

# Validation of Requirement 2.5 – Nigeria: Draft assessment by the EITI International Secretariat

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## 1. Summary

The Secretariat’s preliminary assessment is that Nigeria has made meaningful progress in meeting the initial criteria for implementing Requirement 2.5 on beneficial ownership.

Nigeria has established the legal framework for collecting and disclosing beneficial ownership information from oil, gas and mining companies. Some beneficial ownership information has been disclosed through NEITI’s BO portal. However, the MSG is yet to review the comprehensiveness and reliability of the disclosures. Nigeria has recently reviewed and amended its Companies and Allied Matters Act to provide a legal basis for establishing and maintaining a public register of beneficial owners. These efforts are to ensure Nigeria meets the government commitment at the London anti-corruption summit to tackle corruption through beneficial ownership disclosure. As an interim measure NEITI has launched a BO portal in December 2019 for companies covered by its 2012–2018 reports.

## 2. Background

Following Nigeria’s second Validation, the EITI Board concluded on 27 February 2019 that Nigeria had made “satisfactory progress” in implementing the 2016 EITI Standard<sup>1</sup>.

In June 2019, the EITI Board agreed a framework for assessing Requirement 2.5 on beneficial ownership.<sup>2</sup> To ensure that progress on Requirement 2.5 would be assessed in all countries within a reasonable timeframe, the Board agreed that any country that had achieved overall “satisfactory progress” in Validation that commenced or was concluded in 2019 would undergo a beneficial ownership Validation on 1 January 2021. The Board upheld this decision when agreeing on the transition to a new Validation model.<sup>3</sup>

<sup>1</sup> Board decision 2019-20/BM-42: <https://eiti.org/board-decision/2019-20>

<sup>2</sup> Board decision 2019-48/BM-43: <https://eiti.org/board-decision/2019-48>.

<sup>3</sup> Board decision 2020-83/BM-48: <https://eiti.org/board-decision/2020-83>.

This assessment follows the Board-agreed framework for Phase 1 of assessing beneficial ownership disclosures. The Board agreed that between January 2020 and December 2021, the Validation would focus on whether the implementing country had met a set of initial criteria and provide recommendations for strengthening beneficial ownership disclosures.

This assessment covers Requirement 2.5 only. Progress and possible backsliding on other EITI Requirements have not been considered.

The draft assessment was sent to the multi-stakeholder group for comment on (DATE). After receiving comments from the MSG, the assessment will be finalised for review by the EITI Board.

### 3. Assessment of Requirement 2.5 on beneficial ownership

Adherence to Requirement 2.5 on beneficial ownership is assessed in Validation as of 1 January 2020 as per the framework agreed by the Board in June 2019.<sup>4</sup> The assessment consists of a technical assessment focusing on initial criteria and an assessment of effectiveness.

#### Technical assessment

The technical assessment is included in Annex A. The federal government of Nigeria made a public commitment in May 2016 at the London anti-corruption summit to tackle corruption through beneficial ownership disclosure. This has been documented in the Nigeria OGP Action plan<sup>5</sup>. Nigeria has introduced a law providing the legal basis of establishing and maintaining a public register of beneficial owners<sup>6</sup>.

The NEITI BO declaration form<sup>7</sup> shared with the International Secretariat provided a definition for beneficial ownership and politically exposed persons. The form proved all the required data points were requested as per Requirement 2.5. The reporting threshold for beneficial owners was set at 5%.

In terms of disclosure, NEITI has requested data from all oil and gas companies holding license and mining companies making material payments from the 2012 to 2018 reporting period<sup>8</sup>. The data was uploaded to the NEITI BO portal<sup>9</sup>. The NEITI 2018 oil and gas report<sup>10</sup> show that the MSG has requested BO information from 55 oil and gas companies but twenty eight companies provided data which was compiled as appendix 12<sup>11</sup>. Also, the 2018 mining report indicated that fifty-four mining companies provided information which was compiled as Appendix 8<sup>12</sup>. The BO portal was established by NEITI to meet both OGP and EITI requirements. It was established before the amendment to the CAMA Act to back the establishment of a BO register. According to NEITI, Mining Cadastre Office (MCO) has put a regulation in place and asked that from July 2019 all companies provide BO information as part of license renewals and license applications process. Also, the Department of Petroleum Resources is working on a similar regulation for applicants/bidders in the oil and gas sector to provide BO information as part of the licensing process. However, Department of Petroleum Resources (DPR) has not collected BO information as part of the 2021 Marginal Field Licensing

<sup>4</sup> <https://eiti.org/document/assessing-implementation-of-eitis-beneficial-ownership-requirement>.

<sup>5</sup> <https://www.opengovpartnership.org/documents/nigeria-action-plan-2019-2021/>

<sup>6</sup> Companies and Allied Matters Act 2020: Accessed on 18 January 2021. Available at: <https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf>

<sup>7</sup> <https://neiti.gov.ng/index.php/resources/internal-resources/audit-template>

<sup>8</sup> <https://neiti.gov.ng/index.php/neiti-audits/oil-and-gas>

<sup>9</sup> <https://bo.neiti.gov.ng/>

<sup>10</sup> <https://neiti.gov.ng/index.php/neiti-audits/oil-and-gas/category/203-oga-2018-report?download=965:oga-2018-report>

<sup>11</sup> <https://neiti.gov.ng/index.php/neiti-audits/solid-minerals/category/202-sma-2018-appendices?download=945:sma-2018-apdx8-beneficial-ownership>

Round. With the passing of the CAMA Act, the Corporate Affairs Commission is working on a nationwide BO register encompassing all sectors. The highlight of the MSG minutes of meeting shared with the International Secretariat confirmed extensive stakeholder engagement on BO implementation between 2018 and 2019, it also shows discussion around agreement on a BO definition and setting of materiality threshold. No MSG minutes of meetings were provided to show any recent MSG discussions on BO as there is no MSG in place since March 2020 when the tenure of the MSG expired.

The data provided through the NEITI BO portal include name of companies/persons, nationality, and percentage holding. Also, links to the stock exchange where the companies are listed were provided. The disclosure has also provided a column for Politically Exposed Persons. However, many of those who are listed as beneficial owners are companies. While the BO data published as part of the NEITI 2018 Reports (Appendix 12 (oil and gas) Appendix 8 (mining)) provides additional data points such as date of birth and contact address, these are not provided on the BO portal.

### Assessment of effectiveness

Beneficial ownership disclosure has remained a priority for the Nigerian government and the MSG. Nigeria participated in the EITI BO pilot and developed its roadmap<sup>13</sup> in 2016. The government further amended the Companies and Allied Matters Act to provide legal backing to support BO implementation. In March 2018, the MSG organised an engagement through the companies forum to get the company buy-in on BO disclosure. This was followed by stakeholder engagement in October 2018 to support the implementation of the NEITI beneficial ownership roadmap. Further, the MSG in September 2018 engaged with government agencies on the establishment of the BO register. NEITI launched a series of media campaigns between August and September 2019 to sensitise the public about BO implementation. The activities included radio jingles, broadcast appearances, and social media engagement. NEITI also published a policy brief in May 2016 on beneficial ownership disclosure<sup>14</sup>. The brief identified how secret ownership of extractive industry assets can be used to facilitate corporate financial crimes. NEITI further facilitated capacity-building workshops for media and civil society organisation including women groups in February and June 2019 to facilitate better dialogue on BO implementation in Nigeria.

The International Secretariat's assessment of the technical requirements suggests gaps in the actual data disclosed on the NEITI BO portal. On disclosure, the data appears to have significant gaps with regards to comprehensiveness, data points such as address, date of birth, and so on are not provided. In some instances, legal owners are stated instead of beneficial owners. There is no evidence of MSG assessment of comprehensiveness and reliability of data published. The lack of disclosure of BO for companies that have garnered significant media attention in the past, such as Aiteo, could be seen as a red flag. The identity of the beneficial owner of Aiteo is common knowledge<sup>15,16</sup>, but this information is not in Annex 12 of the 2018 NEITI oil and gas report nor on the NEITI BO portal. The MSG threshold of 5% is much lower than that of the EU (25%), which can lead to more comprehensive BO disclosures.

In terms of functionality, the BO portals allow the user to search for a beneficial owner by company, individuals, and by an asset (OML/OPL number). Significantly, the data is available to bulk download, allowing for systematic analysis of data provided by the 182 oil and gas and 206 solid minerals

<sup>13</sup> <https://neiti.gov.ng/index.php/resources/internal-resources/publications?download=580:neiti-roadmap-on-beneficial-ownership-disclosures>

<sup>14</sup> <https://neiti.gov.ng/index.php/neiti-policy-brief?download=123:neiti-pb-issue01>

<sup>15</sup> <https://www.bloomberg.com/profile/person/19090894>

<sup>16</sup> <https://www.premiumtimesng.com/business/287562-aiteo-founder-benedict-peters-wins-forbes-oil-gas-leader-of-the-year-award-2018.html>

companies. The data provided through the portal include the name of companies/persons, nationality, percentage holding. The portal also displays corresponding charts according to the percentage shareholding by each beneficial owner.

In terms of data quality, NEITI highlighted in the BO self-assessment form that the MSG has approved a mechanism that provides assurance on the accuracy of BO information provided by the entities attesting to the reliability of the data supplied through the BO data collection template. The data collection template has a section on attestation and requires a commissioner for oaths to witness the document and it puts the liability of false data on the data provider. NEITI further highlighted that in collaboration with the Corporate Affairs Commission (CAC), Department of Petroleum Resources (DPR), Bureau for Public Procurement (BPP), Nigeria Financial Intelligence Unit (NFIU), and Ministry of Mines and Steel Development (MMSD) have agreed to the routing of BO data through the database of the NFIU. Also, the Mining Cadastre Office (MCO) has requested that from July 2019, all companies attest to the accuracy of the BO information for all license renewals and license applications.

However, there is no evidence of discussion by the MSG on comprehensiveness and reliability of data disclosed. There is also no evidence to demonstrate that the MSG assessed the comprehensiveness of the data disclosed. The NEITI 2021 Workplan<sup>17</sup> published on the NEITI website indicated that there will be stakeholder engagement on the BO register but the activities to be undertaken are not provided. The Corporate Affairs Commission also maintains an online corporate register<sup>18</sup> of all the companies registered in Nigeria which provides basic information such as company name, address, and registration number. Information such as percentage shareholding and directors of the companies requires a token payment of USD2.60 to be displayed. There is no indication that the MSG has reviewed the comprehensiveness and reliability of information on legal owners.

**Commented [MIG1]:** NEITI to provide minutes of meeting

**Commented [MIG2]:** NEITI to provide documented assessment of comprehensiveness of the BO portal.

## Secretariat's assessment

The Secretariat's preliminary assessment is that Nigeria has made meaningful progress in meeting the initial criteria for implementing Requirement 2.5.

Significant elements of the initial criteria for assessing Beneficial ownership disclosure have been met. A clear government policy and legal basis have been given to beneficial ownership disclosure in Nigeria. All oil and gas companies and mining companies making material payments have been requested to disclose information based on a comprehensive template, that includes assurance mechanism. Actual disclosures show progress, although there are gaps and missing data points. No evidence exists of the MSG's assessment of comprehensiveness and reliability as well as plans to overcome gaps or weaknesses in reporting.

In accordance with Requirement 2.5 and the Board-agreed framework for assessing progress, Nigeria is required to disclose the beneficial owners of all companies holding or applying for extractive licenses by 31 December 2021. To achieve this target, the following measures are recommended:

- the MSG should continue to work with DPR, MCO and CAC, and other relevant stakeholders to ensure that extractive sector beneficial ownership information is comprehensively and publicly disclosed. This should include identities of the beneficial owner(s), contact addresses, and date of birth.
- The MSG is encouraged to work with DPR on its commitment of ensuring all applicants of oil and gas licenses disclose their beneficial owners at the application stage. An assessment of

<sup>17</sup> <https://neiti.gov.ng/index.php/resources/internal-resources/annual-workplans?download=1015:2021-workplan-financial>

<sup>18</sup> <https://pre.cac.gov.ng/home>

the comprehensiveness and reliability of this information should be integrated into the licensing procedures followed by DPR.

- To strengthen implementation, Nigeria is encouraged to undertake a review of the comprehensiveness and reliability of BO disclosures through the NEITI BO Portal, including of all applicants for oil and gas and mining licenses. the MSG should consider putting a plan to overcome the identified challenges.
- The MSG is encouraged to review the comprehensiveness of publicly available information on legal owners from the online register of the Corporate Affairs Commission.
- Nigeria may also wish to expand beneficial ownership disclosures to other segments of the upstream extractive value chain, for instance through collection and disclosure of beneficial ownership information from extractive-sector service providers, to enable monitoring of adherence to local content provisions and to manage corruption and tax evasion risks.

## Annex A: Technical assessment

EITI Requirement: Beneficial ownership disclosure (#2.5)			
EITI sub-Requirement	Summary of main findings	Source(s) of information	Summary of stakeholder views (if applicable)
<p>The MSG has agreed an appropriate, publicly available definition of the term beneficial owner (#2.5.f)</p>	<p>The NEITI BO declaration form shared with the international secretariat provides a definition of Beneficial and it states that “a beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”.</p> <p>And the definition of Politically Exposed Person is stated as “A natural person who is or who has been entrusted with prominent public functions.”</p> <p>The template refers to the definition in the EITI Standard being adopted by the NSWG.</p> <p>The NEITI BO declaration form proved all the required data points were requested as per the EITI Standard including information about Politically Exposed Persons</p>	<p>NEITI BO declaration form <a href="#">here</a></p>	
<p><i>There are laws, regulations or policies in place to back establishing and maintaining</i></p>	<p>Nigeria has introduced a law providing the legal basis of establishing and maintaining a public register of beneficial owners provided in sections 119(3), 791(1-4) and 868(2) (a-e)</p>	<p>2020 Companies and Allied Matters Act 2020: Available <a href="#">here</a></p>	

<p>a public register of beneficial owners (#2.5.a)</p>	<p>of the Companies and Allied Matters Act 2020.</p>		
<p>The government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership is documented (#2.5.b)</p>	<p>The federal government made a public commitment in May 2016 at the London anti-corruption summit to tackle corruption through Beneficial Ownership disclosure, this has been clearly documented in the Nigeria OGP Action plan.</p> <p>Also, Nigeria has introduced a law providing the legal basis of establishing and maintaining a public register of beneficial owners, which is stipulated in sections 119(3), 791(1-4) and 868(2) (a-e) of the Companies and Allied Matters Act (CAMA) 2020</p> <p>These efforts demonstrate that there is a clear government policy to disclose beneficial ownership information in Nigeria.</p>	<p>Nigeria OGP 2019 – 2021 Action plan <a href="#">here</a>.</p> <p>Companies and Allied Matters Act 2020 <a href="#">here</a></p>	
<p>The implementing country has requested beneficial ownership information to be publicly disclosed (#2.5.c)</p>	<p>The 2018 NEITI oil and gas report highlighted that templates were sent to all oil and gas companies to provide BO information, and the 2018 mining report has shown that BO data was requested from sixty-nine mining companies making material payments.</p>	<p>2018 NEITI oil and gas report <a href="#">here</a></p> <p>2018 NEITI oil and gas appendix 12 <a href="#">here</a></p> <p>NEITI BO portal <a href="#">here</a></p>	



	<p>No new oil and gas licenses have been awarded since 2005, however, the Department of Petroleum Resources is working on a regulation for applicants/bidders in the oil and gas sector to provide BO information as part of future licensing process. The Mining Cadastre Office (MCO) has put a <b>regulation</b> in place and asked that from July 2019, all companies provide BO information as part of license renewals and license applications process.</p>		
<p>The requested information includes the identity(ies) of their beneficial owner(s), including nationality, country of residence, and identification of politically exposed persons, the level of ownership and details about how ownership or control is exerted (#2.5.c-d)</p>	<p>The BO template shared with the International Secretariat shows BO details required include name, nationality, country of residence, level of ownership, details about ownership, how control is exerted, politically exposed persons status, national identity number, date of birth, residential or service address, contact and so on.</p> <p>However, the NEITI BO portal only provide information on company, name, nationality, percentage holding, PEP and stock exchange link where a company is listed. While appendix 12 of the NEITI 2018 oil and gas report and Appendix 8 of the 2018 mining report provide more detail including contact address and DOB of some companies but not all.</p>	<p>NEITI BO declaration <a href="#">here</a></p>	

**Commented [MIG3]:** NEITI to provide link to the regulation if available

<p>Any corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract have disclosed the information</p>	<p>Yes. The 2018 NEITI oil and gas report highlighted that templates were sent to all oil and gas companies to provide BO information, appendix 12 of the report shows disclosure by 28 oil and gas companies. The report further highlighted that BO information is disclosed through the NEITI BO portal, a review of the portal shows 189 oil and gas companies and 206 mining companies have disclosed information. There are seventy-one oil and gas companies holding oil and gas license and seven hundred and twenty mining companies.]</p> <p>The NEITI 2018 oil and gas and mining reports confirms that BO data has been published as appendix 12 of the NEITI 2018 oil and gas and appendix 8 of the 2018 mining report and also BO information of all oil and gas companies and mining companies making material payments is published through the NEITI BO portal in December 2019.</p>	<p>NEITI 2018 oil and gas report <a href="#">here</a></p> <p>NEITI 2018 oil and gas appendix 12 <a href="#">here</a></p> <p>NEITI BO portal <a href="#">here</a></p>	
<p>The MSG had assessed and documented gaps or weaknesses in disclosure of beneficial ownership information (#2.5.c)</p>	<p>There is no evidence of discussion by the MSG on comprehensiveness and reliability of data by the MSG. There is also no evidence to demonstrate that the MSG assessed the comprehensiveness of the data disclosed.</p>		

**Commented [MIG4]:** Appendix 12 of the 2018 oil and gas report shows information was requested from 55 companies but 28 companies provided information. NEITI to clarify between the number of companies that provided data in the 2018 reports vs the companies that provided data in the NEITI BO portal.

**Commented [MIG5]:** The 2018 mining report highlighted that 720 mining companies have paid royalty, but the number of companies holding mining license could be more than that. NEITI to confirm the exact number.

<p>The relevant government entity or the MSG has established an approach for participating companies to assure the accuracy of the beneficial ownership information (#2.5.e)</p>	<p>NEITI highlighted in the BO self-assessment form that the MSG has approved a mechanism that provides assurance on the accuracy of BO information by the entities attesting to the reliability of the data supplied through the BO data collection template. The BO data collection template has a section on attestation and requires a commissioner for oaths to witness the document and it puts the liability of false data on the data provider. NEITI further highlighted that, in collaboration with the Corporate Affairs Commission (CAC), Depart of Petroleum Resources (DPR), Bureau for Public Procurement (BPP), Nigeria Financial Intelligence Unit (NFIU) and Ministry of Mines and Steel Development (MMSD) agree to the routing of BO data through the data base of the NFIU. Also, the Mining Cadastre Office (MCO) has requested that from July 2019 for all companies to attest to accuracy of the BO information for all licence renewals and new license applications. However, there is no corresponding MSG meeting minutes to support these claims.</p>	<p>NEITI BO self-assessment form shared with the International Secretariat <a href="#">here</a></p>	
<p>For publicly listed companies, including wholly-owned subsidiaries, the name of the stock exchange has been disclosed and a link included</p>	<p>Link to the information on the stock exchange where companies are listed is provided for extractive companies that are wholly-owned subsidiaries of publicly-listed companies, and links to relevant stock exchange filings.</p>	<p>NEITI BO portal <a href="#">here</a></p>	

to the stock exchange filings where they are listed (#2.5.f)			
Information about legal owners and share of ownership of applicable companies is publicly available (#2.5.g)	The Corporate Affairs Commission has a corporate register of all the companies registered in Nigeria which provides basic publicly available information such as company name, address and registration number. Information such as percentage shareholding and directors of the companies requires a token payment of USD2.6 to be displayed.	Corporate Affairs Commission register <a href="#">here</a>	

**Commented [AG6]:** It would be helpful to comment on the comprehensiveness and reliability of legal ownership (shareholder) information on mining, oil and gas companies. In essence: has anyone (ideally NEITI) actually checked the availability of legal ownership information available from the CAC database?