

# NEITI'S RESPONSE TO INITIAL VALIDATION ASSESSMENT BY THE EITI TEAM

## PART I – MSG OVERSIGHT

### Civil Society Engagement (# 1.3)

#### EITI Initial assessment: Meaningful progress

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

*Civil society in Nigeria is able to engage in public debate without restraint, coercion or reprisal, and its representatives are able to operate freely in relation to the EITI process. Through the Civil Society Steering Committee, NEITI has developed a structure to ensure that civil society representatives are able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process. The CSSC also provides a platform for civil society representatives to communicate and cooperate with each other regarding the EITI process.*

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

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

#### **NEITI'S RESPONSE:**

The nature and character of civil society in Nigeria, put in its socio-political-economic context, is a critical factor in the arrival of a conclusion on the assessment of the operations and performance of civil society in the EITI process in the country. It must be noted that civil society

organizations (CSOs) in Nigeria are operating under a peculiar and challenging economic environment unlike their counterparts in other economically advanced countries where funding opportunities and incentives for civil society operations and social action engagement exist in abundance.

Funding remains the greatest challenge to civil society operations in Nigeria, including engagements and participation in the EITI process. There is a limit to which the Nigeria government or NSWG can fund civil society participation in its process to enable civil society maintain its independence. Although, part of the mandate of NEITI is to build the capacity of its stakeholders, including civil society, funding has become a major constraint to fulfilling this key objective over the years. Nonetheless, NEITI has partnered with various donors over the years to build the capacity of the civil society stakeholders in the EITI processes.

The best the Nigerian government and the NSWG can do and has done is to remove all legal and structural barriers to civil society operations and provide an enabling environment for civil society participation which the assessment acknowledged to have been adequately addressed.

Furthermore, the provisions of the NEITI Board Charter and MoU between the NEITI and the CSOs, through the Civil Society Steering Committee (CSSC) of the NSWG, are manifestations of the intent and pro-activeness to get the CSOs fully involved in the EITI process in a better, more fluid but more structured framework. It is necessary to explain that the CSSC is a creation of NSWG and its tenure ended with the dissolution of NSWG. Membership of the CSSC is drawn from and selected by their respective CSO constituencies. A new CSSC was recently reconstituted and held a meeting on June 15<sup>th</sup> 2016.

The NSWG thinks as incorrect the account in the EITI Secretariat initial validation report that “there is no evidence that the broader constituency is consulted or otherwise engaged in the design, implementation, monitoring or evaluation of the EITI process” (CSOs have not been consistently consulted in the development of work plans, terms of reference or other decision-making process). The peculiar nature of implementing the EITI in Nigeria has to be taken into account: a myriad of CSOs exist in Nigeria and it is not possible to reach out to all the CSOs in terms of involvement in NEITI’s operation, hence the creation of the CSSC as a conduit for information to all civil society stakeholders. While the NSWG acknowledges the leading role of PWYP in the EITI globally, it should be noted that in Nigeria there are other very active CSO organisations currently and actively involved in the NEITI process. Many of them have over the years developed and implemented several programmes directly or indirectly with NEITI. They include CISLAC, CPPC, CICODESOR, ANEEJ, CSR in Action, ORTI, the One Campaign, BudgIT etc. It is therefore important to clarify that the internal challenges of PWYP in Nigeria did not stop NEITI’s engagements with the CSOs. And it will be grossly unfair to negatively appraise the EITI process in the country on account of the issues within a particular coalition.

In the composition of the NSWG, the CSOs are represented and it can also be argued that the labour representative in the NSWG is also a CSO representative. It is therefore NEITI's considered opinion that once an issue is discussed and adopted by the NSWG, which is made up of representatives of all the stakeholders including CSOs, such issue is deemed to have enjoyed the consultations of stakeholders. Of course the general intention that can be gleaned from the MoU is for individual CSSC members to go back to the broader constituency after consultation with the CSO members in the NSWG. However, the issue of how accountable these members are to their various constituencies can be explored and improved upon in the future.

It is pertinent to note that there is evidence to show that in line with this intention, the work plans, terms of reference, and major decisions were always discussed and adopted by the NSWG with inputs from all the stakeholders represented therein during their meetings.

Given these facts the EITI Secretariat's assessment should have been that Nigeria has made "satisfactory progress" on civil society engagement.

### Governance and functioning (#1.4)

#### EITI Initial assessment: Meaningful progress

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

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

*As mentioned in the previous sections, the general impression is that NEITI brings in stakeholders as and when their input could be relevant – industry for questions concerning reporting templates, civil society for dissemination activities, ministries for remediation, etc. This is reflected in the internal structure of NEITI, where among other things responsibility for civil society is housed within the Communications Department. The NSWG formally approves workplans, terms of reference for the independent administrator and annual progress reports. Although there is evidence that these are shared with NSWG representatives for comments,*

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

It should be noted that notwithstanding the challenges surrounding the 2016 nomination of the civil society representative to the NSWG, stakeholders did not, as a general rule, consider the existing arrangement to be problematic. Although civil society is only formally represented by two representatives, the Civil Society Steering Committee ensures that the constituency has a formal platform for broader engagement and participation in the EITI. Likewise, although broadly considered a welcome development by companies, the creation of a Company Forum in December 2015 did not respond to a perceived need for additional engagement within the constituency. The regular dismantlement of the NSWG was seen by civil society as a problem, but other stakeholders did not think this was avoidable.

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

As a matter of priority, industry and civil society should agree constituency guidelines that explain the process by which they will nominate their representatives to the MSG in the future.

Representatives from both constituencies should build on existing structures to ensure a two-way communication with their broader constituencies. Industry in particular should use the newly-created Company Forum to reorient its role within the EITI. Whereas it may be politically implausible to do away with the politically-appointed geopolitical representatives, the Board

*Charter could be modified to require a certain degree of accountability to the constituency they are supposed to be representing.*

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

## NEITI'S RESPONSE

It is imperative to understand that the composition of the NSWG is statutory. While the EITI requirements has evolved over time from the "EITI Indicators" to the "EITI Rule" and now to the "EITI Standard," the NEITI Act which determines the composition of the NSWG has not evolved over the same period of time because it is a statute. It is also necessary that at the time in 2007 when the NEITI Act was passed into law, it was revolutionary in nature and more advanced than the EITI indicators. Nigeria was the first country to codify the implementation of the EITI. While acknowledging that the composition of the NSWG is not in consonance with the EITI Standard, the NSWG can only seek to align its composition of the NSWG with the EITI Standard through legislative amendment which due to the Nigerian legislative process, is very arduous. However, the NSWG is presently working in partnership with both the United Nations Office on Drugs and Crime (UNODC) and the European Commission on the amendment of the NEITI Act.

It is also necessary to point out that the Board Charter is only advisory in the appointment of NSWG members. The prerogative to appointment NSWG members is absolutely with the President of the Federal Republic of Nigeria in accordance with the structure of composition therein contained in the NEITI Act. Be it civil society representative or industry expert or member of the geopolitical zone, the prerogative still lies with Mr. President. That is the Nigeria Law. Which would be of greater consequence for EITI implementation in Nigeria: compliance with the voluntary EITI Standard at the expense of Nigerian Laws or compliance with the Nigeria Laws at the seeming expense of the voluntary EITI Standard?

The above is equally applicable on the representation and appointment of civil society representative in the NSWG. It is also necessary to state that whether civil society has guidelines for the nomination process of representatives to the NSWG or not, would not really suffice on how the civil society representative(s) is (are) chosen because as stated above, it is the absolute prerogative of the President.

Nonetheless, NSWG has done a lot in advising the President of the relevant civil societies that are engage in the EITI process in the country. It is necessary to state that PWYP is not the sole

CSO that is very important in the EITI process in Nigeria: there is a gamut of other CSOs, including coalitions of CSOs, that are just as vibrant in the EITI process in Nigeria as PWYP is. The NSWG's resolve is not to be involved in the selection of CSO representative when the law has ascribed the matter to the President. The NSWG must also be very mindful of the fact that it has to be neutral at all times on the operational management of each stakeholder's activities. The independence of the CSOs also has to be encouraged and maintained to have a more vigorous involvement in the EITI process.

Taking into context the whole of Requirement 1.4 to in relation to the NEITI Act and the Nigerian Constitution which requires a federal character spread as embodied in the geopolitical zonal representation in the NSWG (given the imposed limitation of these legislations vis-a-vis the EITI Standard), Nigeria should be adjudged "satisfactory".

### Work plan (#1.5)

EITI initial assessment: Meaningful progress.

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

*Although work plans are generally costed and readily available on NEITI's homepage, the NSWG only approved a new work plan for 2016 after the start of Nigeria's Validation. The current work plan, like its predecessors, does not update the objectives of the NSWG, which have remained the same since the four-year strategic work plan was drafted in 2012. As a result, the work plan maintains the same structure and objectives as it did under the EITI Rules. Whereas these were ambitious at the time, extending the scope of EITI reporting to things like the FASD Audit and a so-called Value for Money Audit, some of the challenges identified in section two of this initial assessment can be linked to the fact that the work plan continues to focus on the publication of annual audits. At the same time, it is clear that the NSWG does use the annual progress report, the communications strategy and other mechanisms to link its activities to national priorities throughout the year.*

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

### NEITI'S RESPONSE

The NSWG has a four-year strategic plan for the period 2012– 2016. Thus the strategic objectives for this period have remained the same and these strategic objectives inform the work-plan for the period. Furthermore, at the time the strategic plan was adopted, it was linked to national

priorities, and the NSWG was also very conscious to align the strategic plan with the NEITI Act and the EITI process, whilst trying to maintain its independence away from the political priorities of government.

The NSWG was dissolved in July 2015 and a new one was constituted in February 2016. Consequently, there was no policy-making body in place in NEITI during the interregnum that would have reviewed the strategic plan as required by Section 5 (2) the NEITI Act in line with the new national priorities occasioned by the election of a new government in Nigeria in May 2015. However the NSWG is currently in the process of completing a new strategic plan to cover 2017-2021.

NEITI’s work-plan has always had a costed on its website. A costed and completed work-plan for 2016 was meant to be published on the website before the commencement of the validation, however due to administrative error a non-costed version was placed on the NEITI website. The error has since been corrected and a costed work plan for 2016 is presently on the website.

As earlier stated, NEITI’s stakeholders are usually consulted in the development of annual work plans, annual activity report, terms of reference, etc. through their representatives in the NSWG. The efficacy of this consultative process will be analysed and evaluated for improvement going forward bearing in mind the paucity of funds in implementing the EITI in Nigeria.

*Table 1- NEITI’s summary response to initial assessment by EITI table: MSG oversight*

EITI provisions	NSWG’s response to Summary of main findings	International Secretariat’s initial assessment of progress with the EITI provisions	NSWG assessment of progress with the EITI provisions
Civil society engagement (#1.3))	Within the socio-economic climate of Nigeria and the lack of funds, the capacity building of CSOs and their involvement and consultation with the wider constituency over the years has increased tremendously through the mechanism of the CSSC that was put in place by the NSWG.	Meaningful progress	Satisfactory progress
MSG governance and functioning (#1.4)	The peculiarity of the composition of the NSWG in Nigeria has to be taken into account because it is statute-based. The		

	President acts within the scope of his powers under the NEITI Act. Which would be of greater consequence for EITI implementation in Nigeria: compliance with the voluntary EITI Standard at the expense of Nigerian Laws or compliance with the Nigeria Laws at the expense of the voluntary EITI Standard?	Meaningful progress	Satisfactory progress
Work plan (#1.5)	The NSWG has always had a fully costed yearly work plan albeit the 2016 work plan was delayed due to the lack of an NSWG in place. The national priorities were linked to the work plans through the strategic plan and the stakeholders were duly consulted for their inputs through the mechanisms put in place by the NSWG	Meaningful progress	Satisfactory Progress
<p>Implementation of recommendations.</p> <ol style="list-style-type: none"> <li>1. This recommendation is already been implemented through the CSSC for CSOs whilst for companies the mechanism of the Companies Forum that was created in December 2015 would be enhanced through constant consultation.</li> <li>2. The NSWG is presently working on the amendment of the NEITI Act which will be all encompassing in its alignment with the EITI Standard. A NEITI secretariat committee is already in place to review the Board Charter and advise the NSWG thereafter. The NSWG would heed the recommendation of the report to bring all the governance documents into one set of ToR that would resolve any issues in the current structure, however within the limitations imposed by the NEITI Act.</li> <li>3. The EITI Secretariat report has already admitted in paragraph 3 of page 29 that “no indications of legal, regulatory, administrative or actual barriers to civil society preventing participation in EITI, nor any obvious restrictions of fundamental rights” and in the last paragraph of page30 in which the MoU between NEITI and the CSOs states “the right for civil society organisations to: “develop their own independent programs in the promotion of transparency in the extractive industries” is explicitly recognised”. It is also necessary for the NSWG or government not to be involved in the operations of the CSOs less it</li> </ol>			

- affects the independence of the CSOs
4. The NSWG is already encouraging the Companies Forum to partake fully in NEITI's activities beyond "becoming exclusively a mechanism for dissemination of NEITI's activities"
  5. The NSWG would advise the FGN accordingly.

## PART II – EITI Disclosures

### [Licence Allocation \(#2.2\)](#)

#### EITI initial assessment: Meaningful progress

*In oil and gas, the 2013 EITI Report clarifies that no new licenses were awarded in 2013, describes the statutory license allocation and transfer procedures and the criteria for block bidding rounds. However, it does not clarify whether any licenses were transferred or renewed in 2013 nor the procedures and criteria used (both statutorily and in practice) in the case of discretionary license allocations. License allocations and transfers in the JDZ are not covered. In solid minerals, the 2013 EITI Report provides a link to the MCO's statutory license allocation and award guidelines and states that no new competitive licensing round was held in 2013. However, it does not clarify the number of licenses awarded in 2013, deviations from the statutory license allocation and transfer procedures in practice, nor the weightings of technical and financial criteria assessed during license allocation or transfer procedures.*

#### **NEITI'S RESPONSE:**

There are no written guidelines on discretionary license allocations from DPR at present. However, this was addressed in the proposed but defunct PIB. However, the NSWG is of the opinion that this proposal would also be included in the future bills on the petroleum.

Most companies operating in the solid mineral sector of the extractive industry have multiple licences but only report on the active and in-operation licences.

Furthermore, in solid minerals the use of the cadastral system is different from a normal bidding process. The cadastral system is on a first-come-first-served basis.

Our future templates would endeavour to cover the recommendations in paragraph 1 of page 67 of the EITI initial assessment.

### Licence registers (#2.3)

#### EITI Initial assessment: Meaningful progress

*In oil and gas, the 2013 EITI Report provides some information on all licenses held by material companies including license-holder name and type of commodity covered, but does not provide dates of application, award or expiry nor license coordinates (or guidance on how to access these). While the DPR license register is not accessible to the public, the publicly accessible Gas Flare Tracker website provides dates of award and approximations of license coordinates. However, dates of application and expiry for licenses held by material companies are not publicly available. In solid minerals, the 2013 EITI Report provided some information on licenses held by some material companies, including dates of award and expiry, commodity covered and license-holder name for only 56 of the 65 material companies. However, dates of application and license coordinates were not disclosed and information was not provided on licenses held by nine material companies. It is also concerning that one material company did not disclose holding any licenses*

#### NEITI'S RESPONSE

The scope of templates will be reviewed in future audits in O&G not only to include the licence coordinates and dates of application as in the O&G 2013 Report but also to include the award and expiry. Future reports would also endeavour to “provide a link to a website such as “Gas Flare Tracker” providing licence information in the absence of a publicly available DPR licence register”. It is also relevant to state that NEITI has on several discussions in the past with DPR to establish a comprehensive portal to house all elements of a licence register. This is an ongoing process.

The scope of templates will also be reviewed in future solid minerals reports to include dates of application or licence coordinates. Meanwhile, it is appropriate to note that the issue of Magcober Nigeria L td, not disclosing any licences despite having made royalty payments of more than USD 2 million in 2013 is because Magcober is only a buying center. Companies such as Magcober, Astro minerals and Spectrum are buying centers. These companies act as agents in collection of royalties and remittance of same on behalf of ASM miners. The companies do not own licences.

## Contract disclosures (#2.4)

### EITI Initial assessment - Inadequate progress

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

### NEITI'S RESPONSE:

Section 2.4 (a) of the EITI Standard states that "Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.

Under the interpretation of the terminology used in defining compliance on page 13 of the EITI Standard, the word encouraged is not within the ambit of a requirement that has to be mandatorily reported. The applicability of the word "encouraged" is quoted in the EITI Standard thus: "*the use of the terms 'recommended', 'encouraged', 'may wish' and 'could' in the EITI Standard indicates that something is optional. Efforts by the multi-stakeholder group will be documented in Validation but will not be taken into account in the overall assessment of compliance with the EITI Standard*"

In other words, there is no obligation to report on contract disclosures. Taking cognizance of Requirement 2.4.b., NSWG nonetheless provided a description of the various contracts (described in 2.4.c and published the contract agreements for some JVs and PSCs in its 2013 report as appendix 2.1.) In addition, NSWG also adopts to a certain extent the information on the first paragraph of page 72 of the EITI report which states that "*the NSWG had discussed government and industry policies on contract disclosure at several meetings*" with the goal to encourage all stakeholders to make all contracts available to the public.

The NSWG understanding is also that the EITI reports are holistic and reforms reported in other parts of the EITI report relevant to contract disclosure (such as those in the defunct PIB) would

be extended to discussion on contract disclosure under Requirement 2.4 without further expression in the discussion of contract disclosure, otherwise there may be no end to repetitions.

There are no contracts in solid minerals that are attached to issuance of license. The report followed the guidelines by MCO. The cadastral system provides a step-by-step process of how licenses are granted.

Going forward on the implementation of the contract disclosure, the NSWG would better endeavour to follow the recommendations stated in the EITI Secretariat report. Nevertheless the NSWG wishes to state that since this a requirement that is to be “encouraged” and not mandatory, Nigeria should not be have been adjudged as “inadequate progress” in light of the work done so far to ensure compliance with the requirement. The colour code should be grey rather than red in accordance with the criteria set at on page 19 of the Validation guide: same as for beneficial ownership in the EITI Secretariat report.

### State participation – (#2.6)

#### EITI-Initial assessment - Meaningful progress

*In oil and gas, the 2013 EITI Report clarifies that NNPC and its subsidiaries make material payments to government. It provides extensive information on the statutory rules related to the financial relations between NNPC and the state, and some significant deviations in practice. However, the NSWG has not clearly defined SOEs nor provided a comprehensive list of NNPC subsidiaries, nor of new JVs created by IOC divestments from oil blocks since 2010. Despite significant information on loans contracted by NNPC from private third-parties, there is no information on any loans or guarantees extended by the FGN to companies operating in the oil and gas sector, such as NNPC.*

#### **NEITI’S RESPONSE:**

The 2013 O&G report clearly defined the various subsidiaries of NNPC that are relevant to the audit except for trading partners where third-party confirmation for crude lifting was made. Details of these trading partners/subsidiaries were provided in previous reports. In addition, the NSWG has fully disclosed all government interests in the various JV arrangements in the report including divestments. The financial inferences by NNPC as highlighted in different sections of

the report point to the fact that the rules governing the financial relationships between NNPC and the FGN were not followed by NNPC.

On MCA, this has been described fully as rules for third-party financing of NNPC’s share of JVs’ cash calls in Sections 3.2.1 (p.50), 4.3 (p.114) and 8.2.1 (p.204). Details on the operations of the 13 MCAs active in 2013 were provided in Sections 4.3.7 (p.120) and 4.3.8 (pp.120- 121). Government Ownership- NNPC’s equity participating interests in each JV arrangements are shown in Table 6.6.1 (p.132) and Table 8.16.1.1 (pp.385-386). The details of active MCAs contracts are listed in Table 4.3.7 (p.120). A list of the nine PSCs is provided in Table 8.14.2.2 (p.362). The structure of ownership is the same across board as in the JVs even in projects as disclosed in the contractual arrangements. It is only where there are exceptions that the audit report highlighted such, as in the cases of NGL1 and NGL 2.

However, on the issue of NNPCs stake in the PSCs, the PSCs are only contractors and the details for these contractual arrangements have already been disclosed. Considering the above progress, NEITI should be scored “satisfactory”.

*Table 2 – NEITI’s summary response to the initial assessment: Award of contracts and licences*

EITI provisions	NSWG’s response to Summary of main findings	International Secretariat’s initial assessment of progress with the EITI provisions	NSWG assessment of progress with the EITI provisions
Licence allocations (#2.2)	There is partial compliance with this requirement, however the observations are fully noted and the NSWG would amend future templates to resolve the findings.	Meaningful progress	
Licence registers (#2.3)	There is partial compliance with this requirement, however the observations are fully noted and the NSWG would amend future templates to resolve the findings.	Meaningful progress	
Contract disclosures (#2.4)	This is discretionary and not mandatory		

	<p>within the context of the word “encouraged” in the EITI Standard. Nonetheless the NWSG is working on ensuring full contract disclosure in the extractive industry. Besides the NSWG has started to discuss the issue and whilst explicit references were not made to a definite policy, inferences that there is no policy can be drawn from the EITI 2013 O&amp;G and solid minerals reports all within the context of “encouraged”.</p>	Meaningful progress	Satisfactory progress or N/A
State participation (#2.6)	<p>The 2013 EITI O&amp;G report provide extensive information on the statutory rules governing this requirement. There is enough disclosure of number of NNPC subsidiaries and the of the new JV created from IOC divestments and loans granted to oil companies by the FGN would be reported</p>	Meaningful progress	Satisfactory progress
<p>Response to Secretariat recommendations  There is work in progress by the NSWG to carry out new scoping study in O&amp;G that would include a definition of SOEs amongst other things.  All the recommendations are noted for implementation going forward.</p>			

## PART III – MONITORING AND PRODUCTION

### Production data – (#3.2.)

#### EITI-Initial assessment - Meaningful progress

*In oil and gas, the EITI Report provided production volumes for crude oil and natural gas and sufficient information to calculate oil export value, but not for natural gas. In solid minerals, the EITI Report provided production volumes for the eight most significant minerals by volume but with no values or pricing information.*

### NEITI'S RESPONSE

The EITI covers the extractive industry in Nigeria and this is identified as O&G and solid minerals. The O&G is the mainstay of the economy; it is gratifying to note as cited by the EITI Secretariat report that “Nigeria has gone beyond the basic requirement in reconciling oil and gas production lifting figures”. O&G accounts for over 99% of revenue accruing from the extractive industry.

Production values (information) for natural gas could not be sufficiently provided because gas pricing is a contentious issue in O&G in Nigeria. There is no clear-cut policy or formula for price determination. The gas-pricing regime has different prices for different industry users: (Table 8.1.4A) (pages 194-195). Furthermore, the report only provided gas supplied to NGC and NLNG (Federation portion), it has not captured the volume and values supplied to all end users hence the inability to compute the total value of gas supplied.

There's no clear pricing mechanism for sales as regards commodities in the solid minerals industry. Most of the commodities mined /quarried are consumed by the producers e.g. limestone by cement, granite by construction companies. The Ministry of Mines and Steel Development has not been regular in updating the pricing guideline used in royalty calculations.

Heeding the recommendations going forward, the NSWG shall “explore ways of using its EITI reporting to provide more accurate production volume figures, particularly in solid minerals, by exploring the potential for reconciliation of production volumes in the same way as in the oil and gas sector”.

However in terms of compliance with this requirement, Nigeria should be declared “satisfactory” in progress.

### Export data (#3.3)

## EITI-Initial assessment - Meaningful progress

*The EITI Reports provide crude oil and natural gas export volumes and oil export values, but not natural gas export values. They also provide the export values for the three largest solid mineral exports that accounted for roughly two thirds of solid mineral exports, but only export volumes for material companies rather than for total export.*

## NEITI'S RESPONSE

Value for gas supplied to NLNG (export) is provided in the NEITI 2013 O&G Report (Table 3.3.6) (page 64). However, the Auditors could not trace any transaction related to West African Gas Pipeline Company as the gas supplied to them is through the IOCs.

*Table 3 – NEITI's summary response to the initial assessment table: Monitoring and production*

EITI provisions	NSWG's response to Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions	NSWG assessment of progress with the EITI provisions
Production data (#3.2)	EITI Secretariat reports that "Nigeria has gone beyond the basic requirement in reconciling oil and gas production lifting figures". On the issue. The NSWG is working on explicit posting of the production of export value for natural gas and pricing information for solid minerals. these however do not affect the wholesomeness of compliance with this requirement, since there can be calculated from information in the	Meaningful progress	Satisfactory progress

	report		
Export data (#3.3)	Extensive data was provided in compliance with this requirement. Natural gas exports would be included in future EITI reports	Meaningful progress	Satisfactory progress
Secretariat recommendations The recommendations would be implemented going forward			

## 4. REVENUE COLLECTION

### [Comprehensiveness: \(#4.1\)](#)

#### EITI-Initial assessment - Meaningful progress

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

*In oil and gas, the 2013 EITI Report defined materiality thresholds for selecting material companies and revenue streams, listed material entities, described material revenue streams and identified omissions in reporting. However, the materiality threshold for selecting companies appears to have changed during the course of reporting without documented approval from the NSWG and the 2013 EITI Report does not appear to provide a comprehensive list of material companies. The reconciled revenue streams also excluded flows listed under Requirement 4.1.b, such as signature bonuses. The materiality of entities' reporting omissions were not assessed and the IA did not include an overall assessment of the comprehensiveness of the EITI Report. There were also gaps in government's full unilateral disclosure of revenues in material revenue streams, most notably in NIMASA's non-reporting. Finally, the nomenclature for certain payment streams appears outdated: while the 2013 EITI Report refers to NLNG dividends and loan repayments as a single revenue flow, we understand from NLNG's own corporate disclosures that it had completed its loan repayments on 15 December 2010.<sup>437</sup> In preparing Nigeria's next O&G EITI Report, the NSWG may wish to undertake an oil and gas scoping study to consider options for defining materiality thresholds. The NSWG should ensure that all revenue flows listed under Requirement 4.1.b are included in the scope of reconciliation and that the materiality threshold for selecting companies ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The list of material companies should also clearly be defined. The NSWG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. Finally, the NSWG should ensure that Nigeria's next O&G EITI Report includes the IA's assessment of the materiality of omissions, its*

*statement on the comprehensiveness of the EITI Report and that full unilateral government disclosure of material revenues from non-material companies is included. In solid minerals, the 2013 EITI Report defines materiality thresholds for selecting revenue streams and companies, as well as discrepancies, describes material revenue streams, lists material companies, identifies non-reporting companies (and their share of reported government solid minerals revenues) as well as government entities and provides part of the government's full unilateral disclosure. However, it does not define a materiality threshold for discrepancies and does not include an assessment of the materiality of all omissions in government reporting, nor the IA's assessment of the comprehensiveness of the EITI Report. Finally, most of the government's unilateral disclosures are not provided disaggregated by revenue stream. In preparing Nigeria's next SM EITI Report, the NSWG is encouraged to consider the IA's recommendation that it undertake a new solid minerals scoping study to assess different options for defining materiality. It should also agree a materiality threshold for discrepancies and ensure that the IA's assessment of the materiality of material entities' reporting omissions and its assessment of the comprehensiveness of the EITI Report be clearly included. Finally, the NSWG should ensure that full government unilateral disclosure of all material revenues from non-material companies be included, disaggregated by revenue stream.*

## NEITI'S RESPONSE

The observation on the change of the materiality threshold in the ToR and materiality threshold used during the course of reporting was an administrative error. The correct materiality threshold is .05% stated in the ToR and not .5%.

Going forward, NEITI will ensure proper assessment of the materiality threshold of flows with unilateral disclosures and broaden the scope of the report to capture all material revenue streams. The established materiality threshold for the audit reconciliation was a global (uniform) materiality for all flows which was pegged at USD 5 million for the O&G audit. Henceforth, NEITI would also strive to include in the IA's ToR the recommendations expressed in the EITI report.

However, based on the above, the NSWG is of the view that the assessment on materiality threshold for discrepancies and omissions should be adjudged "satisfactory" taking into consideration the organizations performance in setting a global materiality threshold for all identified revenue streams and its level of coverage.

### [Barter and infrastructure transactions: \(#4.3\)](#)

EITI-Initial assessment - Meaningful progress

*The International Secretariat's initial assessment is that Nigeria has made meaningful progress in meeting this requirement. This requirement does not appear to be applicable in the solid minerals sector. In oil and gas, the 2013 EITI Report discloses terms and assesses performance of barter of crude oil for refined products as well as some information on infrastructure provisions, although we note that these infrastructure provisions may social expenditures that have been mis-categorised. We note that NNPC has switched to a system of Direct-Sale-Direct-Purchase in late 2015 to replace OPAs and RPEAs, that NNPC's new management claims resulted in losses of around 30% per cargo and could save it USD 1 billion a year.<sup>500</sup> We also note that Trafigura published its 2013 payments to governments in EITI implementing countries, which revealed that it had transacted USD 2.5 billion worth of products with NNPC under RPEAs in 2013.<sup>501</sup> In preparing its next O&G EITI Report, the NSWG should assess the existence of infrastructure provisions during the scoping phase to ensure that companies' disclosures are categorised according to strict definitions.*

## NEITI'S RESPONSE

Separate templates were designed and sent for infrastructure projects and social expenditure to the covered entities. There must have been a mis-categorization along the line by the companies in view of the fact that there was no project attached to infrastructure in 2013. All these efforts outlined here are geared towards meeting the new standard. The level of progress should therefore, be considered satisfactory.

### Transportation: (#4.4)

EITI – initial assessment: Inadequate progress

*The International Secretariat's initial assessment is that Nigeria has made inadequate progress in meeting this requirement. This requirement is likely not applicable in the solid minerals sector, despite the lack of evidence of NSWG discussions of this issue. In oil and gas, while the 2013 EITI Report describes arrangements for the transportation and storage of crude oil by JVs in which NNPC holds a majority stake, there is no evidence of the NSWG's assessment of the materiality of transportation revenues such as crude handling charges. In preparing its next O&G EITI Report, the NSWG should assess the materiality of any such transportation revenues and disclose such revenues should they be assessed as material.*

## NEITI'S RESPONSE:

In the conventional sense, transportation revenues will be revenues accruing to government from the use of its infrastructure (e.g. pipelines, rail lines, etc.) by operating entities for a fee. Admittedly and acting in misconception, these revenues were not included in the IA's ToR, because it was assumed that since parties in a JV are partners, the option of government invariably obtaining revenues from the use of JV infrastructure in the form of crude oil handling charges were not part of the revenues to be considered especially where the use of the infrastructure was by the operating partner of the JV. This however, is a misconception because third-party usage of the infrastructure is revenue to the JV and consequently to be reported under the requirement.

Nonetheless, to the extent that the 2013 and 2012 reports provided a “*description of the pipelines and marine services, volumes transported, information on crude oil thefts and the “economic, environmental, social, health and governance impacts of crude oil thefts”*”, should suffice to bench mark the fulfillment of the requirement as “meaningful progress”

Issues recommended in the EITI Report would be incorporated in future IA's ToR by the NSWG.

#### [Direct subnational payments: \(#4.6\)](#)

##### EITI-Initial assessment - Meaningful progress

*The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. In some respects the NSWG has made efforts to go beyond Requirement 4.6 in publishing a standalone FASD Report, where the management and allocation of nine states' revenues were disclosed. The EITI Reports provide material companies' unilateral disclosures of payments to state and local governments and the 2007-2011 FASD Report provided nine of Nigeria's 36 states' disclosures of their direct subnational revenues. However, the NSWG does not appear to have considered the materiality of subnational direct payments, did not set a materiality threshold for such payments and did not reconcile such payments with subnational governments' receipts. In preparing its next EITI Reports, the NSWG should consider the materiality of direct subnational payments and clarify whether the three direct subnational payment streams disclosed only for the solid minerals sector (business premises, annual surface rent and tenement fees) are also applicable to oil and gas companies. Should the NSWG consider that it is not possible to reconcile material direct subnational revenues in its annual EITI reporting, it should submit a request for adapted implementation with the EITI Board.*

## NEITI'S RESPONSE

The 2013 O&G report considered payments made by companies to sub-national government entities in the form of NDDC levies, NCDMB payments, NESS fees, cabotage levies and NIWA payments (see section 3.4.1). Payments by NDDC and NCDMB were reconciled with nil balances. NESS payments and cabotage levies were captured for the first time in the 2013 O&G report but were not fully reconciled with government receipts. NIMASA, the agency responsible for cabotage fees, did not participate in the 2013 Audit. With the NESS fees, it was a case of receiving incomplete information from government. The materiality threshold for all payments was set at a uniform USD 5 million for all revenue flows without distinction by the NSWG. However, the materiality threshold for each stream/flow will be clearly spelt out in subsequent reports.

The 2013 O&G reported payments of PAYE and WHT made to the respective states of the Federation. However, reconciliations could not be done because data was not provided by receiving entities (States) in view of the provisions of the Constitution of the Federal Republic of Nigeria. As a result of the said Constitution, a reconciliation of material direct subnational revenues may virtually be impossible unless the state governments willingly consent to such reconciliation otherwise. Going forward, the NSWG would be seeking for adapted implementation of this requirement.

Taking into consideration the pioneering status of the NSWG with the 2007-2010 FASD report and the constitutional constraints, Nigeria should be adjudged to have performed “satisfactorily” in this requirement

#### Data timeliness: (#4.8)

##### EITI-Initial assessment - Meaningful progress

*The International Secretariat’s initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. The EITI Board did not take a decision on Nigeria’s request for a six-month extension to the reporting deadline for its 2013 EITI Reports. The request was not endorsed by the NSWG and the 2013 EITI Reports were published more than five months after the 31 December 2015 deadline. However, there is a case for concluding that Nigeria has made satisfactory progress. It could be argued that the extension request is irrelevant, because the reports were ultimately published within six months of the deadline. Any suspension resulting from the denial of the extension request would have been automatically lifted (see requirement 8.2). The EITI Standard does not specify whether, in these circumstances, the requirement is then considered met. The EITI Board may wish to clarify this matter. More broadly, there appear to have been consistent delays in Nigeria’s EITI reporting. In preparing its next EITI Reports, the NSWG should ensure that procurement of the IA is launched with sufficient time for completion ahead of the reporting deadlines. The NSWG may also wish to*

*explore ways of publishing sections of its EITI reporting separately, particularly those related to contextual information, and to explore means of mainstreaming EITI reporting through reporting entities' routine disclosures.*

## NEITI'S RESPONSE

The NSWG, in response to the assessment of the EITI report that 'Nigeria has made meaningful progress towards meeting this requirement,' would rather rely on the fourth sentence in the same paragraph 1 of the initial assessment on page 137 i.e. *"however, there is a case for concluding that Nigeria has made satisfactory progress"* to justify the NSWG's opinion that Nigeria should have been as assessed as "satisfactory". The reasons for this assertion can be found in:

- i. With the enactment of the NEITI Act 2007, Nigeria could easily have justified the preparation of its EITI audit reports to commence from 2007. But given the need to provide historical background to the financial, physical and process transparency of the O&G sector of the extractive industry, Nigeria decided to commence its first audit reports to cover 1999-2004, a period before the NEITI Act. Timeliness at the onset had to go with the historical antecedent in understanding the issues of transparency and accountability in the Nigerian O&G sector.
- ii. Whilst it is a concern shared by the NSWG that presently EITI reports may be a bit late, any fears that the 2013 EITI reports are *"outdated upon publication and that they thus studied the reports out of interest, rather than as part of their business operations"* within the context of the requirement begs the question of the timeliness of the reports. The question is, are the reports within the timelines provided by the EITI Standard? The answer is yes.
- iii. The relevance of the request of extension for the 2013 reports was obsolete because the reports were *"ultimately published within six months of the deadline"* i.e. 31<sup>st</sup> December 2015 to 30<sup>th</sup> June 2016: Requirement #8.2.  
Besides the silence of the EITI Board in not notifying Nigeria of its decision on Nigeria's request for a six-month extension because of the dissolution of the previous NSWG by the government can be deemed acquiescence to the request and so the issue of untimeliness would therefore not arise in the publication of the EITI 2013 reports.
- iv. It is an unequivocal fact that the procurement process in Nigeria is tedious and cumbersome. It is statute based: Public Procurement Act 2007. The NSWG has always endeavoured to launch the procurement process with sufficient time for the completion of the EITI reports but the process is encumbered by the further need for budgetary allocation to be in place before any processes concluded by the NSWG for the procurement of the IA can be concluded. In other words, even when the NSWG has completed its bit, the procurement may be held back because of budgetary allocation as a result of the well-known delays in passing the national budget.

However, the NSWG would fully heed the recommendation in the last sentence of the initial assessment i.e. *"publishing sections of its EITI reporting separately, particularly those related to*

contextual information, and to explore means of mainstreaming EITI reporting through reporting entities' routine disclosures".

#### Data quality and assurance: (#4.9)

##### EITI-Initial assessment - Meaningful progress

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

*The NSWG's involvement in drafting the ToR for the O&G and SM EITI Reports is covered under Requirement 1.4 on MSG oversight, but we note that reporting entities and stakeholders typically provide input at the level of reporting templates rather than the ToR. We also note significant deviations from the ToR for the IA in the final 2013 EITI Reports, particularly for oil and gas and quality assurance procedures, with no evidence of NSWG approval of these deviations in meeting minutes. The NSWG's agreement on quality assurance procedures also consistently precedes the IA's review of auditing procedures, both statutorily and in practice, and it is unclear from the EITI Reports whether all reporting entities had their financial statements for the year under review audited to international standards. For both oil and gas as well as solid minerals, the absence of mechanisms to ensure the confidentiality of information pre-reconciliation within the NEITI Secretariat, which has undertaken data collection since the 2012 EITI Reports, is also a concern, although there is no evidence of any instances when the EITI disclosures were tampered with. In oil and gas specifically, the ToR for the IA for the 2013 EITI Report deviates from the standard ToR approved by the EITI Board in omitting reference to transportation revenues and specifically excluding subnational governments from the scope of reporting. The 2013 O&G EITI Report provided an overview of statutory audit procedures for government entities, of the general quality assurance procedures for EITI reporting, an assessment of the reconciliation coverage, descriptions of quality assurance omissions by reporting entities clear sourcing of most contextual information, a review of follow-up on past EITI recommendations and a set of new recommendations. However, the 2013 EITI Report did not provide an overview of statutory audit procedures for companies, nor deviations in auditing practices for either companies or government entities. The procedures adopted to ensuring the reliability of data in the EITI Report were not described in detail and the 2013 EITI Report did not provide an assessment of whether the payments and revenues were subject to credible, independent audit, applying international auditing standards. Finally, the IA did not include an assessment of the overall reliability of information in the 2013 EITI Report and there are instances where contextual information does not appear to be clearly sourced.*

*In solid minerals, the 2013 EITI Report provided an overview of statutory audit procedures for both companies and government entities, described the quality assurance procedures for EITI reporting, provided the coverage of reconciliation, quantified the number of companies and listed the government entities that did not provide the required quality assurance procedures, consistently sourced the contextual information and included a review of follow-up on past EITI*

*recommendations as well as a set of new recommendations. However, the 2013 EITI Report did not describe any deviations in practice from statutory audit procedures for either companies or government entities, did not list the reporting companies who omitted elements of the required quality assurance procedures nor assessed the materiality of omissions by either companies or government entities. Finally, the IA did not include a clear assessment of the reliability of information in the 2013 EITI Report.*

*In preparing its next EITI Reports, the NSWG should ensure that a review of actual auditing practices by reporting companies and government entities be conducted before agreeing procedures to ensure the reliability of EITI information. The NSWG should also ensure that the ToR for the IA is in line with the standard ToR approved by the EITI Board and that its agreement on any deviations from the ToR in the final EITI Reports be properly documented. The NSWG should also ensure that the IA include an assessment of whether the payments and revenues disclosed in the EITI Reports were subject to credible, independent audit, applying international auditing standards.*

## NEITI'S RESPONSE

The issue of consultation on inputs from stakeholders has been exhaustively discussed under MSG oversight Requirement 1.3 t in our earlier response to the EITI assessment. For the ease of reference, we reiterate as follows: "It is therefore NEITI's considered opinion that once an issue is discussed and adopted by the NSWG, which is made up of representatives of all the stakeholders including CSOs, such issue is deemed to have enjoyed the consultations of stakeholders". The ToR is usually discussed at the NSWG meetings where the respective representatives of the stakeholders are present and do present their inputs to the ToR. Secondly the deviation from the ToR particularly for O&G was occasioned by the recognition of the need to provide a more practical report against the deadline for the report and the fact that the NSWG meets only a few times in a year to approve or ratify the changes in the ToR to the IA. Going forward, the use of board circulars would be utilized for the NSWG approval. Thirdly, all NEITI staff in the technical department or any other department owe a common law duty of care and loyalty to keep confidential matter relating to the operation of NEITI confidential, excepting applicable laws of disclosures. This is further entrenched in the acknowledgement and acceptance letters of employment which has to be signed by each employee accepting amongst other things the terms set out in the employee handbook. Article 5.1.1 of the employee handbook under the section on conflict of interest states "that information obtained because of employment at NEITI that is not generally available to the public should not be communicated to any individual(s) or organisation(s) outside NEITI. NEITI reserves the exclusive right to determine what information can and cannot be communicated outside the organisation". The NSWG is of the opinion that this covers the disclosure of confidential matters including data collected for the EITI reports. Fourthly, the practice on the part of government accounts is that the Auditor General of the Federation provides the quality assurance mechanism confirming that the records were audited

by the Auditor General. On the part of the companies, audited financial statements were supplied to the IA which was used to confirm that the information provided tallied with their books and records, and furthermore that the books and records tallied with the audited financial statements (AFS) conducted to IFRS Standard. However, in future reports, NSWG would ensure that an overview of the procedures used in the quality assurance will be fully described.

Table 4 - NEITI's summary response to the initial assessment table: Revenue collection

EITI provisions	NSWG's response to Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions	NSWG assessment of progress with the EITI provisions
Comprehensiveness (#4.1)	The materiality threshold did not change between the ToR and course of the reporting. The correct materiality threshold remained at .05%: it was an error. Furthermore the established materiality threshold was uniform for all revenue flows at USD 5 million.	Meaningful progress	Satisfactory progress
Barter and infrastructure transactions (#4.3)	Separate templates were sent for infrastructure projects and social expenditure but in filling the templates the companies mis-categorised them	Meaningful progress	Satisfactory progress
Transportation (#4.4)	Whilst admittedly some information was not provided due to a misconception of revenue accruing under this requirement, nonetheless, the description of the pipelines and marine services, volumes	Inadequate progress	Meaningful progress

	transported, information on crude oil thefts and the “economic, environmental, social, health and governance impacts of crude oil thefts” were made.		
Subnational direct payments (#4.6)	The materiality threshold for all payments is a uniform USD 5 million. Subnational direct payment could not be reconciled due to constitutional constraints.	Meaningful progress	Satisfactory progress
Data timeliness (#4.8)	The delays in the reports are mainly caused by socio-political factors beyond the immediate control of the NSWG.	Meaningful progress	Satisfactory progress
Data quality (#4.9)	The deviation was for practical reasons that were within the knowledge of the NSWG, although not officially approved by the NSWG and the report was conducted in accordance with international auditing standards and best practices for both government and companies.	Meaningful progress	Satisfactory progress
<p>Secretariat’s recommendations</p> <p>The scoping studies for both O&amp;G and solid mineral are works in progress by the NSWG in line with recommendations 1 and 2.</p> <p>On recommendation 3, the NSWG shall continue to endeavour to commence the procurement of the IA on time, but within statutory constraints</p>			

## 5. REVENUE MANAGEMENT

### Sub-national transfers: (#5.2)

#### EITI-Initial assessment - Meaningful progress

*The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. The 2013 EITI Reports provided the general formula for calculating subnational transfers, but not the actual formula used for calculating transfers to individual states and LGAs. The EITI Reports did not describe that FAAC and derivation transfers to states and LGAs were first transferred to states, who were then expected to transfer their respective LGAs' shares from the aggregate sums received, even though this appears to be a source of concern for several CSOs. Furthermore, discrepancies between actual and calculated transfers were not disclosed in the EITI Reports. While the EITI Reports included a detailed description of FAAC and derivation transfers, they did not make reference to the NSWG's discussion of the materiality of subnational transfers. While the 2013 O&G EITI Report referred to monthly FAAC reports, it did not provide guidance on how to access these reports, although we note that monthly FAAC reports, providing budgeted FAAC allocations and actual FAAC disbursements, are available with a four-month time-lag on the MoF website.<sup>623</sup> Finally, amnesty payments to former Niger Delta militants appear to have been mis-categorised as subnational transfers in the 2013 O&G EITI Report since these are transferred from Federal Government entities (the Presidency and the Federal Ministry of Niger Delta Affairs) to private individuals directly and were not linked to extractive industry revenues. In preparing its next EITI Reports, the NSWG should assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers linked to extractives revenues (i.e. 13% derivation transfers) to individual states and LGAs, disclose any material subnational transfers and any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity. In light of NEITI Secretariat's participation in monthly FAAC allocation meetings as observers and the May 2016 Fiscal Sustainability Pact, the NSWG may also wish to consider reconciling subnational transfers and disclosing any material discretionary or ad-hoc transfers.*

### NEITI'S RESPONSE

Most of the issues raised are constitutional matters that are beyond the powers of the NEITI Act or the EITI Standard. Nonetheless, the 2007-2011 FASD has done a lot to enlighten Nigerians on the issue of subnational transfers.

Page 49 of the FASD 2007-2011 (produced below) showed the actual formula for calculating transfers to individual states and LGAs.

ACTUAL DISBURSEMENT TO STATES AND LGAS

The Horizontal Formula:

The horizontal formula is the adopted sharing arrangement for the disbursement of Federation Revenue to each of the 36 States of the Federation. This formula is also used for the disbursement to each of the 774 LGCs of the Federation.

The States and the LGCS further shared the revenue due to them using the horizontal formula; the percentages due to each State/LGC were determined by RMAFC while the criteria used were as specified in the Constitution of the Federal Republic of Nigeria. The table below shows the criteria and their corresponding percentages:

SHARING CRITERIA	% ALLOTTED	BREAKDOWN OF CRITERIA	RATIO
Equality	40%		1.00 (40%)
All entities share 40% of the total allocation equity			
Social Development Factor (SDF)	10%		
10% of total allocation is shared based on Social Development Factor (SDF). This allocation is further divided into several indices of SDF based on the survey of the Federal Bureau of Statistics.		Primary Enrolment	0.24 (10%)
		Direct Secondary / Commercial Enrolment	0.08 (10%)
		Inverse Secondary/Commercial Enrolment	0.08 (10%)
		Hospital beds	0.30 (10%)
		Water Supply Spread	0.15 (10%)
		Rainfall proportion	0.15 (10%)

Population	30%		
30% of the total allocation is shared based on the ratio of the population of individual entity to the total population		Actual allocation to State 'A' is calculated thus: (Population of State A/Total population of the 36 States)X(30% of amount allocated to States)	
Land Mass and Terrain	10%		
10% of the allocation is shared based on the land mass/Terrain of each entity. This 10% is further divided into 2 portions – a portion for Land Mass and the other portion for Terrain		Land Mass	0.50 (10%)
		Terrain	0.50 (10%)
Internally Generated Revenue (IGR) Effort	10%		
The last 10% of the allocation is shared based on the IGR Effort of individual entity. Three quarters of the 10% is shared equally while the remaining one quarter is shared based on the individual IGR effort.		Equality on IGR	0.75 (10%)
		IGR Effort	0.25 (10%)
	100%		100%

To the extent that it relates to accountability i.e. how the revenues from the extractive industry have been utilized, it is very paramount to conduct future FASD. The conduct of future FASD

reports has been hampered by the lack of funds. However, the NSWG would be asking for adapted implementation of this requirement with the conduct of future FASD. Meanwhile, in view of the efforts of the NSWG in conducting the pioneer FASD in the comity of EITI-implementing countries and the obvious constitutional challenges the Nigeria should be categorized as “satisfactory”. See table below.

*Table 5 - NEITI’s summary response to initial assessment table: Revenue management and distribution*

EITI provisions	NSWG’s response to Summary of main findings	International Secretariat’s initial assessment of progress with the EITI provisions	NSWG assessment of progress with the EITI provisions
Sub-national transfers (#5.2)	Some of the issues covered under this requirement are already covered by the FASD and are constitutional in nature. The FASD report is the pioneer report directly on accountability and the NSWG would continue to improve on it and would also be seeking adapted implementation in the future.	Meaningful progress	Satisfactory progress
Secretariat’s recommendations The NSWG would heed the recommendations within the confines of the Nigerian requirements			

## 6. SOCIAL AND ECONOMIC SPENDING

### Mandatory social expenditure: (#6.1.a)

EITI-Initial assessment - Meaningful progress

*The International Secretariat’s initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. We understand from stakeholders that this requirement is not*

*applicable in the oil and gas sector, although the 2013 EITI Report did not explicitly state that mandatory social expenditures did not exist in the oil and gas sector. The disclosure of voluntary social expenditures in oil and gas is encouraging, although the mis-categorisation of certain social expenditures as infrastructure provisions and quasi-fiscal expenditures is of concern. In solid minerals, the 2013 EITI Report disclosed companies' unilateral disclosures of both mandatory and voluntary social expenditures, disaggregated between cash and in-kind payments, although the data was not disaggregated by project and the identity of beneficiaries was not disclosed. In preparing its next EITI Reports, the NSWG should clarify whether mandatory social expenditures exist in the oil and gas sector and ensure that reporting of mandatory social expenditures be disaggregated by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The NSWG may also wish to consider the feasibility of reconciling mandatory social expenditure disclosures.*

## NEITI'S RESPONSE

Although this requirement is not applicable to the O&G, the EITI Secretariat report acknowledging the effort of the NSWG that was employed in disclosing voluntary social expenditures in the sector as "encouraging", and the admission that 2013 EITI solid minerals report "disclosed companies' unilateral disclosure of both mandatory and voluntary social expenditure, disaggregated between cash and in-kind payments" should suffice for satisfactory progress

### [SOE quasi-fiscal expenditures \(#6.2\)](#)

#### EITI-Initial assessment - Meaningful progress

*The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. This requirement is not applicable in solid minerals. While the 2013 O&G EITI Report provided NNPC-NAPIMS' disclosures of quasi-fiscal expenditures undertaken by NNPC JVs (and one wholly-private company), none of the stakeholders consulted considered these JVs to be SOEs. These expenditures appear to be social expenditures that have been mis-categorised. While the 2013 EITI Report also disclosed subsidy payments for refined products, it discloses the share covered by the FGN budget, the share retained at source by NNPC but not the share of subsidies absorbed by NNPC without compensation. Finally, the NSWG does not appear to have considered whether the lack of penalty for late payment of NNPC oil sales,*

*certain buyers' discretion in selecting the price at which they purchased NNPC oil and other expenditures such as pipeline security and maintaining strategic national reserves constituted quasi-fiscal expenditures. In preparing its next O&G EITI Report, the NSWG should undertake a review of all quasi-fiscal expenditures undertaken by NNPC and its subsidiaries. This is a particularly important issue given ongoing reforms at NNPC and the SOE's interest in improving public understanding of its non-commercial activities.*

## NEITI'S RESPONSE

NEITI is of view that the assessment here should be satisfactory based on these reasons:

- i. SOE quasi-fiscal expenditure is not applicable to solid minerals.
- ii. O&G, particularly NNPC, has no clear-cut expenditure that fits the quasi -fiscal profile other than the ones stated in Appendix 3.6.2 of the report.
- iii. The 2013 EITI O&G report provided what was claimed by NNPC as subsidy, what was deducted at source by NNPC, and what was processed and approved by PPPRA. Please see sections 3.3.5.1, page 62/63 of the report.
- iv. Shares of subsidies absorbed by NNPC are compensated.

### [Economic contribution \(#6.3\)](#)

#### EITI-Initial assessment - Meaningful progress

*The International Secretariat's initial assessment is that Nigeria has made meaningful progress towards meeting this requirement. In oil and gas, the 2013 EITI Report provided the sector's size relative to GDP, but not in absolute terms, its contribution to government revenues in absolute and relative terms, the value of exports of crude oil, but not of natural gas, and an estimate of its share of total exports and an estimate of sector employment in absolute and relative terms. It also provided an overview of informal activities and of the location of activities. However, the low estimate of sector employment is a concern in light of stakeholders' comments. In solid minerals, the 2013 EITI Report provided the sector's size in absolute terms and relative to GDP, its share of government revenues in absolute but not relative terms, its share of exports in absolute and relative terms as well as its share of employment in relative but not absolute terms. It also provided an overview of informal activities and some information on the location of mining activities. In preparing its next EITI Reports, the NSWG should liaise with relevant government entities to provide the size of the oil and gas sector in absolute terms, the solid mineral sector's share of government revenues in relative terms, the value of oil and gas exports in absolute and relative terms and the size of solid minerals employment (for the year(s) under review) in absolute*

terms. The NSWG may also wish to agree a definition of oil and gas employment, considering whether to include non-permanent staff for instance.

## NEITI'S RESPONSE

The observations of the EITI report are duly noted and same shall be implemented in future reports.

Table 6 - NEITI's summary response to initial assessment table: Social and economic spending

EITI provisions	NSWG's response to Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions	NSWG assessment of progress with the EITI provisions
Mandatory social expenditure (#6.1.a)	The NSWG ensured that meaningful data was provided by the EITI 2013 solid mineral report. This requirement is not applicable to O&G	Meaningful progress	Satisfactory progress
SOE quasi-fiscal expenditure (#6.2)	This requirement is not applicable to solid minerals and the NNPC has no definite expenditure that is quasi-fiscal	Meaningful progress	Satisfactory progress
Contribution of the extractive sector to the economy (#6.3)	The EITI 2013 report provided the bulk of the data required	Meaningful progress	Satisfactory progress
Secretariat's recommendations. The NSWG shall endeavour to fulfill the recommendations in the future.			

## PARTICULAR ATTENTION TO CERTAIN ISSUES TO BE CONSIDERED BY VALIDATION

The validation is invited to pay particular attention to the following in assessing certain objectives or activities in accordance with the NSWG work-plan for the relevant period of validation:

1. Constraints of the NEITI Act

NEITI, besides being an integral part of the international EITI, is also a national legal entity created by the NEITI Act 2007. However, in spite of the great gains achieved by NEITI since the

Act was enacted, the NSWG has identified some gaps which are not in consonance with the EITI Standard and general need review. Some of these gaps have made it literally impossible to fully effect the Standard in the implementation of the EITI process in Nigeria because the NEITI Act as a national law takes precedence over the EITI Standard, which is not a domesticated treaty. The NSWG is proposing an amendment of the NEITI Act.

## 2. Lack of funds

Funding has been one of the major challenges to NEITI in the achievement of its objectives. The NEITI budgetary allocation from the Federal Government is not sufficient to take care of the planned activities of the work-plan or not released on time, and as such NEITI depends on grants from donor agencies to supplement budgetary allocation. This has greatly affected NEITI's operations including capacity-building programmes for stakeholders.

## 3. The dependence on political will

This might sound like a paradox because on the one hand EITI requires autonomy from the executive arm of government as much as possible, whilst on the other hand NEITI would need to rely on strong political will from the government to tackle the anomalies in the extractive industries. Political will go further than just creating the Inter Ministerial Task Team but ensuring that:

- constant positive pronouncements are made about the implementation of the EITI and
- recommendations of the NEITI reports are implemented by the IMTT.

On a final note, it is important to make the point that it is intriguing that despite clear acknowledgements of the ground-breaking efforts of Nigeria among EITI-implementing countries and ample evidence of enormous political will and impact on reforms in the country, NEITI is not rated to have performed beyond expectations on not even ONE of the indicators. In many instances of the ratings being contested, there are jarring dissonances between the narratives, the evidence presented, and the rating given. There are ample instances of contradictions and misrepresentations that we would rather not dwell on. This is why we adopted a point-by-point rebuttal to ratings we want reconsidered. While, there is definitely a need for a standard that is uniformly applied, actual implementation cannot be divorced from the national contexts, unambiguous innovations, the need for diversity approaches, and the impact on the ground. While not claiming undue exceptionalism, we hope that the points raised in this response would be taken into consideration in arriving at the final assessment of Nigeria.