasanjo's Govt Rushed Oil Block Deals', http://www.thenigeriabusiness.com/energy142.html, June 20, 2008

1.2 Contract transparency

1.2.007: Are all contracts, agreements or negotiated terms for exploration and production, regardless of the way they are granted, disclosed to the public?

Score: A B C D E

Comments:

In general, oil and gas contracts, and in particular, contracts for fiscal/production arrangements, such as the Joint Ventures and Production sharing agreements are not publicly available. When the relevant regulatory agencies are approached (DPR, Ministry of Petroleum), there is a reluctance to release any information on oil contracts. While there are bits and pieces of information from official presentations of the NNPC on the terms for the JVs and PSCs, it is impossible to get hold of the contracts.

A recent report by Global Witness on the 'resource curse' in Angola, Nigeria and the Democratic Republic of Congo verifies this situation.

References:

Global Witness (2012) 'Rigged: The Scramble for Africa's Oil, Gas and Minerals', London, January 2012.

1.2.008 Environmental and social impact assessments

1.2.008.a: Does legislation require that mining, gas and oil development projects prepare an environmental impact assessment prior to the award of any mineral rights or project implementation?

Score: A B C

Comments:

The EIA Decree 1992 and the DPR EGAS 1991 require the preparation of an EIA report prior to the commencement of oil and gas activities in Nigeria. The production of the EIA report is the responsibility of the Environmental Assessment Department of the Federal Ministry of the Environment. However, there is a duplication of roles as the DPR has separate EIA guidelines for oil and gas companies, although this is not supported by legislation

Based on an interview with officials of the Ministry of the Environment, the EIA process (of the Ministry of the Environment) is designed to be 'proponent driven'. This is a summary of the process - companies submit an application, the proposal for the oil and gas project and Terms of Reference to the Ministry, the Ministry sends officials to verify the project site, an EIA categorisation is issued by the Ministry, followed by an external peer-review by a group of experts, after which the outcome is communicated to the company (called an 'approval in provision'), and an Environmental Impact Statement is released. Based on the approval, companies may pay a fee to mitigate the impact of the proposed activities, to the government. There are various categories of EIA reports (some involve publication for a minimum of 21 days and a public review, and others do not).

Also, oil companies choose experts to sit on the review panel (subject to accreditation by the Ministry), and also cover logistics costs of this panel during the EIA consultation/review process. Thus the independence of the panel can be questioned. An interview revealed severe capacity issues in the Ministry of Environment for conducting sound and robust oil and gas EIA, and disseminating EIA reports. The ministry officials were also unhappy about DPR's duplication of their functions, and the private oil companies perceived 'allegiance' to DPR by default.

References:

Environmental Impact Assessment Decree No. 86 [1992] http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm
Department of Petroleum Resources Environmental Guidelines and Standards (EGAS) 1991
Echefu N. and E. Akpofure (2000) Environmental impact assessment
in Nigeria: regulatory background and
procedural framework, in UNEP EIA Training Resource Manual, Geneva: United Nations Environment Programme (UNEP)
Interview with Environmental Assessment Department, Ministry of Environment, FOSTER TBI Project, Abuja, Nigeria, September 6, 2011.

1.2.008.b: Are environmental impact assessments for oil, gas and mining projects published by the authority in charge of regulating the sector and is there a consultation process?

Score: A B C (D) E

Comments:

The Nigerian Ministry of the Environment does not have a functional website and does not publish EIA reports. In general, EIA reports are not readily available from the Ministry of the Environment, and the DPR. However, private oil companies may independently release EIA reports (see Shell Nigeria EIA reports in the link, above) without any impediment. There is evidence that such reports are at least produced - see the following link for EIA reports produced by a consulting firm for several oil and gas projects http://www.bgiresourcesltd.com/Projects_types.htm.

The EIA process is designed to be consultative, with field visits to project sites by Ministry officials and experts, and dialogue sessions with local communities. However, the independence of this consultative process from influence by oil companies is not clear. See comments for question 1.2.008a above.

References:

Shell Nigeria, Environmental Impact Assessment reports
http://www.shell.com.ng/home/content/nga/environment_society/environment_impact_assessments/

1.2.008.c: Does legislation require that mining, gas and oil development projects prepare a social impact assessment?

Score: A (B) C

Comments:

Quote from Akpofure and Ojile, p. 215

'By necessity, social impact assessments are conducted simultaneously with EIAs. However, few companies have determined explicit guidelines for conducting SIAs, and as a result the majority of industry social assessments provide only a limited description of potential impacts and the range of alternative management practices available to a company'

See also comments and sources for question 1.2.008a

References:

Environmental Impact Assessment Decree no. 86, 1992, http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm
Akpofure E and M Ojile, (2000) Social impact assessment: an interactive and participatory approach, UNEP EIA Training Resource Manual, Geneva: United Nations Environment Programme (UNEP)

1.2.008.d: Are social impact assessments for oil, gas and mining projects published and is there a consultation process?

Score: A B C D E

Comments:

See comments for Questions 1.2.008 a & b above

References:

See sources for question 1.2.008 a, b above

1.2 Access to information and legislation

1.2.009: Does the government publish detailed mineral/hydrocarbon resource legislation?

Score: A B C D E

Comments:

The overarching legislation for the oil and gas sector is the Petroleum Act (1969) as amended, which will be eventually replaced by the Petroleum Industry Bill (1969), when it is presented to the National Legislature for approval. In general, the Petroleum Act does not contain details of fiscal terms or tax obligations, although it provides general rules for contract and license approvals. The substantive Joint Venture agreements and Production Sharing Contracts are not disclosed to the public, although reference to contractual terms may be provided from official websites (such as NNPC and FIRS above) or independently obtained from academic papers (attached).

Nigeria is a federal republic, and the constitution mandates the sharing of public revenues (of which oil revenues constitute up to 85%) between the federal, state, and local governments, according to a stipulated formula (Section 162). As stated earlier (in question 1.1), the constitution vests ownership of natural resources in the Nigerian state.

It is expected that the PIB will consolidate the disparate pieces of legislation governing the fiscal provisions, tax obligations and procedures for awarding contracts and licenses into a single, detailed and comprehensive legal framework. The issue of non-availability of PSC and JV contracts is also to be addressed. However, this expectation is ambitious given the intrigues that have bedevilled the passage of the PIB and it is left to see if the PIB, when finally ratified, will address these fundamental shortcomings.

References:

Petroleum Act 1969 [amended 1996] - see attached document in question 1 .1
Constitution of the Federal Republic of Nigeria (1999), Section 162 - see attached document in question 1.1
Petroleum Profits Tax (2007) http://www.firs.gov.ng/petroleum-profits-tax.aspx

Deep Offshore And Inland Basin Production Sharing Contracts Decree (1999) http://www.nigeria-law.org/DeepOffshoreAndInlandBasinProductionSharingContractsDecree1999.htm
The New Production-Sharing Contract Agreement for Crude Oil Production of 1993 (not available)
Joint Operating Agreement for Nigerian Joint Venture Agreements
http://www.nnpcgroup.com/NNPCBusiness/UpstreamVentures.aspx
Ameh, M. (2006), The Shift from Joint Operating Agreements to Production Sharing Contracts in the Nigerian Oil Industry: Any Benefits for the Players, Centre for Energy, Petroleum & Mineral Law & Policy (CEPMLP) Dundee Annual Review Vol. 10, Article 32

See also sources for question 1.1.004 (particularly the NNPC official presentation)

1.2.010: This country has adopted a rule or legislation that provides for disclosure of information in the oil, gas and mineral sectors.

Score: A B C D E

Comments:

The Nigerian Legislature approved a Freedom of Information Bill in 2011, in the twilight of the first tenure of President Goodluck Jonathan. The Bill has been hailed as a triumph by civil society activists, since it is applicable to all public agencies in Nigeria (including the oil and gas sector).

However, the law has rarely been put to use since its enactment. There is very low awareness of the provisions of the Bill, and the costs to legal practitioners and civil society groups for pursuing FOI-related lawsuits are exorbitant. The fear of intimidation and repression by powerful interests in the state, using the brutal security organs (Police and paramilitary service) may also be preventing prolific use of the FOI.

The only FOI request the researcher is aware of, that is related to the oil and gas sector is a petition filed in January 2012 by the Socio-Economic Rights Action Programme (SERAP) compelling Lamido Sanusi, the Governor of the Central Bank, to release documents on the scandalous fuel subisdy payments for 2011.
http://www.vanguardngr.com/2012/01/serap-urges-sanusi-to-release-documents-on-alleged-scam-in-subsidy-system/

References:

Nigeria, Freedom of Information Act (2011)

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Legal Framework and Practices

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Indicator		Score
1.3	Legal Framework and Practices	33

1.3 Legal Framework and Practices

1.3.011: The authority in charge of awarding licenses or contracts for mineral or hydrocarbon production is independent of the state owned company (SOC) or other operating companies.

Score: A B C

Comments:

Nigeria's oil and gas regulatory structure is byzantine, and the most precise answer to this question is somewhere between A and B. As described in comments to questions 1.1.003, 1.1.005 and 1.1.007, the Minister of Petroleum Resources has the final, discretionary say over the award of oil licenses and contracts, while the DPR oversees the licensing process, granting of leases and permits and ensures compliance with industry regulations. There is a separate entity called NAPIMS, which is a subsidiary of the State-owned company (NNPC), but is responsible for oversight over upstream oil contracts, operating costs and state investments in the oil and gas sector.

The DPR is weak and ineffective and is not independent of the NNPC, by any stretch of the imagination. A lack of funding and technical capacity and political interference have constrained its credibility and effectiveness as a regulator. In turn, NAPIMS is a subsidiary of the NNPC and thus not independent. All three agencies, DPR, NAPIMS and the NNPC itself are subject to the discretionary influence of the Minister of Petroleum and the Presidency.

As a reflection of its weakness/incompetence, the first NEITI Audit process revealed that DPR cannot provide accurate information on Nigeria's daily oil production and output, but relies on reports provided by oil companies, and furthermore, DPR has no comprehensive records of oil license holders, or oil acreage awarded to license holders (see cited newspaper article above).

As a caveat to this description, the PIB will create an independent Petroleum Directorate (successor to the DPR) and commercialise the NNPC. However, if the DPR is not given operational freedom and there is still pervasive intervention by the Minister and other powerful interests, this situation of 'regulatory capture' will prevail even after reform.

References:

Department of Petroleum Resources http://www.dprnigeria.com/licenses.html
See also sources for questions 1.1.003, 1.1.005, 1.1.007 above
NEITI Vs NNPC- DPR: How Much Oil Does Nigeria Actually Produce?
http://saharareporters.com/article/neiti-vs-nnpc-dpr-how-much-oil-does-nigeria-actually-produce

1.3.012: Is the licensing process intended to be open and competitive to all qualified companies?

Score: A B C D E

Comments:

See comments to questions 1.1.003, 1.2.006 a,b above.
The most recent oil licensing round in 2007 was ostensibly designed to be open and competitive, with public disclosure of oil blocks, selection critieria and received bids. However, the oil licensing process was severely flawed. The licensing round was the subject of a legislative probe by the House of Representatives in July 2008, and several awarded blocks became the subject of court litigation. Several awarded licenses were revoked and the DPR Director was fired as a result of the discovery of pervsasive flouting of rules and extensive manipulation of the licensing process (see newspaper article above).

There were several irregulaties: including, the use of shell/briefcase companies to secure oil licenses, preferential treatment to the advantage of certain companies which were given varying bid qualification criteria and signature bonus deadlines, 'forced marriages' between disparate companies that were eventually dissolved or wound up in court, and the controversial 'right of first refusal' awarded to mainly Asian companies that promised infrastructure investments in the highly criticised 'oil for infrastructure' deals. The planned investments never materialised and the country lost monumental sums by way of underpayments of signature bonuses and other infractions. (See the Chatham House report, and the NEITI 2006-2008 Audit Executive Summary p.22).

At the heart of the problems with awarding oil licenses in Nigeria is the lack of independence of the regulator (DPR, presently), and the pervasive influence of powerful interests - ranging from the Minister of Petroleum to the Presidency, commercial/private multinational actors, political interests, and so forth.

References:

See sources in questions 1.1.003, 1.2.006 a,b above
Josephat Ogunyemi, 'Nigeria’s costly oil somersault', Tuesday, July 29, 2008
http://www.eslnetworld.com/webpages/opinion/2008/july/28/opinion-28-07-2008-001.htm
Alex Vines, Lillian Wong, Markus Weimer and Indira Campos (2009), Thirst for African Oil: Asian Oil Companies in Nigeria and Angola, London: Royal Institute for International Affairs
Nigerian Extractive Industry Transparency Initiative (NEITI), 2006-2008 Audit Report: Executive Summary of Recommendations and Proposed Actions, available online
http://www.neiti.org.ng/sites/default/files/auditors2006/Executive-Summary-Report-Final-300112.pdf

Peer Review Comments:

The processes for awarding midstream, downstream and lifting licenses is not open, transparent, or competitive, and have been subject to much high-level manipulation and corruption.
See for instance:
Report of House of Representatives Ad-Hoc Committee Investigating the activities of NNPC and its subsidiaries 1999-2008.
Global Integrity report "Rigged, The Scramble for Africa's Oil, Gas and Minerals."
http://www.globalwitness.org/library/rigged-scramble-africas-oil-gas-and-minerals

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1.3.013: Does the licensing process or legislation impose limits to discretionary powers of the authority in charge of awarding licenses or contracts?

Score: A B C D E

Comments:

See comments to questions 1.1.002, 1.1.003. 1.1.005, 1.2.006, 1.2.007 and 1.3.013 above

The oil licensing process is designed to be competitive, although in reality it is not (as described in previous questions). While the DPR is responsible for overseeing the licensing process, the Minister of Petroleum has the final say over the award of licenses. He/She is free to exercise discretionary powers over the award of licenses and permits, as provided for by the Petroleum Act Section 2(3), especially paragraph 23.

References:

See sources in questions 1.1.002, 1.1.003. 1.1.005, 1.2.006, 1.2.007 and 1.3.013 above
Petroleum Act (1969) with amendments (the attachment in question 1.1.001) Section 2(3), paragraph 23

1.3.014: Does the legislative branch have any oversight role regarding contracts and licenses in the oil, gas and mining sector?

Score: A B C D E

Comments:

According to the Petroleum Act, the legislature is not required to ratify oil and gas licenses or contracts, and the oversight role does not extend to monitoring the oil licensing and contractual regime. However, there are standing committees in the House of Representatives and Senate on related areas, such as Upstream and Downstream Oil and Gas, Environment, Public Appropriations and Due Process, which maintain regular contact with oil sector regulatory agencies, especially for (public) budget approvals. In response to public petitions and in consonance with public sentiment, the legislature can set up investigative committees to probe specific aspects of the oil and gas sector - good examples of this are the House of Representatives Probe of the 2007 Oil Licensing Round and Operations of the NNPC and DPR from 1999 (2008), and the Senate and House of Representatives Probes of the Fuel Subsidy Regime (2012). In 2009 and 2010, as the PIB made its way through the Legislature, there were public hearings on its provisions organised by the relevant standing committees, that were open to the public and interested parties.

In practice, the Legislature is constrained from playing a strong oversight role over oil and gas because the outcome of these public hearings and inquests have no bearing on the Executive, but may deflect public outcry over oil sector corruption. The weakness of institutions, especially law enforcement and anti-corruption agencies to prosecute individuals implicated in oil corruption scandals also limits the impact of legislative oversight. Furthermore, the Legislature is seen to be corrupt and heavily compromised (e.g. influence of powerful state and commercial interests in altering the PIB to suit their interests while the draft bill was being scrutinised by the lawmakers), thus their ability to independently monitor the oil and gas sector as an impartial arbiter is severely reduced.

As a note to this comment, since the Legislature is responsible for creating appropriate laws for the Federation, the new PIB will have to be enacted by the upper and lower houses, although as described above, in practice, the lawmakers have very little control over the management of the oil and gas sector.

References:

Petroleum Act (1969) including amendments (see attachment in question 1)

1.3.015: Is there a due process to appeal licensing decisions?

Score: A B C

Comments:

See comments to questions 1.1.003, 1.2.006 a,b, 1.3.013, 1.3.014 above

There is no statutory provision for aggrieved parties to appeal the outcome of the oil licensing process, and aggrieved parties usually turn to the courts, or present petitions to the Legislature. As stated in comments to previous questions, the 2007 oil licensing round was so flawed that it became the focus of a July 2008 legislative probe, in which companies submitted petitions on various irregularities in the award of licenses, to a House of Representatives Committee set up to investigate the activities of NNPC and DPR from 1999 to 2008, including the 2007 licensing round (conducted at the end of the Obasanjo presidency). As a result of this probe, several awarded licenses were revoked by the Yar'Adua regime (see newspaper reports above), and the DPR Director was fired.

Aggrieved parties have sought redress through the courts (see examples of court cases cited in newspaper articles above), although there is little published information (from the DPR or Ministry of Petroleum) on these court cases in the public domain. Some of the court cases (mainly on the oil-for-infrastructure deals) are still pending, and without a fair resolution of the disputes, it is difficult to see how the planned 2012 oil license auction will go ahead.

References:

See sources for questions 1.1.003, 1.2.006 a,b, 1.3.013, 1.3.014 above

Nigeria: KNOC in court over oil blocks challenge, http://www.energy-pedia.com/news/nigeria/knoc-in-court-over-oil-blocks-challenge
Ifeanyi Izeze, Pointblanknews.com, Oil-for-Infrastructure Mis-Deals: The Fraud in Proper Perspective, http://www.pointblanknews.com/artopn1683.html, August 26, 2009

1.3.016: Is there a legal or regulatory requirement to disclose all beneficial ownership in oil, gas and mining companies or projects?

Score: A (B) C

Comments:

Nigeria does not have a specific law on beneficial interests in the oil and gas sector, but there is a Code of Conduct enshrined in the 1999 constitution, which mandates the declaration of assets, including details of company ownership, by all public office holders and elected politicians. The declaration of assets must be performed on assumption of public office, and shortly after departure. There is a Code of Conduct Bureau (CCB) which monitors the compliance of public officers with the legal statutes, and overall 'public morality'.

In practice, due to weak institutions and high public corruption, the CCB is weak and sidelined. Public officials routinely flout this rule and as an illustration of the gravity of the situation, the current President, Goodluck Jonathan has failed to declare his assets.

Access to state office has long been regarded as an avenue for the accumulation of personal wealth, and ownership of strategic interests in the oil and gas sector is one of the most lucrative instruments of distributive patronage in Nigeria. Under military rule, a narrow clique of retired generals set up companies (sometimes, simply shell companies) that were awarded generous oil acreage. To date, there is a pervasive practice of politicians and public officials establishing companies for the sole purpose of participating in oil and gas activities or accquring majority interests in existing companies, and using their influence to secure favourable terms from the state and regulatory agencies.

An interesting case which epitomises the extent of beneficial ownership and oil-driven corruption in Nigeria is that of 'Malabu Company Limited', which recently sold its stake in OPL 245, widely regarded as one of the most lucrative oil blocks in Nigeria (extracted from Businessday article cited above):

'Malabu was founded around 1997/98 by then Petroleum Minister, Dan Etete,(1995-1998) and had secured the concession in 1998, following which Shell became a minority partner. The concession was made to Malabu under a programme designed to get indigenous businesses and people involved in the lucrative Nigerian oil industry.
After lengthy counter litigations and arbitrations, as well as political scheming, Shell (with Agip as its partner) is believed to have offered Malabu $1.3 billion for the entire OPL 245, in early July 2011, an offer, which Dan Etete and his Malabu appear to have accepted.'

Unfortunately, such opaque practices are routine in Nigeria, and due to weak law enforcement agencies, the code of conduct and other anti-corruption laws are hardly enforced on public officers and powerful political actors, while the oil and gas sector continues to be the major theatre of public corruption.

References:

Constitution of the Federal Republic of Nigeria 1999, Fifth Schedule, Section 1 (see attachment to question 1.1.001)
Conduct Bureau and Tribunal Act, Cap 56, LFN 1990.
Code of Conduct Bureau http://www.codeofconductbureau.gov.ng/

Philip Isakpa, Businessday, Shell-Malabu $1.3 billion oil deal questions FG indigenisation plan, http://www.businessdayonline.com/NG/index.php/news/76-hot-topic/26715-shell-malabu-13-billion-oil-deal-questions-fg-indigenisation-plan, September 1, 2011

Peer Review Comments:

"B" is the correct answer here. Despite the limited Constitutional provision for asset disclosure, there is neither rule or practice of beneficial ownership disclosure anywhere in the sector.

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Context

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Indicator		Score
2.1	Context	

2.1 Context

2.1.017: Does the government receive in-kind payments instead of financial payments from resource companies?

Score: A B C

Comments:

See also comments to question 1.1.004.
There are several types of in-kind payments that involve the Nigerian government, state-owned and private oil companies:

1 Domestic crude allocation: The federal government allocates 445,000 bpd of crude oil to the NNPC (state-owned company) to be refined for domestic consumption. Nigeria's four refineries have a total production capacity of 445,000 bpd. Due to decades of mismanagement and corruption, the NNPC can only refine up to 40% of this allocation locally. The remainder of the crude allocation is exported and refined abroad in Cote d'Ivoire and the United Kingdom (through crude swap deals), and the refined products are supplied to the NNPC. The NNPC is invoiced in US dollars for the domestic crude allocations and is expected to remit the Naira equivalent to the Federation Account - the opportunities for exchange rate arbitrage, or using exchange rates lower than the official Central Bank rate has created avenues for shortchanging the Nigerian government to the tune of $550 billion between 2007 and 2009 (see KPMG report). The domestic crude allocation is valued at a price slightly below the export parity price, but it is unclear if NNPC pays anything, in effect. NNPC stands to profit from the low domestic refining capacity by exporting the allocated domestic crude, since the allocation is obtained at no cost, and at a good price. The practice of allocating domestic crude to the NNPC is designed to enable it cover some of its operating losses arising from the subsidised provision of refined petroleum products, below market prices, to the Nigerian market. In this sense, the domestic crude allocation to the NNPC is a type of intra-governmental in-kind payment and the 'lost' government revenue from the foregone output is an implicit subsidy.

2 Joint Venture Arrangements (with alternative financing): a new form of JV that was introduced in the last five years due to the NNPC's inability to fund its JV cash call obligations. This involves full financing of oil acreage development and production under the JV by the oil multinationals and in-kind payments from the NNPC to meet its' capital costs by way of additional crude oil produced. The oil multinationals (carrying partner) recover their costs with interests through capital and investment tax allowances, and the additional crude oil allotment, and the NNPC, representing the Nigerian government (carried partner) receives its share of the produced crude oil, which is then exported.

3 Production Sharing Contracts: Production sharing contracts are agreements between the NNPC and a private company. NNPC is granted the concession rights and pays taxes to the Federation. The private operator bears all the risks and development costs, and the produced oil is shared between the NNPC and the private operator to cover royalty, production costs and PPT. The state is entitled to royalty as a first call on production, development costs may be recovered by the private operator, and any PPT returns are made to the state, while the remaining (profit) oil is shared between the NNPC (representing the government) and the operator according to percentages set out in the PSC.

The KPMG Audit Report attached here shows the massive irregularities in transactions and abuse of power by the NNPC. There is a section that highlights the peculiar situation arising from in-kind transfers (such as the domestic crude allocation) where the NNPC is a buyer and also a seller of Federation crude oil.

References:

See sources in question 1.1.004. See also NEITI 2006-2008 Audit Report Summary cited as a source in question 1.3.012

KPMG Nigeria (2010) 'Current State Assessment Report on the Process and Forensic Review of the Nigerian National Petroleum Corporation', A Consultancy Project Report for the Nigerian Federal Ministry of Finance.

2.1.018: If the government or state owned companies sell physical commodities (oil, gas or minerals) from in-kind payments or own production, is there information about how these commodities are marketed?

Score: A B C D E

Comments:

There is evidence that the government sells its share of produced crude oil from the alternative JVs in export markets, however the precise details of these arrangements (whether through commodity traders or spot pricing) is unclear. The government allocates 445,000 bpd of Nigeria's daily crude production to the NNPC, which refines a portion of this allocation locally. The researcher was told that commodity traders are used for the crude swap deals that arise from the exported portion of the domestic allocation, however, it is difficult to obtain any source to verify this position.

References:

See sources for question 2.1.018 and 1.1.004 above

2.1.019: What authority actually collects payments from resource companies?

Score: A B C D E

Comments:

Nigeria's oil revenue collection practices are complex. The current situation is a combination of options A and B, which is why I selected 'other'.

The tax agency (the Federal Inland Revenue Service) receives taxes on profits arising from petroleum activities, and other hydrocarbon related taxes and levies, while the sector regulator (DPR) receives other payments such as rents, royalties, signature bonuses, license fees, permit fees and other charges.

Since Nigeria is a federation, all petroleum taxes, royalties and other petroleum sector payments are remitted by the FIRS and the DPR into the Federation Account, which is managed by the Accountant-General of the Federation, while the Central Bank is final custodian of the revenues.

References:

Petroleum Act (1969) [amended 1998] First Schedule, Section 2(3) para. 30-32 (attached in question 1.1.001)
Department of Petroleum Resources http://www.dprnigeria.com/dpr_roles.html
Federal Inland Revenue Service: Petroleum Profits Tax (2007) http://www.firs.gov.ng/petroleum-profits-tax.aspx

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Indicator		Score
2.2A.020	Does the Ministry of Finance publish periodical information on revenue generation?	45
2.2A.020.j	Does the Ministry of Finance publish information on disaggregated revenue streams?	37
2.2A	Quality of reports	67
2.2B.020	Does the Ministry of the extractive sector publish information on revenue generation?	0
2.2B.020.j	Does the Ministry of the extractive sector publish information on disaggregated revenue streams?	0
2.2B	Quality of reports	0
2.2C.020	Does a Regulatory Agency publish information on revenue generation?	0
2.2C.020.j	Does a Regulatory Agency publish information on disaggregated revenue streams?	0
2.2C	Quality of reports	0
2.2D.020	Does the Central Bank publish information on revenue generation?	44
2.2D.020.j	Does the Central Bank publish information on disaggregated revenue streams?	44
2.2D	Quality of reports	100
2.2E.020	Does any other government agency or entity publish information on revenue generation?	18
2.2E.020.j	Does any other government agency or entity publish information on disaggregated revenue streams?	26
2.2E	Quality of reports	67
2.2	Public sector balance	22

2.2A.020 Does the Ministry of Finance publish periodical information on revenue generation?

2.2A.020.a: Reserves

Score: A B C D E

Comments:

The Ministry of Finance does not publish information on oil and gas reserves.

References:

Federal Ministry of Finance website http://www.fmf.gov.ng/

2.2A.020.b: Production volumes

Score: A (B) C D E

Comments:

The Ministry of Finance website has an archive section in which it publishes reports on public finances and revenue management. However, most of the links are inactive and the only working links are for the section on budget implementation reports (the reports are prepared by the Budget Office of the Federation or BOF - an independent agency in the Ministry). The budget reports contain information on petroleum revenue generation (e.g. prices, production, export volumes, realised revenues etc) Unfortunately, none of the budget reports for 2011 could be downloaded from the Ministry website.

However, the researcher found budget reports for the 1st, 2nd and 3rd quarters in 2011 from the BOF website. The researcher chose 'reporting year only' because there was no report released for Q4 2011, or Q1 2012. The in-year reports, for 2011, also do not provide any comparative data for prior years.

Attached are the available Budget Reports for 2010-11.

References:

Ministry of Finance website - archives http://www.fmf.gov.ng/archive.html
Budget Office of the Federation http://www.budgetoffice.gov.ng/

Peer Review Comments:

The researcher's summary is generally correct. While researching to confirm scores during May 2012, reviewer found quarterly reports for 2009, 2010 and 2011, on the Budget Office's website only, the Ministry of Finance links did not work. Reports available have no comparative data and provide information only for the period covered and going back only for previous quarters in the same year.

2.2A.020.c: Information on prices

Score: A (B) C D E

Comments:

See comments to question 2.2.A.020b

In the budget implementation reports, there is information on the budget benchmark oil price (on which the government determines its expected revenue for the fiscal year), as well as actual oil prices, in the analysis of annual or quarterly revenue performance.

References:

See sources in 2.2A.020b

2.2A.020.d: Value of resource exports

Score: A (B) C D E

Comments:

See comments in 2.2A.020b above

In all the budget reports, there is information on crude oil and gas exports (termed 'crude oil sales' and 'gas sales' respectively) in the summary of 'distributable revenue', i.e. pooled revenue from oil and other sources which is shared between the three tiers of government.

References:

See sources in 2.2A.020b above

2.2A.020.e: Estimates of investment in exploration and development

Score: A (B) C D E

Comments:

See comments for question 2.2A.020b

Yes, there are details of expenditure on 'frontier exploration services' and 'national domestic gas development' as part of the summary of distributable revenue in the budget implementation reports (particularly the two reports published in 2011)

References:

See sources for question 2.2A.020b

2.2A.020.f: Production costs

Score: A (B) C D E

Comments:

See comments for question 2.2A.020b

The budget implementation reports consistently report information on expenditure for Joint Venture cash calls in the analysis of distributable revenue. The JV cash calls are the government's share of production and operational costs in the existing JVs with the multinational oil firms. These cash call payments/costs are deducted as a first-line charge from the Federation Account (before revenue is shared with sub-national governments), and paid to the NNPC to meet its JV cash call obligations.

The reports also provide details of operating costs (per barrel) for various fiscal arrangements, such as the JVs and PSCs, and Gas production, as part of the underlying revenue assumptions for the annual budget, which are derived from the Medium Term Fiscal Framework (MTFF).

References:

See sources for question 2.2A.020b

2.2A.020.g: Names of companies operating in country

Score: A B C (D) E

Comments:

The Ministry of Finance does not publish this information.

References:

See sources for question 2.2A.020b

2.2A.020.h: Production data by company and/or block

Score: A B C D E

Comments:
The Ministry of Finance does not publish this information

References:
See sources for question 2.2A.020b

2.2A.020.i: Cost of subsidies or social investments paid by mineral revenue

Score: A B C D E

Comments:
See comments for question 2.2A.020b
The budget implementation reports contain information on fuel subsidy payments to the NNPC, or private oil marketers.The subsidy expenses are deducted as a first-line charge before total distributable revenue is transferred to the (central) Federation Account.

References:
See sources in question 2.2A.020b

Peer Review Comments:
The quality and accuracy of the figures published is likely to be quite low, however. Past reports, for instance, either reported only on budgeted expenditure for domestic fuel subsidy (the largest component each year is extra-budgetary), or contained no info on subsidy expenditure at all. See budget implementation reports.

2.2A.020.j Does the Ministry of Finance publish information on disaggregated revenue streams?

2.2A.020.j1: Production streams value

Score: A B C D E

Comments:
See comments for question 2.2A.020b

The budget implementation reports contain information on disaggregated revenues accruing from oil and gas production (expressed in Naira) in the analysis of oil revenue performance, and summary of distributable revenue. For instance, the components of total oil and gas revenues (for 2011) include:
Crude Oil Sales (i.e. Exports)
Gas Sales (i.e. Exports)
Royalties Oil & Gas
Rent
Gas flared Penalty
Miscellaneous Oil Revenue
Petroleum Profit Tax
Gas Tax

References:
See sources for question 2.2A.020b

2.2A.020.j2: Government s share in PSC

Score: A (B) C D E

Comments:
See comments in 2.2.A.020.b

The budget reports provide information on goverment share in PSC production. However, this information is provided in percentage, and not in monetary terms or volume.

References:
See sources in 2.2.A.020.b

2.2A.020.j3: Royalties

Score: A (B) C D E

Comments:
See sources in 2.2.A.020b

The budget reports provide information on royalty payments in Naira, as a component of total oil revenue

References:
See sources in 2.2.A.020b

2.2A.020.j4: Special taxes (e.g. withholding taxes, excise taxes, excess earning taxes, charged on extractive companies)

Score: A (B) C D E

Comments:
See comments in 2.2.A.020b

The budget reports contain information on revenues arising from Petroleum Profit Tax payments, and other related sources such as the gas tax, as components of overall petroleum revenue.

References:
See sources in 2.2.A.020b

2.2A.020.j5: Dividends

Score: A B C (D) E

Comments:
The Ministry of Finance does not publish information on dividends

References:
See sources in 2.2.A.020b

2.2A.020.j6: Bonuses

Score: A B C (D) E

Comments:
The Ministry of Finance does not publish this information

References:
See sources in 2.2.A.020b

2.2A.020.j7: License fees

Score: A B C D E

Comments:
The Ministry of Finance does not publish this information

References:
See sources in 2.2.A.020b

2.2A.020.j8: Acreage fees

Score: A B C D E

Comments:
The Ministry of Finance does not publish this information

References:
See sources in 2.2.A.020b

2.2A.020.j9: Other (Explain in 'comments' box.)

Score: A B C D E

Comments:
See comments in 2.2.A.020b

The budget reports provide figures for a category of distributable oil revenue called 'miscalleneous' or 'other' oil revenue. However, there is no further information on the composition of this category of revenue

References:
See sources in 2.2.A.020b

2.2A Quality of reports

2.2A.021: Are periodical reports containing information on revenue generation published by the Ministry of Finance understandable?

Score: A B C D E

Comments:
The budget reports, which form the basis of the reporting on oil revenue generation, are comprehensive, with general descriptions of the macroeconomic environment, underlying fiscal and revenue assumptions, oil and non-oil revenue performance, and overall budget performance. There are

detailed charts and tables which provide information on revenue sources.

However, the reports lack sections on definitions, methodology, explanatory notes to the tables or graphs which account for missing or contradictory information, and a summary that can be understood by the general public. In summary, the budget reports are technical and can only be fully understood by economists, policy analysts or oil and gas experts, who have some knowledge of the fiscal policy environment in Nigeria.

References:

See sources in 2.2.A.020b

2.2A.022: How often are the periodical reports containing information on revenue generation published by the Ministry of Finance?

Score: A B C D E

Comments:

See comments in 2.2.A.020b

Budget implementation reports should be published every quarter. In 2010, there were reports for the four quarters in the year, however the most recent report released by the BOF/Ministry of Finance is for the third quarter in 2011.

References:

See sources in 2.2.A.020b

2.2B.020 Does the Ministry of the extractive sector publish information on revenue generation?

2.2B.020.a: Reserves

Score: A B C D E

Comments:

The Ministry of Petroleum does not publish any reports or statistical bulletins.

The MoP website appears to be a PR tool and there is no information on oil and gas statistics, data or specific regulatory activities.

References:

http://www.mpr.gov.ng/index.php?option=com_content&view=frontpage&Itemid=1

2.2B.020.b: Production volumes

Score: A B C D E

Comments:

See comments in 2.2B.020a

References:

See source in 2.2B.020a

2.2B.020.c: Information on prices

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.d: Value of resource exports

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.e: Estimates of investment in exploration and development

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.f: Production costs

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.g: Names of companies operating in country

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.h: Production data by company and/or block

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.i: Cost of subsidies or social investments paid by mineral revenue

Score: A B C D E

Comments:
See source in 2.2B.020a

There is an agency called the Petroleum Products Pricing Regulatory Authority (PPRA) domiciled which is responsible for fuel subsidy administration. However PPPRA only has the template for pricing petrol or Premium Motor Spirit (PMS) on its website and no information on subsidy payments.

References:
See source in 2.2B.020a

2.2B.020.j Does the Ministry of the extractive sector publish information on disaggregated revenue streams?

2.2B.020.j1: Production streams value

Score: A B C D E

Comments:
See comments in 2.2.A.0.20.b

References:
See sources in 2.2B.020.a

2.2B.020.j2: Government s share in PSC

Score: A B C D E

Comments:
See comments in 2.2B.020.a

References:
See sources in 2.2B.020.a

2.2B.020.j3: Royalties

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See sources in 2.2B.020a

2.2B.020.j4: Special taxes (e.g. withholding taxes, excise taxes, excess earning taxes, charged on extractive companies)

Score: A B C D E

Comments:
See comments in 2.2B.020.a

References:
See source in 2.2B.020.a

2.2B.020.j5: Dividends

Score: A B C D E

Comments:
See comments in 2.2B.020.a

References:
See source in 2.2B.020.a

2.2B.020.j6: Bonuses

Score: A B C D E

Comments:
See comments in 2.2B.020.a

References:
See source in 2.2B.020.a

2.2B.020.j7: License fees

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.j8: Acreage fees

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.020.j9: Other (Explain in 'comments' box.)

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B Quality of reports

2.2B.021: Are periodical reports containing information on revenue generation published by the Ministry of the extractive sector understandable?

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2B.022: How often are the periodical reports containing information on revenue generation published by the Ministry of the extractive sector?

Score: A B C D E

Comments:
See comments in 2.2B.020a

References:
See source in 2.2B.020a

2.2C.020 Does a Regulatory Agency publish information on revenue generation?

2.2C.020.a: Reserves

Score: A B C D E

Comments:
DPR is the oil and gas regulator, and the technical arm of the Ministry of Petroleum. However, DPR does not publish information on revenue generation, and the reports listed on its website are outdated and not related to revenue generation. The Data Repository does not hold any oil and gas data, but only data templates for reporting information.

During meetings, the researcher saw DPR data on monthly oil production submitted to officials of other public agencies (such as the Revenue Mobilisation Commission), but data release appears to only be done for inter-governmental purposes (such as the inter-agency Crude Oil Revenue Reconciliation Committee) and not for public use. It is unclear how comprehensive their record-keeping or data management practices are. The most recent NEITI Audit Report 2006-2008 (a source document in question 1.3.012) specifically singles out DPR for the non-availability of information on key oil sector processes (e.g. transfer of signature bonus payments to the Federation Account)

References:

DPR publications and downloads http://www.dprnigeria.com/publications.html
DPR data repository http://ndr.dprnigeria.com/

2.2C.020.b: Production volumes

Score: A B C D E

Comments:

See comments in 2.2C.020.a

References:

See source in 2.2C.020.a

2.2C.020.c: Information on prices

Score: A B C D E

Comments:

See comments in 2.2C.020.a

References:

See source in 2.2C.020.a

2.2C.020.d: Value of resource exports

Score: A B C D E

Comments:

See comments in 2.2C.020.a

References:

See source in 2.2C.020.a

2.2C.020.e: Estimates of investment in exploration and development

Score: A B C D E

Comments:

See comments in 2.2C.020.a

References:

See source in 2.2C.020.a

2.2C.020.f: Production costs

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.g: Names of companies operating in country

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.h: Production data by company and/or block

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.i: Cost of subsidies or social investments paid by mineral revenue

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j Does a Regulatory Agency publish information on disaggregated revenue streams?

2.2C.020.j1: Production streams value

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:

See source in 2.2C.020.a

2.2C.020.j2: Government s share in PSC

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j3: Royalties

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j4: Special taxes (e.g. withholding taxes, excise taxes, excess earning taxes, charged on extractive companies)

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j5: Dividends

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j6: Bonuses

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:

See source in 2.2C.020.a

2.2C.020.j7: License fees

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j8: Acreage fees

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.020.j9: Other (Explain in 'comments' box.)

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C Quality of reports

2.2C.021: Are periodical reports containing information on revenue generation published by the Regulatory Agency understandable?

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2C.022: How often are the periodical reports containing information on revenue generation published by the Regulatory Agency?

Score: A B C D E

Comments:
See comments in 2.2C.020.a

References:
See source in 2.2C.020.a

2.2D.020 Does the Central Bank publish information on revenue generation?

2.2D.020.a: Reserves

Score: A B C D E

Comments:
The Central Bank does not publish this information

References:
Central Bank of Nigeria Publications page http://www.cenbank.org/documents/gpagedocs.asp

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2.2D.020.b: Production volumes

Score: A B C D E

Comments:
The Central Bank of Nigeria (CBN) regularly publishes information related to oil revenue generation, and Federation finances on its website, and printed copies of reports can also be easily obtained by visiting its premises, and using the library on-site.

For this sub-section, the answers are based on information provided by the following publications from the CBN - Annual Report, Annual Statistical Bulletin, Monthly Economic Reports, and Quarterly Economic Report. The most recent publication is the Monthly Report for November 2011 (released in March 2012). There is a short lag in releasing publications, but compared to other public institutions in Nigeria, the CBN is highly professional and generally has a good reputation for releasing a wide range of information on revenues and macroeconomic performance to the public.

Criterion A was selected because the in-year reports, annual reports and bulletin provide a basis for comparison with prior years (for the in-year reports, up to three years, for annual reports, a minimum of four years, and for the statistical bulletin, long-term, historical data)

The data on oil and gas production volumes can be found in all of the publications listed above in the sections on the petroleum sector. Aggregate production data for oil, condensates and natural gas liquids is presented in millions of barrels per day (mbd).

References:
Central Bank of Nigeria Publications http://www.cenbank.org/documents/gpagedocs.asp

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2.2D.020.c: Information on prices

Score: A B C D E

Comments:
See comments in 2.2D.020.b

Information on prices for Nigeria's Bonny Light crude in US$ is tracked on a monthly, quarterly and annual basis, in comparison to other benchmark crude oil blends (e.g. Brent, West Texas Intermediate and the OPEC Basket Price), and comparisons are made with data fror prior years

References:

See sources in 2.2D.020.b

Peer Review Comments:

Nigeria sells 100% of its share of crude through traders, rather than to end users. This data in CBN reports reflects what Bonny fetches on the open market in forward sales to end users, rather than the selling prices traders receive. The numbers also include sales by operators of their equity shares of Bonny crude. The prices of crude published by the Central Bank are average prices that Nigerian crude fetches from sales by traders in the spot market, rather than the (lower) prices Nigeria receives from term sales to traders.

2.2D.020.d: Value of resource exports

Score: (A) B C D E

Comments:

See comments in 2.2D.020.b

Crude oil exports are reported in aggregate, including condensates and LNG.

References:

See sources in 2.2D.020.b

Peer Review Comments:

Aggregation of figures makes it impossible to ascertaining values of crude sold in a given period.

2.2D.020.e: Estimates of investment in exploration and development

Score: A B C (D) E

Comments:

The CBN does not publish this information

References:

See sources in 2.2D.020.b

2.2D.020.f: Production costs

Score: (A) B C D E

Comments:

See comments in 2.2D.020.b

The CBN publishes details of Joint Venture cash call payments in the section on Federation Account operations, in the Annual report (p. 231). See also comments in 2.2A.020.f for a description of the JV cash call mechanism.

References:

See sources in 2.2D.020.b

Peer Review Comments:
Published figures do not include detailed cost breakouts or benchmarks, and production sharing contracts are not covered in any detail.

2.2D.020.g: Names of companies operating in country

Score: A B C (D) E

Comments:
The CBN does not publish this information

References:
See sources in 2.2D.020.b

2.2D.020.h: Production data by company and/or block

Score: A B C (D) E

Comments:
The CBN does not publish this information

References:
See sources in 2.2D.020.b

2.2D.020.i: Cost of subsidies or social investments paid by mineral revenue

Score: A B C (D) E

Comments:
The CBN does not publish information on quasi-fiscal activities, particularly fuel subsidy expenditure

References:
See sources in 2.2D.020.b

2.2D.020.j Does the Central Bank publish information on disaggregated revenue streams?

2.2D.020.j1: Production streams value

Score: (A) B C D E

Comments:
See comments in 2.2D.020.b

The CBN publishes information on disaggregated oil revenues from various sources. The major categories are:
Oil and Gas Exports
Petroleum Profits Tax and Royalties
Domestic Crude oil sales
'Other' Oil Revenue

References:

See sources in 2.2D.020.b

Peer Review Comments:
Much of this information is not sufficiently disaggregated to make it useful to outsiders though. For instance, receipts from crude oil and gas sales are commonly combined.

2.2D.020.j2: Government s share in PSC

Score: A B C D E

Comments:
This information is not published by the CBN

References:
See sources in 2.2D.020.b

2.2D.020.j3: Royalties

Score: A B C D E

Comments:
See comments in 2.2D.020.b

There is information on royalties paid, as part of overall oil revenue. See also comments in 2.2D.020.j1

References:
See sources in 2.2D.020.b

Peer Review Comments:
The information is not broken down by operator, lease etc.

2.2D.020.j4: Special taxes (e.g. withholding taxes, excise taxes, excess earning taxes, charged on extractive companies)

Score: A B C D E

Comments:
See comments in 2.2D.020.b

There is published information on Petroleum Profit Tax receipts as part of total oil revenues. See also comments in 2.2D.020.j1

References:
See sources in 2.2D.020.b

Peer Review Comments:
CBN reports tend to aggregate different types of hydrocarbon taxes together, making analysis of individual payments difficult by external users.

2.2D.020.j5: Dividends

Score: A B C D E

Comments:
The CBN does not publish this information.

References:
See sources in 2.2D.020.b

2.2D.020.j6: Bonuses

Score: A B C (D) E

Comments:
The CBN does not publish this information.

References:
See sources in 2.2D.020.b

2.2D.020.j7: License fees

Score: A B C (D) E

Comments:
The CBN does not publish this information.

References:
See sources in 2.2D.020.b

2.2D.020.j8: Acreage fees

Score: A B C (D) E

Comments:
The CBN does not publish this information

References:
See sources in 2.2D.020.b

2.2D.020.j9: Other (Explain in 'comments' box.)

Score: (A) B C D E

Comments:
See comments in 2.2D.020.b

The CBN publishes information on 'other' oil revenue as part of overall revenues. However, it is difficult to say what exactly this category of oil revenue is comprised of. The reported sums are substantial in any case - in the 2010 Annual Report summary of Federation finances on p.231, 'other oil revenue for 2009 is reported as N84.5 billion (US$528.12 million, based on US$1/N160 exchange rate).

References:
See sources in 2.2D.020.b

2.2D Quality of reports

2.2D.021: Are periodical reports containing information on revenue generation published by the Central Bank understandable?

Score: A B C D E

Comments:
See comments in 2.2D.020.b

The CBN has a laudable publications policy and its reports and statistical databases are about the best among public institutions in Nigeria. This is remarkable, given that the quality of information on public finances in Nigeria, and oil revenues in particular, is poor.

Specifically, it is much easier for the public to access information on oil revenue generation and public finances through the CBN, whether through physical visits or online, than from the DPR, NNPC, Ministry of Finance or Ministry of Petroleum. The CBN reports are generally accessible to the public, not too technical and thus, relatively easy to understand. The use of graphs, charts and tables to illustrate trends and changes also enhances the accessibility of material. The annual statistical bulletin contains explanatory notes (a sample is attached as a source in 2.2D.020.b), there is a glossary of terms and definitions, and explanatory comments that account for missing or contradictory data, and the in-year reports are concise.

References:
See sources in 2.2D.020.b

2.2D.022: How often are the periodical reports containing information on revenue generation published by the Central Bank?

Score: A B C D E

Comments:
See comments in 2.2D.020.b

As stated in previous comments in this sub-section, the CBN has a relatively prolific publications track record. Monthly and quarterly economic reports, which contain information on oil revenues, are frequently released (though with a modest lag).

References:
See sources in 2.2D.020.b

2.2E.020 Does any other government agency or entity publish information on revenue generation?

2.2E.020.a: Reserves

Score: A B C D E

Comments:
The only other agency that reports information on oil revenues, physical and financial flows is the Nigerian Extractive Industries Transparency Initiative.

The Nigerian Extractive Industries Transparency Initiative (NEITI) is charged with promoting transparency and accountability in Nigeria's oil, gas and mining sectors. Nigeria is a signatory to the

EITI, and NEITI was established in 2004, while a statutory act was passed in 2007 (the NEITI Act 2007), which legally enshrines its roles and responsibilities. NEITI's audit reports have opened up the oil and gas sector to greater scrutiny, in spite of the challenges in Nigeria's political and institutional contexts.

The first NEITI Audit Report, for 1994-2005, was only completed and released to the public in 2006, and the second NEITI Audit Report for 2006-2008 was released in 2012. The greatest obstacle to NEITI's success is this delay in releasing reports.

There is no specific information on oil reserves published by NEITI in the Audit Report.

References:

http://www.neiti.org.ng/documents/neiti-2006-2008-reports-final-january-30-2012

2.2E.020.b: Production volumes

Score: A B C D E

Comments:

The NEITI Physical and Financial Audit Reports for 2006-2008 contain the most detailed information on oil and gas revenue and physical data in Nigeria. Unfortunately, the information in the reports is dated and for this survey, will be termed 'historical' since it is pre-2008.

However, the NEITI audit process is comprehensive and detailed enough to fill the enormous gaps in reporting on oil revenue management in Nigeria, and the overall weaknesses in regulating oil sector processes and transactions.

The physical report contains information on oil production volumes, called the 'consolidated mass balance' expressed in millions of barrels.

References:

NEITI 2006-2008 Audit Reports http://www.neiti.org.ng/documents/neiti-2006-2008-reports-final-january-30-2012

Peer Review Comments:

NEITI does not report production volumes on an operator-by-operator or lease-by-lease basis in an understandable fashion. This makes figures of limited use for further analysis.

2.2E.020.c: Information on prices

Score: A B C D E

Comments:

See comments in 2.2E.020b above.

None of NEITI Audit Reports contain specific data on realised oil prices, although there is an extensive discussion of the NNPC's pricing system for Federation crude oil.

References:

See sources in 2.2E.020b

Peer Review Comments:

Past reports also contained widely varying statements on the pricing regime for crude sales, some suggesting it is robust, others that it fails to deliver full and fair value. NEITI's analysis of the crude sales process in general has been one of its key weaknesses.

2.2E.020.d: Value of resource exports

Score: A B C D E

Comments:
See comments in 2.2E.020b

Information on oil and gas exports can be found in the Physical Audit Report. The report presents data on actual crude oil liftings exported by the Federation

References:
See sources in 2.2E.020b

Peer Review Comments:
The data published, however, is not sufficiently complete to allow independent researchers conduct further analysis about what value Nigeria receives for its crude.

2.2E.020.e: Estimates of investment in exploration and development

Score: A B C D E

Comments:
See sources in 2.2E.020b

The NEITI Audit Reports do not provide this information

References:
See sources in 2.2E.020b

2.2E.020.f: Production costs

Score: A B C D E

Comments:
See comments in 2.2E.020b

The financial audit report contains detailed information on Joint Venture cash call payments by the NNPC to its JV partners for 2006-2008.

References:
See sources in 2.2E.020b

Peer Review Comments:
NEITI reports do not contain details about costs assessment under production sharing contracts.

2.2E.020.g: Names of companies operating in country

Score: A B C D E

Comments:
See sources in 2.2E.020b

The NEITI Audit Reports contain lists of all companies operating in the country at the time, classified according to the respective fiscal/production arrangement.

References:

See sources in 2.2E.020b

2.2E.020.h: Production data by company and/or block

Score: A B (D) E

Comments:

See sources in 2.2E.020b

Production data reported by NEITI is aggregated for all companies, per export terminal, based on monthly reports compiled by DPR for individual companies. There is also some detailed information on PSC production entitlements by companies through each export point. The aggregated production data does not reveal much about an individual company's production volumes.

References:

See sources in 2.2E.020b

Peer Review Comments:

NEITI publishes production volumes by terminal. Because several companies can use a single terminal, terminal mass balances do not accurately reflect production on a company-by-company basis. NEITI does not publish information by block.

2.2E.020.i: Cost of subsidies or social investments paid by mineral revenue

Score: A B C D E

Comments:

See comments in 2.2E.020b.

The NEITI Audit Report provides details of fuel subsidy expenditure (see Simplified Audit Report).

References:

See sources in 2.2E.020b

Peer Review Comments:

The information is fragmentary, not sufficiently disaggregated, and possibly inaccurate. For instance, reports only cover NOC subsidy withholdings from crude sales revenues. See NEITI report.

2.2E.020.j Does any other government agency or entity publish information on disaggregated revenue streams?

2.2E.020.j1: Production streams value

Score: A B C D E

Comments:

See comments in 2.2E.020b

The NEITI Financial Audit report contains details of oil revenues realised from various sources, including oil and gas exports, domestic sales, petroleum profit taxes, royalties, signature bonuses, and NLNG dividends.

References:

See sources in 2.2E.020b

2.2E.020.j2: Government s share in PSC

Score: A B C D E

Comments:
See comments in 2.2E.020b

The Physical Audit report contains details of government (through the NNPC) oil production entitlement in five PSCs. See particularly the Executive Summary of the overall Audit Report.

References:
See sources in 2.2E.020b

2.2E.020.j3: Royalties

Score: A B C D E

Comments:
See comments in 2.2E.020b

The financial audit report provides data on royalties paid to the government (through DPR), receipts by DPR, and reconciles the differences.

References:
See sources in 2.2E.020b

2.2E.020.j4: Special taxes (e.g. withholding taxes, excise taxes, excess earning taxes, charged on extractive companies)

Score: A B C D E

Comments:
See sources in 2.2E.020b

The NEITI financial report shows details of special taxes paid by oil companies to the Nigerian government. These include the Petroleum Profits Tax, and other taxes such as withholding tax. There are also details of special, mandatory payments by oil companies to the Niger Delta Development Commission (NDDC), a government agency which carries out social and economic programmes to tackle poverty and unrest in the Niger Delta oil producing region. The NDDC levy (or tax) is 3% of the total annual operating budget of oil companies operating in the Niger Delta.

References:
See sources in 2.2E.020b

2.2E.020.j5: Dividends

Score: A B C D E

Comments:
See comments in 2.2E.020b.

The NEITI financial audit report contains details of dividends paid by the Nigeria Liquified Natural Gas Ltd (NLNG) to the NNPC during the audit period. However, it is not clear if the NNPC has remitted these monies to the Federation.

References:
See sources in 2.2E.020b

2.2E.020.j6: Bonuses

Score: A B C D E

Comments:
See comments in 2.2E.020b

The NEITI financial audit report provides information on signature bonuses paid by oil license holders to the DPR between 2005 and 2008.

References:
See sources in 2.2E.020b

Peer Review Comments:
These figures are often confusing though. For instance, it is impossible to tell total volumes of payments made pursuant to a given bid round.

2.2E.020.j7: License fees

Score: A B C D E

Comments:
This information is not published in the NEITI Audit report

References:
See sources in 2.2E.020b

2.2E.020.j8: Acreage fees

Score: A B C D E

Comments:
There is no information on acreage fees in the reports.

References:
See sources in 2.2E.020b

2.2E.020.j9: Other (Explain in 'comments' box.)

Score: A B C D E

Comments:
See comments in 2.2E.020b

The NEITI financial report contains information on other financial flows to the government arising from oil and gas activities. These include remittances from oil companies for VAT, Pay as You Earn (PAYE) tax, Education Tax and Company Income Tax.

References:
See sources in 2.2E.020b

2.2E Quality of reports

2.2E.021: Are periodical reports containing information on revenue generation published by any other government agency or entity understandable?

Score: A B C D E

Comments:
See comments in 2.2E.020b

The NEITI reports are highly technical, and comprehensive, covering oil sector financial and physical flows, providing a glossary of terms, explanation of the methodology of the reconciliation process and appendices that provide specific information at a disaggregated level. Unfortunately, in the researcher's opinion, they are difficult to understand, for an average Nigerian. There is a a need for more narrative sections that put the reported figures in context, and detailed explanatory notes on oil sector operations would improve the overall coherence, and public impact of the reports. Many Nigerians, educated and illiterate alike, are confounded by the arcane workings of the oil and gas sector, and the NEITI report is a good opportunity to demystify the sector.

This is why I have chosen the second highest score. The subject matter of the Audit is highly technical and confusing for the average Nigerian. Without advanced knowledge of the oil and gas sector, revenue management or fiscal policy in Nigeria, it would be difficult to understand the report.

References:
See sources in 2.2E.020b

Peer Review Comments:
NEITI audits also change methods for reporting revenue streams from year to year -- for instance, combining revenue streams one year, disaggregating them the next. The overall volume of information looks impressive at first glance, but often proves unhelpful when one actually attempts to use the numbers for analytical purposes.

2.2E.022: How often are the periodical reports containing information on revenue generation published by the any other governmental agency or entity?

Score: A B C D E

Comments:
See comments in 2.2E.020b

The final 2006 to 2008 NEITI Audit report was presented to Nigeria's President and released to the public in January 2012. NEITI recently signed contracts for the 2009 to 2011 reconciliation, which will extend to the solid mineral sector (2007-2010), for the first time. The earliest date for the completion of the reconciliation and release of the new audit report would be in 2013.

References:
See sources in 2.2E.020b
http://www.neiti.org.ng/news/2012/03/02/neiti-signs-contracts-oil-gas-and-solid-minerals-audits

2.2 Public sector balance

2.2.023: Does the government include the SOC financial balance (its assets and liabilities) within the public sector balance or overall balance of general government in reports to the legislature?

Score: A B C D E

Comments:

The government does not publish details of the NNPC's financial position as it relates to the current or primary fiscal balance. When presenting budget estimates to the Legislature, there is no information on NNPC's financial balance and the implications for the Federation's fiscal balance. Information on public sector balances is available from the Ministry of Finance, to be found in the budget implementation reports, and published reports from the Central Bank of Nigeria (both sources cited in previous questions, above).

The NNPC operates as an opaque, autonomous entity without any oversight from the Executive and Legislature.

References:

Budget Office of the Federation
Central Bank of Nigeria
(see sources and documents in 2.2A.020b and 2.2D.020b)

2.2.024: Does the government include projections of transactions, accounts of actual spending by the natural resource funds, and their assets and liabilities, within the public sector balance or overall balance of general government in reports to the legislature?

Score: A B C D E

Comments:

See also comments in 2.2A.020b, and 2.2D.020d

Nigeria's case is somewhat complex and the researcher has answered this question based on the practices surrounding the Excess Crude Account and not the Sovereign Wealth Fund, as it is not yet operational.

In 2011, the Legislature approved the creation a Sovereign Wealth Fund, which was intended to provide a formal, legal backing to the expedient arrangement called the Excess Crude Account (ECA) that was introduced in 2003 as part of fiscal reforms undertaken by the Obasanjo regime. The ECA was designed to reduce the procyclicality of fiscal policy, and guard against oil price volatility and the associated boom-bust fiscal cycles, by setting a benchmark oil price for the annual budget, above which the accrued oil revenues will be held in a special escrow account.

However, the existence and management of the ECA has been dogged by controversy. While disbursements are made from the Office of the Accountant-General and paid from the accounts held in the Central Bank, it is unclear which public agency directly manages the account. The argument by state governors (which eventually led to the conversion to the SWF) is that the ECA is unconstitutional as it permitted the accrual of funds outside the Federation Account. However, states still happily receive additional funds from the ECA when there is a shortfall in expected oil revenues. There are also sub-accounts that comprise the ECA, for domestic oil and gas sales, oil exports and so forth, denominated in Naira and foreign currency. So the ECA is not a single account but an aggregation of the balances in various sub-accounts and it is unclear how transactions on all these accounts are managed.

What is readily available in published reports from the Budget Office/Ministry of Finance and the Central Bank (reports cited above) is information on oil revenue transfers to the ECA as part of the revenue distribution process, or statutory fiscal allocations to all tiers of government based on augmentation from ECA oil revenues. The information described here (on ECA inflows and ECA augmentation) is included in the analysis of prior budget performance presented to the Legislature during the annual budget approval process, and is reflected in the overall fiscal deficit and public sector balance.

Attached is a link for a media report on a recent accrual into the ECA. Furthermore, In the latest IMF Article IV report on Nigeria, there is information on annual balances for the ECA (see link above).

References:

Budget Office of the Federation and Central Bank of Nigeria (sources listed in 2.2A.020b, and 2.2D.020d)

Nigerian News Service, '$2.1bn accrues to Excess Crude Account in seven weeks', http://www.nigeriannewsservice.com/nns-news-archive/headlines/21bn-accrues-to-excess-crude-account-in-seven-weeks

IMF Executive Board Concludes 2011 Article IV Consultation with Nigeria
Public Information Notice (PIN) No. 12/20
February 28, 2012, http://www.imf.org/external/np/sec/pn/2012/pn1220.htm

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2.2.025: Does the government provide information on the non resource fiscal balance in its budget proposal?

Score: A B C

Comments:

The government does not present information on the non-oil primary balance in budget estimates, although there is a projection of the fiscal deficit. However, there is a short description of the non-oil primary balance (in percent of non-oil GDP) in the revised 2011-13 Medium Term Fiscal Framework prepared by the Budget Office of the Federation (see page 57 of the MTFF). The revenue and expenditure assumptions in the MTFF are used to derive the annual budget. Following the conclusion of IMF Article IV consultations with the Nigerian government in February, the IMF published its assessment of Nigeria's fiscal policy stance. There is a table in the report that shows the non-oil primary balance (see link above).

References:

Budget Office of the Federation Medium Term Fiscal Framework and Fiscal Strategy Paper
http://www.budgetoffice.gov.ng/2011_budget/Revised%202011-2013%20MTEF%20&%20FSP..pdf

IMF Executive Board Concludes 2011 Article IV Consultation with Nigeria
Public Information Notice (PIN) No. 12/20
February 28, 2012, http://www.imf.org/external/np/sec/pn/2012/pn1220.htm

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Legal Framework and Practices

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2.3 Legal Framework and Practices

2.3.026: In the legal framework, what government agencies have authority to collect taxes and payments from resource companies?

Score: A B C D E

Comments:
See comments in 2.1.019

The national tax agency, Federal Inland Revenue Service collects tax revenue from petroleum activities, and the DPR collects non-tax revenue (royalties, rents, signature bonuses, license fees etc).

References:
Petroleum Act (1969) [amended 1998] First Schedule, Section 2(3) para. 30-32 (attached in question 1.1.001)
Department of Petroleum Resources http://www.dprnigeria.com/dpr_roles.html
Federal Inland Revenue Service: Petroleum Profits Tax (2007) http://www.firs.gov.ng/petroleum-profits-tax.aspx

2.3.027: Are all resource related revenues, including those collected by state owned companies, regulatory agencies, ministries, special funds or by the tax authority placed in the national treasury?

Score: A B C D E

Comments:
By default, all revenues earned from petroleum activities should be deposited in the national treasury (i.e. the Federation Account). However, Nigeria's oil sector has multiple loopholes for corruption and revenue leakages, and while some oil revenues collected by the FIRS and DPR do reach the Federation Account, the size of the missing sums is staggering.

The NEITI Audits have been instrumental in revealing the scale of corruption in the oil sector. In the first place, there is no accurate estimate of daily oil production in Nigeria, as neither the DPR or the NNPC measures daily output. Current estimates are based on the reports provided by private oil companies. Another important loophole is the payment of oil export proceeds to the NNPC, which are held outside the Federation Account in an offshore bank account. There is no oversight over transactions on the oil export revenue account (see the CSEA Policy Brief above). Given this situation, oil export revenues reported by the NNPC to the CBN, Ministry of Finance and Accountant-General of the Federation cannot be independently verified.

As reported in the Reuters news article, "The NEITI audit shows some startling gaps: $540 million missing from $1.675 billion in signature bonuses - these are advance payments to develop fields, a standard producer country demand. Then there's 3.1 million barrels of oil missing from NNPC declarations about its joint ventures compared with the figures released by NNPC's international partners. That equates to 0.25 percent of the output. NNPC also received $3.789 billion in dividends from Nigeria LNG, a liquefied natural gas venture over the 2006-2008 period, but there is no record of those dividends being paid into the federal accounts.

An NNPC spokesman did not respond to requests to explain the irregularities listed in the report in detail. The firm denies malpractice. When asked about corruption last month, NNPC managing director Austin Oniwon replied that the issue was overblown. "Corruption in NNPC is in the imagination of some people," he said.

The NEITI report says foreign oil majors may have underpaid royalties "of $2.33 billion arising from subjective interpretation of volume, pricing," and grading variables.

Foreign firms also seemed to have underpaid petroleum profit tax by over $1 billion, NEITI said. The report recommended a review of the tax returns of Chevron and Exxon Mobil."

References:

NEITI 2006-2008 Financial Audit Report (see all attachments in 2.2E.020.b)

CSEA Policy Brief Vol. 1 Issue 2, 'Transparency Deficits in the Disclosure of Oil Sector Information', December 2011. http://www.cseaafrica.org/index.php?option=com_docman&Itemid=380

Reuters Africa, Insight: Nigeria oil corruption highlighted by audits, http://af.reuters.com/article/topNews/idAFJOE82706520120308?pageNumber=1&virtualBrandChannel=0&sp=true, March 8 2012.

2.3.028: Are government officials with a role in the oversight of the oil, gas or mining sector required to disclose information about their financial interest in any extractive activity or projects?

Score: A B C

Comments:

The issues raised here have been addressed in 1.3.016 (see particularly the intrigues surrounding Malabu Oil Company, which was founded by Dan Etete, a Minister of Petroleum during the Abacha years, while he was still holding public office).

The precise answer is somewhere between A and B. Government officials in oil sector oversight roles should, as a matter of law, declare their assets according to the Code of Conduct. Such asset declarations would reveal any beneficial ownership in oil and gas. However, in practice, many public officials, starting with the President, flout the Code of Conduct with impunity.

As stated in the related discussion, it is very easy to circumvent the law, and anti-corruption agencies (such as EFCC, ICPC or NEITI) are weak and cannot prosecute public officers that are found to be using their positions for personal benefit.

References:

See sources in 1.3.016

Constitution of the Federal Republic of Nigeria 1999, Fifth Schedule, Section 1 (see attachment to question 1.1.001)
Conduct Bureau and Tribunal Act, Cap 56, LFN 1990.
Code of Conduct Bureau http://www.codeofconductbureau.gov.ng/

2.3.029: Is there independent external validation of internal controls of agencies in charge of

receiving payments from resource companies with the objective of providing assurances of integrity of public funds and sound financial management?

Score: A (B) C D E

Comments:

The Office of the Auditor-General is statutorily responsible for conducting periodic audits of the public accounts of the Federation. The Auditor-General conducts financial audits on government agencies, including those that receive revenues in the oil and gas sector, such as the NNPC. The Auditor-General could potentially be a powerful advocate of public sector transparency and accountability. However, this is another toothless bulldog, given that the scale of public sector corruption in Nigeria is astonishing. For instance, the NNPC's audited accounts have never been publicly disclosed, even to senior public officials in Nigeria. NNPC has no internal policy on information disclosure, and this is used to justify the non-release of financial and other organisational information. Thus, there is no public record of the NNPC's financial position.

As an illustration of the NNPC's clout in intimidating its critics, I'm attaching news coverage of a media exchange between the Auditor-General and the NNPC in November 2011. The Auditor-General claimed that the NNPC (and paradoxically the anti-corruption agency, the EFCC) had never submitted financial accounts for proper audit by his office. When attacked by the NNPC, he later retracted his statement and said he had seen NNPC audits up to 2010.

NEITI is also responsible for conducting audits of payments and receipts arising from oil and gas activities (see attached NEITI 2006-2008 audit report in 2.2E.020b). NEITI Audits have been very effective in revealing oil sector corruption in Nigeria. However, the audits are not timely enough, and the findings have no legal or statutory backing that would ensure the adoption of internal controls in the oil sector regulatory institutions, and improvement in public financial management practices.

References:

Office of the Auditor-General of the Federation http://www.oaugf.gov.ng/
NEITI 2006-2008 Audit Report (see all attachments in 2.2E.020b)

Sunday Williams, Daily Trust, 18 October 2011, 'NNPC faults Auditor General on audited accounts', http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=145617:nnpc-faults-auditor-general-on-audited-accounts&catid=1:news&Itemid=2

Oscarline Onwuemenyi, SweetCrude Reports, 30 October 2011, http://sweetcrudereports.com/2011/10/30/public-accounts-auditor-general-denies-indicting-nnpc-others/

2.3.030: Does the national audit office (or similar independent organization) report regularly to the legislature on its findings, including an objective analysis of agencies in charge of managing resource revenues, and are these reports published?

Score: A (B) C D E

Comments:

The Auditor-General's Office submits reports on the audited financial accounts of public sector agencies, including oil and gas revenue management institutions, to the Public Accounts Committees of the House of Representatives and the Senate. These reports are submitted two years afterwards.Attached is an audit report prepared by the Auditor-General's office on the accounts of the Federal Government for fiscal-year 2007, which was submitted in 2009 to the Legislature. The report includes the accounts of the Ministries of Energy and Finance, but not the NNPC, its subsidiaries, and the DPR.

However, the outcome of this legislative review is not made public, and no significant action is taken on erring public institutions. The audit reports are not widely disseminated by the Auditor-General's office, and aside from the report attached here, there is no other one available in the public domain.

NEITI's Audits on financial and physical flows in the oil and gas sector are presented to the Presidency and the relevant legislative oversight committees. The latest Audit report for 2006-2008 was presented to President Goodluck Jonathan in January 2012. NEITI's Audit Reports are public knowledge and freely accessible to all Nigerians, although there is no formal legislative process for the implementation of the findings of the NEITI Audits.

References:

Office of the Auditor General of the Federation http://www.oaugf.gov.ng
Office of the Auditor-General of the Federation: Audit Report presented to the National Assembly for the year ended 2007 http://www.oaugf.gov.ng/AuditReport.html#
NEITI Audit Report 2006-2008 (see all attachments in 2.2E.020.b)

2.3.031: Does a Parliamentary committee scrutinize reports on resource related revenues and, if so, when does this occur?

Score: A B C D E

Comments:

In the previous question 2.3.030, the researcher described the practices surrounding legislative review of Auditor-General reports and NEITI audit reports. It is fair to say that audit reports are submitted to relevant legislative committees, but there is no activity that would merit being described as 'scrutiny'. The public sittings of the Legislative Public Accounts Committees at which the Auditor-General presents audit reports appear to be no more than window dressing, as there is no further legislative action on the reports, or enforcement of sanctions on the NNPC and other erring oil revenue generating institutions.

Likewise the NEITI audit reports are submitted to the President and the appropriate legislative committees, but there is no significant action taken on the findings.

Perhaps, public sentiment and legal petitions using legislation such as the FOI, NEITI or Fiscal Responsibility Acts may compel the legislators to actually 'srcutinise' audit reports and take necessary actions against corrupt entities in the oil and gas sector.

References:

See sources in 2.3.030 above

2.3.032: Is this country an EITI candidate or compliant country?

Score: A B C D E

Comments:

Nigeria is an EITI Compliant Country (2011). The NEITI has just released the final report of the 2006-2008 Oil and Gas Physical and Financial Audit, and commissioned a new audit for 2009-2011, whose report should be released in 2013. Nigeria's compliance would have to be revalidated in 2016

Nigeria's compliance with the EITI is commendable, but is a sharp contradiction to the scale of oil sector corruption, which seems to have reached gargantuan proportions with the fuel subsidy scandal of January 2012. This highlights the importance of strong domestic institutions that can tackle oil-related corruption and the impunity of public officers, and prudently manage oil revenues for the improvement in welfare and living conditions of the millions of impoverished Nigerians.

References:

Extractive Industries Transparency Initiative http://eiti.org/Nigeria
NEITI 2006-2008 Audit Report (see all attachments in 2.2E.020b)

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3.1.1	Context	67

3.1.1 Context

3.1.1.033: Is there a state-owned company? If so, what is its role in the extractive sector?

Score: A B C D E

Comments:

NNPC is Nigeria's state owned oil company, which was created in 1977 as a legal monopoly for the exploitation of the country's petroleum resources. NNPC is the major player in the upstream, midstream and downstream sectors of the petroleum industry. It conducts oil and gas exploration and production activities, in partnership with IOCs, on behalf of the Federation, owns and manages refineries and other distribution infrastructure, and retails petroleum products to consumers.

NNPC's creation occurred at a time when Nigeria's industrialisation policy was driven by a nationalist, indigenous ethos that ostensibly sought to promote local ownership and control of the 'commanding heights' of the economy. NNPC has evolved into a byzantine, opaque behemoth, whose operations are puzzling to experts and average citizens alike.

NNPC's roles straddle commercial, regulatory and policy development functions, which creates a moral hazard, and has contributed to the company's under-performance, in comparison with other SOCs around the world (for instance, in the cited World Bank NOC report, the NNPC is ranked in the lowest category on the basis of performance and transparency)

This quote from Thurber et. al. (2010) sums up the multiple roles played by the NNPC in Nigeria's oil and gas industry:

"NNPC plays a number of roles in the oil sector through the activities of its manifold divisions and subsidiaries. First and foremost, the company is a sector manager and quasi-regulator, using the approval authority of its subsidiary NAPIMS (National Petroleum Investment Management Services) to assert control over the international oil companies (IOCs) operating in Nigeria. Second, NNPC is a buyer and seller of oil and refined petroleum products. Third, NNPC plays an operational role in upstream, downstream, and gas transport activities, though none of its operational ventures is as yet a success. Fourth, NNPC is a service provider to the Nigerian oil sector."

Given the importance of oil revenues in the national political economy, the NNPC has been a major site of distributive patronage since its inception. The NNPC may desire operational autonomy, but its operations are subject to presidential control which further reduces its status as a profitable state-owned concern (see the report by Nwokeji (2008). There are numerous conflicts of interest that arise from NNPC's multiple roles. While DPR is the statutory industry regulator, the NNPC in practice, controls major decisions in the oil and gas sector. Notably, in the upstream sector, the NNPC (using the instrument of NAPIMS) regulates production arrangements in which it is a participant.

References:

NNPC http://www.nnpcgroup.com/AboutNNPC/Corporateinfo.aspx
Thurber M., I. Emelife and P. Heller, (2010), NNPC and Nigeria's Oil Patronage Ecosystem, Programme on Sustainable Energy and Development Working Paper No. 95, September 2010.
Nwokeji, U. (2007), NNPC and the Development of Nigeria's Oil and Gas Industry: History, Strategies

and Current Directions, James A. Baker Institute for Public Policy Policy Report, Rice University.
World Bank (2008), A Citizen's Guide to National Oil Companies: Part A - Technical Report, Washington, D.C.: The World Bank.

3.1.1.034: How is government ownership of resource companies structured in this country?

Score: A B C D E

Comments:

The NNPC, and 10 of its subsidiaries, are wholly owned by the Nigerian government. However, since NNPC lacks the technology and resources to solely undertake oil exploration activities, the company enters into partnership with IOCs to explore and produce oil and gas. The Nigerian government, through the NNPC, owns 55 to 60% of the equity in the six substantive joint ventures currently operating. There are also six PSCs in operation, in which the Nigerian government, through the NNPC, shares oil production entitlements and returns with the IOCs.

The Nigerian Liquified Natural Gas Limited (NLNG) is a subsidiary of the NNPC responsible for the development and export of natural gas. NLNG operates as an incorporated joint venture between the NNPC and its foreign partners. It is limited liability company in which the NNPC has a 49% stake, and three IOCs - Shell Gas, Total and Agip (ENI) control the remaining shares.

References:

See sources in 3.1.1.033
http://www.nnpcgroup.com/NNPCBusiness/UpstreamVentures.aspx
http://www.nlng.com/PageEngine.aspx?&id=43

3.1.1.035: Is there more than one state-owned company (SOC) operating in the extractive sector?

Score: A B C

Comments:

The NNPC has 10 subsidiaries, as follows (all subsidiary company websites listed above). Management officials of these subsidiaries are usually appointed by the Minister of Petroleum.

1 Hyson Limited: Which is the NNPC's oil trading company
2 Integrated Data Services Limited (IDSL): offers petroleum engineering and geophysical services such as seismic data acquisition
3 Kaduna Refining and Petrochemical Company (KRPC): The only NNPC owned refinery in Northern Nigeria, which has an installed capacity of 110,000 bpsd (barrels per stream day) to produce petroleum derivatives, including petrochemical products.
4 Nigerian Engineering Technical Company (NETCO): whose mission is to provide engineering technology for the oil and gas industry
5 Nigeria Gas Company (NGC): The NGC is responsible for processing and distribution of natural gas
6 Nigerian Petroleum Development Company (NPDC): The oil and gas exploration subsidiary of the NNPC
7 National Petroleum Investment Management Service (NAPIMS): NAPIMS manages government's assets and portfolio in the various upstream production arrangements, including JVs and PSCs. In effect, it is the regulator of the upstream sector of the industry.
8 Port-Harcourt Refining Company (PHRC): This is Nigeria's oldest refinery, based in the heart of the oil and gas industry. The refinery has a total installed capacity of 210,000 bpsd.
9 Pipelines Product Marketing Company (PPMC): The PPMC supplies and distributes petroleum products to the refineries, markets and end-users. It supplies subsidised fuel to wholesale oil marketers, for onward sale to the market.
10 Warri Refining and Petrochemical Company (WRPC): Nigeria's other refinery, owned and operated by the NNPC, with installed capacity of 125,000 bpsd.

Nigeria Liquified Natural Gas Ltd.: An incorporated joint venture between the Nigerian government and three IOCs (Shell, Total and Agip) for the production and export of natural gas, in which the NNPC has a minority equity stake of 49%.

References:

Hyson Nigeria Limited http://www.nnpcgroup.com/NNPCBusiness/Subsidiaries/Hyson.aspx
Integrated Data Services Limited http://idsl.nnpcgroup.com/

Kaduna Refining and Petrochemical Company
http://www.nnpcgroup.com/NNPCBusiness/Subsidiaries/KRPC.aspx

Nigerian Engineering Technical Company http://netco.nnpcgroup.com/

Nigerian Gas Company http://www.ngc-nnpcgroup.com/

Nigerian Petroleum Development Company http://npdc.nnpcgroup.com/

National Petroleum Investment Management Service
http://napims.nnpcgroup.com/

Port-Harcourt Refining Company http://www.nnpcgroup.com/NNPCBusiness/Subsidiaries/PHRC.aspx

Pipelines and Products Marketing Company http://ppmc.nnpcgroup.com/

Warri Refining and Petrochemical Company
http://www.nnpcgroup.com/NNPCBusiness/Subsidiaries/WRPC.aspx

Nigerian Liquified Gas Company Limited http://www.nlng.com/PageEngine.aspx?&id=43

Peer Review Comments:

Over the years NNPC has created various other subsidiaries besides Hyson to trade in Nigerian crude oil and refined products. Others include Napoil, Calson, Nigermed and Duke Oil. All are structured as JVs with private oil traders except for Duke, which is 100% government-owned.

3.1.1.036: Do the roles and responsibilities of the SOC include provision of subsidies or social expenditures (quasi-fiscal activities)?

Score: A B C

Comments:

The most significant QFA is the provision of fuel (PMS), at subsidised prices, by the NNPC. The NNPC does not provide much information on the fuel subsidy, but the PPPRA and the Budget Office do.

The Nigerian government maintains a subsidy on fuel such that the retail price, which consumers pay at the fuel pump and is less than the international market price, while the government pays the difference between the two prices (see the Q and A on fuel subsidy). The NNPC, as the state owned company, is charged with ensuring that Nigerians get subidised fuel. Note that the pricing of other products such as diesel has been liberalised since 2009.

The NNPC, acting through its subsidiary, the PPMC, supplies fuel received from NAPIMS to the refineries, and also transports refined fuel through its pipeline network from the refineries to the depots. For imported fuel, PPMC transports fuel from the ports to the depots where the products are distributed for retail use. Private oil marketers who are licensed to import petroleum products, store the products in private tanks and distribute them to their depots and retail outlets.

Nigeria's refineries have a combined capacity of 445,000 bpd, which if fully operational and can service up to 70% of the country's energy needs. However decades of mismanagement have crippled the country's refineries. In recent times, the situation has deteriorated to the point that up to 90% of Nigeria's energy needs are met through importation. Frequent pipeline vandalisation, oil union strikes, bureaucratic delays, product mispricing and corruption have further decimated Nigeria's local refining capacity.

In 2006, the Federal Government set up a Petroleum Support Fund, which acts as a stabilising mechanism against volatile international oil prices, and meets subsidy claims by the NNPC and private marketers. The PSF is administered by the PPPRA, an agency of the Ministry of Petroleum, which approves submitted fuel importation claims, based on fuel import licenses issued by the DPR, while the CBN and Ministry of Finance are the custodians of the revenues in the PSF, and the CBN makes actual disbursements. Another agency called the Petroleum Equalisation Fund manages a 'bridging' mechanism which is supposed to ensure uniform product prices across the country, although in practice, there is recurring fuel scarcity and wide discrepancies between fuel prices in coastal and inland areas.

The NNPC, through the PPMC plays a central role in the fuel subsidy regime. PPMC is the major wholesale supplier of refined petroleum products, and informs the pricing template used by the PPPRA. Thus, the NNPC plays the conflicting roles of determining retail prices of petroleum products, and also supplying the same products, alongside private marketers, to the market. The funding of the fuel subsidy has also been problematic, given the enormous fiscal burden it presents. As an illustration, the NNPC GMD Austen Oniwon, stated that NNPC received N2.157 trillion as subsidy on petroleum products between 2006 and 2011. The NNPC's conflictual roles of quasi-regulator and operator in the fuel subsidy regime is a further reflection of oil sector corruption, and specifically, the massive racketeering that has characterised the administration of the fuel subsidy.

References:

http://www.pppra-nigeria.org/pricingtemplate.asp

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Indicator		Score
3.2.1	Comprehensive reports	0
3.2.2.038	Does the SOC publish information on revenue generation?	37
3.2.3.038.j	Disaggregated Revenue Streams	0
3.2.4	Quality of reports	59
3.2.5.043	Audited reports	34

3.2.1 Comprehensive reports

3.2.1.037: Does the SOC publish comprehensive reports with information about its operations and subsidiaries?

Score: A B C D E

Comments:
The researcher scoured the NNPC and ten subisdiary websites but found nothing on finances and operations. If there are Annual Reports, these are obviously not released in the public domain. The researcher also checked media reports and with industry insiders but did not yield much information on the operations and financial position of the subsidiaries. Granted though, that most of the ten subsidiaries have websites, but the information published on operations is not detailed enough, and there is no financial information, to warrant a 'yes'.

The only exception is the NLNG, for which the researcher found this document called 'Facts and figures', which provides details of its operations in 2011 (see link above).

References:
http://www.nnpcgroup.com/NNPCBUSINESS/Subsidiaries.aspx
http://www.nlng.com/publications/NLNG%20FF%202012.pdf

3.2.2.038 Does the SOC publish information on revenue generation?

3.2.2.038.a: Reserves

Score: A B C D E

Comments:
The NNPC has improved its publications record, and the Corporate Planning and Strategy of the NNPC Unit releases monthly, quarterly and annual statistics on the oil and gas sector. The most recent monthly report is for November 2011, and the annual report is for the year ended 2010. The annual reports provides data, on exports and production by company or fiscal arrangement for instance, for at least five years, and in some cases, up to ten years, so there is opportunity for multi-year comparison and analysis. Thus, the researcher chose the highest category 'reporting year and at least one prior

year' for the available data from the NNPC in this sub-section.

The underlying issue with NNPC statistics is their reliability, as observed elsewhere in this survey. There are many gaps in the data on physical flows, and inconsistency/no reconciliation with figures published by the CBN and Budget Office. NNPC acknowledges this much with the disclaimer on the front page of all the statistical reports.

On this question, specifically, the researcher did not find information on reserves in any of the published reports, so the answer is 'No'.

References:

NNPC Oil and Gas Statistics http://www.nnpcgroup.com/PublicRelations/OilandGasStatistics.aspx

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3.2.2.038.b: Production volumes

Score: A B C D E

Comments:

The NNPC provides information on the volumes of oil and gas produced on a monthly, quarterly and annual basis, in miilions of barrels of oil, and cubic feet, respectively.

References:

See sources in 3.1.2.038a

Peer Review Comments:

The quality of its figures is quite questionable, however. Daily and annual production summaries often do not tally with those published by other government agencies like NEITI or the Finance Ministry, or data collected internally by the SOC. Published production volumes also sometimes conflate oil and oil equivalents inconsistently.

3.2.2.038.c: Information on prices

Score: A B C D E

Comments:

NNPC publishes no information on prices of various Nigerian crude oil blends or international blends in its reports.

References:

See sources in 3.1.2.038a

Peer Review Comments:

It has not done so since 2005.

3.2.2.038.d: Value of resource exports

Score: A B C D E

Comments:

See comments in 3.1.2.038a
NNPC does not publish any information on financial flows. What is available is information on physical flows - for production and exports- in its annual, monthly and quarterly statistical reports.

References:

See sources in 3.1.2.038a

Peer Review Comments:

NNPC publishes information about production and lifting volumes, but nothing about the values received for any crude oil or gas it sells.

3.2.2.038.e: Estimates of investment in exploration and development

Score: A B C D E

Comments:

NNPC does not publish information on capital expenditure on exploration and development activities, although there are details of seismic and drilling activities.

References:

See sources in 3.1.2.038a

3.2.2.038.f: Production costs

Score: A B C D E

Comments:

NNPC does not publish information on production costs, such as operational costs for the Joint Ventures.

References:

See sources in 3.1.2.038a

3.2.2.038.g: Names of companies operating in country

Score: A B C D E

Comments:

NNPC does not directly publish a list of all oil and gas companies operating in the company. However it does provide actual export and production data for the applicable oil and gas companies.

References:

See sources in 3.1.2.038a

3.2.2.038.h: Production data by company and/or block

Score: A B C D E

Comments:

NNPC publishes data on oil and gas production by company and oil field, in its annual, quarterly, and monthly statistical reports.

References:

See sources in 3.1.2.038a

Peer Review Comments:

NNPC does not publish production data on a field-by-field basis.

3.2.2.038.i: Quasi fiscal activities

Score: A B C D E

Comments:
NNPC does not publish details of its quasi-fiscal activities

References:
See sources in 3.1.2.038a

3.2.3.038.j Disaggregated Revenue Streams

3.2.3.038.j1: Production streams value

Score: A B C D E

Comments:
NNPC publishes information on physical, and not financial flows. So, there is no information on disaggregated revenue flows in its reports.

References:
See sources in 3.1.2.038a

3.2.3.038.j2: Government s share in PSC

Score: A B C D E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1

The NNPC does not publish this information

References:
See sources in 3.1.2.038a

3.2.3.038.j3: Royalties

Score: A B C D E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1

The NNPC does not publish information on royalties.

References:
See sources in 3.1.2.038a

3.2.3.038.j4: Special taxes

Score: A B C D E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1

The NNPC does not publish this information

References:
See sources in 3.1.2.038a

3.2.3.038.j5: Dividends

Score: A B C (D) E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1.

The NNPC does not publish information on dividends.

References:
See sources in 3.1.2.038a

3.2.3.038.j6: Bonuses

Score: A B C (D) E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1

The NNPC does not publish this information.

References:
See sources in 3.1.2.038a

3.2.3.038.j7: License fees

Score: A B C (D) E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1

The NNPC does not publish information on license fees.

References:
See sources in 3.1.2.038a

3.2.3.038.j8: Acreage fees

Score: A B C (D) E

Comments:
The NNPC does not publish information on acreage fees.

References:

See sources in 3.1.2.038a

3.2.3.038.j9: Other (Describe below)

Score: A B C D E

Comments:
See comments in 3.1.2.038a and 3.1.2.038j1

The NNPC does not publish information on other oil revenues

References:
See sources in 3.1.2.038a

3.2.4 Quality of reports

3.2.4.039: Are the reports published by the state owned company understandable?

Score: A B C D E

Comments:
The NNPC reports are comprehensive, and provide useful data across broad categories. The 10 year reporting period enables multi-year comparison and analysis. There is a short glossary of terms, and narrative sections in the monthly and quarterly reports that examine specific issues such as export performance, gas flaring, and refining capacity.

However, in general, the reports do not provide adequate explanations of methodology used in compiling the data, details of oil sector operations that average Nigerians can comprehend, to better understand the reported data, and explanations for contradictory or missing information. Furthermore, important information such as realised crude oil prices, government take from PSCs, details of Joint Venture operations, and oil reserve estimates, are not published. Some of the tables have text that is not legible, and there are few illustrative charts and diagrams in the annual report.

Thus, answer 'B' seems more appropriate.

References:
See sources in 3.1.2.038

3.2.4.040: How often are the reports or statistical databases containing information on revenue generation published by the state owned company?

Score: A B C D E

Comments:
See comments in 3.1.2.038a

The NNPC publishes annual, quarterly and monthly reports. The most recent reports were for November 2011 (monthly and quarterly). It is not clear when the next in-year reports will be released.

References:
See sources in 3.1.2.038a

3.2.4.041: If the SOC is involved with quasi fiscal activities, does it publish information about them?

Score: A (B) C

Comments:

See comments in 3.1.1.036

The NNPC provides refined petroleum products (petrol, diesel, kerosene) at subsidised prices to consumers. This subsidy programme is funded by the Federal Government through a special fund. See description of the fuel subsidy and its administration in 3.1.1.036 above.

In spite of its role in providing subsidised petroleum products, and the massive amounts paid out from the treasury to the NNPC, there is no published information on its subsidy expenditures, and operations. Furthermore, approaching NNPC officials privately did not yield any concrete details on its participation in the fuel subsidy regime.

References:

See sources in 3.1.1.036

3.2.4.042: If there are joint ventures, does the SOC (or government) publish information on its share of costs and revenues deriving from its equity participation in joint ventures?

Score: (A) B C

Comments:

See comments in 2.2A.020b, 2.2D.020b, 2.2E.020b, and 3.1.2.028a

The NNPC does not publish information on its share of JV cash calls and revenues. However, this information can be pieced together from the reports of the Budget Office of the Federation, Central Bank of Nigeria, and NEITI Audit for 2006-2008.

The Budget implementation reports and CBN annual reports contain details of NNPC/government JV cash call expenditure, and the government's revenues realised from JV production (for the audit period) can be found in the NEITI Audit Report.

References:

See sources in 2.2A.020b, 2.2D.020b, 2.2E.020b, and 3.1.2.028a

Peer Review Comments:

The information published is dated and fragmented, however, to allow for further analysis by independent researchers.

3.2.5.043 Audited reports

3.2.5.043.a: Is the SOC subject to annual audits conducted by an independent external auditor to ensure that the financial statements represent the financial position and performance of the company?

Score: A (B) C D E

Comments:

See comments for 3.1.033, and for 2.3.029, 30 and 31.

The NNPC conducts audits because there is some media reportage of the NNPC submitting its audited reports to the Auditor-General of the Federation (see comments in 2.3.029). However, it is difficult to say the principles underlying the financial audit and how extensive and frequent the process is.

Attached is the recent KPMG Forensic Audit Report on the NNPC, which is a one-off consultancy project commissioned by the Ministry of Finance in November 2010 to ascertain the soundness of NNPC's internal financial processes and controls with regards to oil revenue generation. From this report it can only be infered that internal audits do occur, and not much else.

The only extensive and independent audit of oil and gas financial flows is by NEITI. The NEITI audits cover the NNPC and its subsidiaries which generate revenues for the Federation (such as NAPIMS, PPMC and the NGC), although the latest NEITI audit is for 2006-2008. NEITI has however commissioned a new audit of the sector for 2009 to 2011, which should be ready in 2013.

Given the description above, the most appropriate answer would be 'B'.

References:

NEITI 2006-2008 Audit Reports - attached in 2.2E.020b
See sources for 3.1.033, and for 2.3.029, 30 and 31.

3.2.5.043.b: Are SOC audited reports published?

Score: A B C D E

Comments:

See sources for 3.1.2.043a, 3.1.033, and for 2.3.029, 30 and 31 above

The non-transparency of the NNPC's audit process and lack of effective oversight by the Legislature has been discussed in the questions above.

There is no public record of the NNPC's audited financial statements. Even if these audit reports are published, they are internal documents and not released to the public.

The NEITI audit report 2006-2008 contains extensive information on revenue flows and payments between the government and oil and gas operators. However, while NEITI Audit Reports contain specific information on some NNPC internal financial transactions (such as oil export transactions, and JV cash call payments - see the appendix cited above), the reports do not directly disclose the NNPC's audited accounts, or its financial position.

References:

See sources for 3.1.2.043a, 3.1.033, and for 2.3.029, 30 and 31 above
NEITI 2006-2008 Audit Report (all attachments in 2.2E.020b)
NEITI 2006-2008 Audit Report - Appendix 6

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Indicator		Score
3.3.1	Legal Framework and Practice	60

3.3.1 Legal Framework and Practice

3.3.1.044: Does the SOC have a legal obligation to publish financial reports?

Score: A B C

Comments:

Under the Freedom of Information Act (2010), Section 2, all public sector agencies are required to publish details of their operations, revenues and expenditures. As a state-owned company, the FOI Act applies to the NNPC, and all its subsidiaries.

The NNPC produces financial statements and audits that are submitted to the Auditor-General of the Federation, and the legislative oversight committee on public accounts. However, these financial statements are not released to the public. (see also the discussion on the role of the Auditor-General, and the nature of parliamentary oversight over SOC audit reports in 3.1.1.033 and 2.3.029, 30 and 31).

The NNPC also complies with the periodic NEITI reconciliation process by providing details of oil revenue receipts and payments.

The NNPC is not a publicly listed company and not under obligation to comply with Nigerian Stock Exchange rules for publication of financial statements. NNPC's annual budgets are also exempt from scrutiny by the Legislature as part of the budget approval process.

References:

Freedom of Information Act (2010) Section 2 - see attachment in 1.2.010
NEITI Financial Audit Report 2006-2008 (see attachment in 2.2E.020b)
See sources in 3.1.1.033 and 2.3.029, 30 and 31

3.3.1.045: Does the SOC follow internationally recognized accounting standards?

Score: A B C

Comments:

See the discussion in 3.1.3.044, 3.1.1.043, 3.1.1.033 and 2.3.029, 30 and 31.

Since NNPC does not publish its audit reports, it is difficult to say whether internal audits are done in accordance with internationally recognised accounting standards.

However, the NEITI 2006-2008 Financial Audit Report (pp. 3-4) indicates that the NEITI Secretariat and External Auditor received confirmation from the Auditor-General of the Federation that government, state agencies, and state-owned company accounts are prepared in accordance with 'generally accepted accounting standards.'

References:

See sources in 3.1.3.044, 3.1.1.043, 3.1.1.033 and 2.3.029, 30 and 31
NEITI 2006-2008 Audit Report (see all attachments in 2.2E.020b)

3.3.1.046: Do SOC audits include consolidated accounts that cover all of the SOC subsidiaries?

Score: A (B) C

Comments:

See sources in 3.1.3.044, 3.1.1.043, 3.1.1.033 and 2.3.029, 30 and 31.

As explained in the responses to previous questions, the NNPC does not publish audited reports, nor do its subsidiaries.

However the NEITI Audits cover the NNPC, its relevant units, and subsidiaries involved in oil and gas receipts and payments, but not all of the NNPC's subsidiaries.

References:

See sources in 3.1.3.044, 3.1.1.043, 3.1.1.033 and 2.3.029, 30 and 31.
NEITI 2006-2008 Financial Audit Report (see attachment in 2.2E.020b)

Peer Review Comments:

NEITI reports cover relevant NNPC units and subsidiaries, but not all of them.

3.3.1.047: Are officials of the SOC required to disclose information about their financial interest in any oil, gas or mining projects?

Score: (A) B C

Comments:

See comments in 1.3.016 and 2.3.028

The Code of Public Conduct has been discussed in other questions (above). This legislation applies to all public officers, including officials of the NNPC, who are expected to declare their assets (which would reveal any benefical ownership or interest).

However, as stated earlier, in practice, the law is hardly enforced.

References:

See sources in 1.3.016 and 2.3.028

3.3.1.048: Does the SOC publish information on the composition of its Board of Directors?

Score: (A) B C

Comments:

The NNPC publishes information on the composition of its Board of Directors on its website. The Board is chaired by the Minister of Petroleum, and comprises the Group Managing Director, Group Executive Directors of eight Corporate Divisions or business units of the Corporation, and the Legal Adviser.

References:

http://www.nnpcgroup.com/AboutNNPC/Board.aspx

3.3.1.049: Does the SOC publish information about the rules governing decision making by the Board of Directors?

Score: A B C

Comments:

The NNPC does not publish information on the rules governing decision-making by the Board of Directors.

References:

http://www.nnpcgroup.com/AboutNNPC/Board.aspx

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