

Extractive Industries Transparency Initiative (EITI)

## **Validation of Nigeria**

### **Draft assessment by the EITI International Secretariat**

1 October 2018

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## 1. Summary

Nigeria's second Validation commenced on 11 July 2018. The EITI International Secretariat has assessed the progress made in addressing the 16 corrective actions established by the EITI Board following Nigeria's first Validation in 2016<sup>1</sup>. The 16 corrective actions relate to:

1. Civil society engagement (Requirement 1.3)
2. MSG oversight (Requirement 1.4)
3. Workplan (Requirement 1.5)
4. License allocations (Requirement 2.2) and license registers (Requirement 2.3)
5. Contract disclosure (Requirement 2.4)
6. State participation (Requirement 2.6), including quasi-fiscal expenditures (Requirement 6.2)
7. Production data (Requirement 3.2) and export data (Requirement 3.3)
8. Comprehensiveness (Requirement 4.1)
9. Barter and infrastructure agreements (Requirement 4.3)
10. Transport revenues (Requirement 4.4)
11. Direct subnational payments (Requirement 4.6)
12. Data timeliness (Requirement 4.8)
13. Data quality (Requirement 4.9)
14. Subnational transfers (Requirement 5.2)

<sup>1</sup> <https://eiti.org/validation/nigeria/2016>

15. Social expenditures (Requirement 6.1)
16. Contribution to the economy (Requirement 6.3).

**The Secretariat’s assessment is that Nigeria has fully addressed 10 of the 16 corrective actions, having made “satisfactory progress” on the corresponding requirements, and has made “meaningful progress” with considerable improvements in addressing the other six corrective actions.** Should the Board choose to exercise its discretion in accepting to take account of new information published subsequent to the commencement of the second Validation (11 July 2018) related to Requirements 2.2, 2.6, 4.1, 4.9 and 6.1, it could be reasonably concluded that 14 of the 16 corrective actions had been fully addressed and that Nigeria had made meaningful progress in implementing the EITI Standard, with considerable improvements across several individual requirements. The draft assessment was sent to the National Stakeholders’ Working Group (NSWG) on 2 October 2018. Following comments from the NSWG expected on 23 October 2018, the assessment will be finalised for consideration by the EITI Board.

## 2. Background

Nigeria was accepted as an EITI Candidate in September 2007 and was designated as compliant with the EITI Rules in March 2011. The first Validation of Nigeria against the EITI Standard commenced on 1 July 2016. On 11 January 2017, the EITI Board found that Nigeria had made meaningful progress in implementing the 2016 EITI Standard. Sixteen corrective actions were identified by the Board, pertaining to the following requirements: civil society engagement (#1.3), MSG oversight (#1.4), workplan (#1.5), license allocations (#2.2), license registers (#2.3), contract disclosure (#2.4), state participation (#2.6), including quasi-fiscal expenditures (#6.2), production data (#3.2), export data (#3.3), comprehensiveness (#4.1), barter and infrastructure agreements (#4.3), transport revenues (#4.4), direct subnational payments (#4.6), data timeliness (#4.8), data quality (#4.9), subnational transfers (#5.2), social expenditures (#6.1) and contribution to the economy (#6.3). The Board asked Nigeria to address these corrective actions to be assessed in a second Validation commencing on 11 July 2018.

Nigeria has undertaken a number of activities to address the corrective actions:

- Having approved the ToR for the 2014 and 2015 solid minerals (SM) EITI Reports at its 6 December 2015 meeting, the NSWG appointed Amedu Onekpe & Co (Chartered Accountants) as the IA on 22 August 2016.
- NEITI published its 2017-21 Strategic Plan on 8 December 2016. The Civil Society Action Plan, focused on deepening civil society engagement in the EITI in Nigeria, was agreed by the NSWG on 2 March 2017. While widely circulated within the constituency beforehand, the action plan was only published on the NEITI website on 20 July 2018.
- Having approved the ToR for the IA for the 2015 oil and gas (O&G) EITI Report at its 13 March 2017 meeting, the NSWG appointed Haruna Yahaya & Co (Chartered Accountants) as the IA on 31 July 2017.
- NEITI published the 2015 SM EITI Report in November 2017 and the 2015 O&G EITI Report in December 2017, each with a separate set of appendices published separately on its website.
- NEITI published the NSWG’s per diem policy (allowances) on its website in December 2017. A status report prepared by the Civil Society Steering Committee (CSSC) on the constituency’s efforts to address the corrective action related to Requirement 1.3 published in March 2018.
- Following pre-Validation workshops on the basis of the 2015 EITI Reports in early 2018, NEITI subsequently launched a ‘Extractives value chain’ section of its website in March-April 2018.

While following the categories of the five main groups of EITI Requirements, the new section of the website focuses only on oil and gas. This section included a repository of newly-disclosed documents including a copy of the DPR's register of 99 Oil Mining Leases (OMLs) and 65 Oil Prospecting Leases (OPLs) active in 2015, field legal contract data submitted by oil and gas companies for 2015, the process for awarding OPLs in the 2007 oil and gas licensing round, a clarification of contract disclosure policy and practice, and around 30 other documents.

- NEITI published its 2018 country workplan on 5 March 2018. On 26 April 2018, NEITI published NSWG meeting attendance charts on its website, as well as highlights of NSWG meetings in May 2018. On 11 April 2018, NEITI published both the Stakeholder Analysis and Mapping report and the CSSC's Framework for Sharing Information with Constituencies on its website. The minutes of CSSC meetings were published gradually on the NEITI website from 11 May to late August 2018.
- Following a gap assessment from the International Secretariat, the NSWG met on 13 June 2018 to approve a host of documents related to clarifying its scoping and assurance decisions for the 2015 EITI Reports. NEITI published its 2017 annual progress report on 26 June 2018. In early July (prior to 11 July), NEITI published over a dozen new standalone appendices, in many ways superseding the information provided in the 2015 EITI Reports. The supplementary appendices covered areas including reconciliation of physical flows, license data, export and domestic sales, pricing of Federation crude oil, NEITI's materiality decisions for the 2015 reconciliation, the NSTP-JDZ and NLNG exports, as well as a supplementary report and new appendices to the 2015 SM EITI Report. NEITI continued to make updates to the 'Extractives value chain' section of its website until the commencement of the second Validation on 11 July 2018.
- NEITI published a range of new documents related to civil society outreach and communications on 10-11 July 2018, including zonal outreach reports and the NSWG's Communications Policy Guideline for the NEITI Secretariat.
- Subsequent to the commencement of the second Validation, NEITI published a range of new documents related both to multi-stakeholder oversight and to technical aspects of reporting. Over 20-26 July 2018, NEITI published the revised MoU between NSWG and the CSSC, the Policy Guideline on Appointment of CSOs to the NSWG, the Addendum to the Board Charter for the NSWG and the MoU between NEITI and the Companies' Forum. Stakeholders confirmed that these were agreed and circulated prior to commencement of Validation.
- Between 25 July and 6 August 2018, NEITI published over a dozen new documents related to the 2015 EITI Reports, including the government's full unilateral disclosure of 2015 solid minerals revenues, a comprehensive list of all PSCs active in 2015, an updated version of the DPR's 2007 licensing round guidance, DPR's checklist for assessing requests for conversions of Oil Prospecting Licenses (OPLs) into Oil Mining Licenses (OMLs), the full list of original bidders for the three OPLs awarded in 2015, an updated version of the DPR license register (for 2015), and a description of the process of transferring participating interests in JDZ-Blocks.

The following section addresses progress on each of the corrective actions. The assessment is limited to the corrective actions established by the Board and the associated requirements in the EITI Standard. The assessment follows the guidance outlined in the Validation Guide<sup>2</sup>. In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as "satisfactory progress" or "beyond" in the 2016 Validation. While these requirements have not been comprehensively assessed, in the Secretariat's view there is no

<sup>2</sup> [https://eiti.org/sites/default/files/documents/validation-guide\\_0.pdf](https://eiti.org/sites/default/files/documents/validation-guide_0.pdf)

evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

### 3. Review of corrective actions

As set out in the Board decision on Nigeria's first Validation, the EITI Board agreed 16 corrective actions.<sup>3</sup> The Secretariat's assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on the 2018 work plan, the 2014 and 2015 EITI Reports, the 2016 and 2017 annual progress report and, minutes of the NSWG meetings from January 2017 to July 2018, alongside various documents submitted by NEITI to the International Secretariat, e-mail correspondence, and stakeholder consultations (in-person and via skype).

#### 3.1 Corrective action 1 (#1.3)

In accordance with requirement 1.3a, the NSWG should ensure that civil society is fully, actively and effectively engaged in the EITI process. In accordance with requirement 1.3eii, civil society should ensure that civil society organisations outside the multi-stakeholder group are substantially engaged in the design, implementation, monitoring and evaluation of the EITI process.

In accordance with requirement 8.3.c.i, the civil society constituency is requested to develop and disclose an action plan for addressing the deficiencies in civil society engagement documented in the initial assessment and validator's report within three months of the Board's decision, i.e. by 11 April 2017.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. The Validation did not identify any breaches of the Civil Society Protocol. Civil society in Nigeria was considered able to engage in public debate without restraint, coercion or reprisal, and its representatives were seen as able to operate freely in relation to the EITI process. The Validation assessed that, through the Civil Society Steering Committee (CSSC), NEITI had developed a structure to ensure that civil society representatives were able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process. However, despite a favourable framework for civil society engagement, Validation found that civil society on the NSWG did not in fact function as a link between the EITI and the broader civil society constituency. Outside of EITI Report dissemination, there was no evidence that the broader constituency was consulted or otherwise engaged in the design, implementation, monitoring or evaluation of the EITI process. Validation also highlighted concerns that civil society did not consider the existing platforms for engagement with the NSWG as adequate, choosing instead to communicate with NEITI through public demands and press releases. The Validation considered that these weaknesses had affected the broader civil society constituency's engagement in EITI implementation.

<sup>3</sup> EITI (January 2017), 'EITI Board decision on Nigeria's 2016 Validation', accessed [here](#) in July 2018.

## Progress since Validation

NEITI responded by developing a Civil Society Action Plan and publishing implementation reports<sup>4</sup> monitoring progress. In addition, NEITI publishes CSSC meeting minutes.<sup>5</sup> A stakeholder analysis report was published in 2017<sup>6</sup>, including a Communications Policy Guideline<sup>7</sup> for the NSWG and the NEITI Secretariat. Lastly, NEITI developed and published a Freedom of Information (FOI) Portal<sup>8</sup> on the NEITI website.

Two documents, although distributed in hard-copy and publicly disseminated, were published subsequent to the start of the second Validation. The *Civil Society Action Plan: Deepening Civil Society Engagement of the EITI in Nigeria*<sup>9</sup> which was published on 20 July 2018, as was the *Memorandum of Understanding – Revised 2017 – between NSWG and Civil Society Organisations in Nigeria*<sup>10</sup>.

**Action plan:** Subsequent to the EITI Board’s decision on the first Validation, NEITI and the Civil Society Steering Committee (CSSC) established a sub-committee of five CSOs<sup>11</sup> to develop the Civil Society Action Plan addressing gaps and corrective actions related to civil society engagement from Validation. Stakeholder consultations and meeting minutes show close collaboration and coordination among stakeholders in its implementation. The action plan was approved by the CSSC on 2 March 2017<sup>12</sup> and communicated to the wider NSWG within three months of the Board decision.<sup>13</sup> While the original document was not published ahead of the 11 July 2018 deadline for Validation, several progress reports for implementing the actions were published on NEITI’s website. Whilst only publicly disclosed with the final implementation progress report published 10 July 2018, the CSO action plan was regularly consulted by CSOs to assess progress in implementation over time.

The action plan included three objectives<sup>14</sup> and eleven timebound activities. Under *Objective 1*, related to gaps in CSO engagement, the NSWG commissioned and approved a Stakeholder Analysis and Mapping<sup>15</sup> study, published in June 2017. By describing broader outreach and dissemination activities, the study also aimed to broaden CSO representation and coordination within the CSSC – bridging the gap between urban- and rural-based CSOs. The study identified approximately 60 organisations and informed the development of the deliverables under objective 2 below.

Under *Objective 2*, related to more effective dissemination and consultation with the CSO constituencies, the CSSC adopted a framework for information sharing.<sup>16</sup> The framework, signed by CSSC Chairman and

<sup>4</sup> NEITI (May 2018), ‘CSO Remedial Issues on EITI Validation Report on Nigeria: #1.3 a Status Report on Steps Taken to Address the Issues’, accessed [here](#) in June 2018.

<sup>5</sup> See CSSC meeting minutes under: NEITI (2018), ‘Citizen participation’, accessed [here](#) in July 2018.

<sup>6</sup> NEITI (June 2017), ‘Stakeholder Analysis and Mapping’, accessed [here](#) in July 2018.

<sup>7</sup> NEITI (2017), ‘Communications Policy Guideline for the NSWG and the NEITI Secretariat’, accessed [here](#) in July 2018.

<sup>8</sup> NEITI (2018), ‘Freedom of Information (FOI) Portal’, accessed [here](#) in June 2018.

<sup>9</sup> NEITI (March 2017), ‘Civil Society Action Plan: Deepening Civil Society Engagement of the EITI in Nigeria’, accessed [here](#) in July 2018.

<sup>10</sup> NEITI (March 2017), ‘Memorandum of Understanding – Revised 2017 – between NSWG and Civil Society Organisations in Nigeria’, accessed [here](#) in July 2018.

<sup>11</sup> The five CSOs on the CSSC sub-committee were Dr Muttaka Usman (representative from academia), Obas Esiedesa (representative from media), Ms Abiodun Beiyewu Teru (representative from CSOs focused on solid minerals), Ms Emem B. Okon (representative from women’s organisations) and Ms Ekaete Judith Umoh (representative from organisations focused on persons with disabilities).

<sup>12</sup> NEITI (2017), ‘CSSC Meeting Minutes for 2 March 2017’, accessed [here](#) in July 2018.

<sup>13</sup> NEITI (2017), ‘NSWG Meeting Minutes for 13 March 2017’, unpublished, provided by NEITI Secretariat in July 2018.

<sup>14</sup> The three objectives of the CSO action plan are: Broaden the space of CSOs participation in the EITI process in Nigeria; Effective Communications by CSOs and their respective constituencies; and Development of a framework for wider CSO participation.

<sup>15</sup> NEITI (June 2017), ‘Stakeholder Analysis and Mapping’, accessed [here](#) in July 2018.

<sup>16</sup> NEITI (2017), ‘Members of NEITI Civil Society Steering Committee Framework for Sharing Information with Constituencies’, accessed [here](#) in July 2018.

CSO NSWG member Kolawole Banwo and NEITI Executive Secretary Waziri Adio, outlines detailed expectations for CSSC members and requirements for sharing information with the broader constituency.

Under *Objective 3* related to developing a framework for broader CSO participation, the CSSC established platforms through Google Groups, WhatsApp groups, Facebook and newsletters<sup>17</sup> for effective feedback, participation and regular interaction between the CSSC and the more than 60 other CSOs identified through the stakeholder mapping<sup>18</sup>, facilitating the operationalisation of the information-sharing framework.

To facilitate the completion of the above actions and objectives, the Civil Society Memorandum of Understanding (MoU) with the NSWG was revised and approved on 2 March 2017.<sup>19</sup> This included an endorsement of the Presidential power for appointing CSO representatives to the NSWG<sup>20</sup>, and made minor changes to the internal governance of the steering committee enabling NEITI to function as the CSSC's secretary. Although the MoU was published on 20 July 2018, after the commencement of the second Validation, stakeholders confirmed that the documentation had been widely circulated.

As the NEITI Secretariat also facilitates steering committee meetings, the secretariat monitored progress through regular implementation reports.<sup>21</sup> Meeting minutes of the CSSC<sup>22</sup> and the NSWG<sup>23</sup> indicate that progress in action plan implementation has been consistently discussed in both venues. The CSO constituency endorsed the final implementation report for the Civil Society Action Plan and agreed that the corrective action related to EITI Requirement 1.3 had been addressed.<sup>24,25</sup> Although the EITI does not require CSSC meeting minutes to be published, the NEITI Secretariat ensures that minutes of key meetings are publicly available on the NEITI website.<sup>26</sup>

### Secretariat's Assessment

The International Secretariat is satisfied that the corrective action on civil society engagement has been addressed and considers that Nigeria has made satisfactory progress on Requirement 1.3. There is no evidence of any breaches of the Civil Society Protocol since the first Validation. In accordance with requirement 8.3.c.i, the civil society constituency developed an action plan for addressing the deficiencies in civil society engagement documented in the first Validation. The 'Civil Society Action Plan' was developed by CSOs and shared with stakeholders within three months of the Board's decision, before 11 April 2017. Although the action plan was not published on any website as of the start of the second Validation (11 July 2018), it was subsequently published on 25 July 2018. Lastly, the MoU between the

<sup>17</sup> NEITI (May 2018), 'CSO Remedial Issues on EITI Validation Report on Nigeria: #1.3 a Status Report on Steps Taken to Address the Issues', accessed [here](#) in July 2018.

<sup>18</sup> Partnership to Engage, Reform and Learn (PERL, 2017), 'NEITI Stakeholder Mapping and Engagement Framework', table 1 page 25, access [here](#) in July 2018.

<sup>19</sup> NEITI (March 2017), 'Memorandum of Understanding – Revised 2017 – between NSWG and Civil Society Organisations in Nigeria', accessed [here](#) in July 2018.

<sup>20</sup> NEITI (n.d.), 'National Stakeholders Working Group', accessed [here](#) in July 2018.

<sup>21</sup> NEITI (June 2018), 'CSO Remedial Issues on EITI Validation Report on Nigeria: #1.3 a Status Report on Steps Taken to Address the Issues', accessed [here](#) in July 2018.

<sup>22</sup> CSSC Meeting Minutes from March 2017 to April 2018 are available through the NEITI website [here](#) in July 2018.

<sup>23</sup> Unpublished, made available to the International Secretariat in July 2018.

<sup>24</sup> NEITI (2018), 'CSSC Meeting Minutes for 19 April 2018', accessed [here](#) in July 2018.

<sup>25</sup> NEITI (2018), 'NSWG Meeting Minutes of 13 June 2018', accessed [here](#) in July 2018.

<sup>26</sup> NEITI (2018), 'Citizen participation', accessed [here](#) in July 2018.

CSSC and NSWG was not published until 20 July 2018 but it was signed and approved by the CSSC and NSWG in 2017, and stakeholder consultation revealed that all constituencies were adequately consulted.

While implementation of the action plan appears to have been timely, two key documents were made publicly-available subsequent to the commencement of the second Validation (11 July 2018): the original Civil Society Action Plan<sup>27</sup> and the NEITI Communications Policy Guideline<sup>28</sup>, which codifies information-sharing procedures with constituencies including civil society. Nonetheless, minutes of CSSC meetings, regular implementation updates and stakeholder consultations reveal that stakeholders were aware of all aspects of the action plan as of March 2017, despite the lack of formal publication. The International Secretariat thus considers that, despite the lack of public accessibility of the action plan within three months of the Board Decision on Nigeria's Validation, the broader objective of Requirement 1.3 has been met.

To ensure that interested parties, including wider non-affiliated stakeholders, have access to all relevant information, the NEITI Secretariat is encouraged to continue to ensure that all agreed policies and documents are publicised and disseminated in a timely fashion on their website and through other media.

To provide for a more effective dissemination of NEITI reporting to regional governments and stakeholders, Nigeria may wish to ensure that representatives from the geopolitical zones are more proactive in their engagement with subnational government officials. To further strengthen implementation, the civil society constituency may wish to consider additional ways of addressing capacity constraints with a view to strengthening their use of EITI data to drive reforms.

### 3.2 Corrective action 2 (#1.4)

In accordance with requirement 1.4.a.ii, the NSWG should ensure that its procedures for nominating and changing multi-stakeholder group representatives are public and confirm the right of each stakeholder group to appoint its own representatives. In accordance with requirement 1.4.b.ii and 1.4.b.iii, the NSWG should undertake effective outreach activities with civil society groups and companies, including through communication such as media, website and letters, informing stakeholders of the government's commitment to implement the EITI, and the central role of companies and civil society. Members of the NSWG should liaise with their constituency groups. In accordance with requirement 1.4.b.vi, the NSWG should ensure an inclusive decision-making process throughout implementation, particularly as concerns industry.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. It was noted that Nigeria was almost unique in that the EITI was both a government agency and a multi-stakeholder initiative. Whereas it empowered NEITI to break new ground, Validation found this to have come at the cost of meaningful stakeholder oversight of the EITI process. The NSWG was considered to act more as a consultative Federal Board than a representative decision-making body. Of the 15-member NSWG, only one representative was nominated by a constituency and 8 were political appointees who did not respond to a constituency. There was no evidence that the wider constituencies were able to participate in the establishment of the NSWG and was not possible to conclude that stakeholders were equal partners in the NSWG. At the same time, Validation considered that NEITI and the NSWG had taken

<sup>27</sup> NEITI (March 2017), 'Civil Society Action Plan: Deepening Civil Society Engagement of the EITI in Nigeria', accessed [here](#) in July 2018.

<sup>28</sup> NEITI (2017), 'Communications Policy Guideline for the NSWG and the NEITI Secretariat', accessed [here](#) in July 2018.

their internal governance seriously and had sought to find a form of organisation that helped address their priorities under the EITI Standard and the NEITI Act. Notwithstanding the challenges surrounding the 2016 nomination of the civil society representative to the NSWG, stakeholders consulted during the Validation did not, as a general rule, consider the existing arrangement to be problematic.

### Progress since Validation

NEITI documented their progress by keeping and summarising NSWG minutes for publication on the NEITI website.<sup>29</sup> NEITI also published several other documents, including the Annual Progress Report 2017<sup>30</sup>, reference documents to implementing the civil society's action plan, zonal outreach reports, the new *Policy Guideline on Appointment of Civil Society Representative on the NSWG*, the NSWG's per diem policy (Allowances)<sup>31</sup> and NSWG members' attendance sheets.<sup>32</sup>

In addition, certain documents were made available subsequent to the commencement of Validation (on 11 July 2017). The *Addendum to the Board Charter for the National Stakeholders Working Group*<sup>33</sup> was published on 20 July 2018 and the MoU between the Companies' Forum and the NSWG<sup>34</sup> was only made available on the NEITI website on 26 July 2018. Still, stakeholders confirmed that the revisions were approved ahead of Validation commencement (and confirmed by NSWG meeting minutes). Stakeholders also confirmed that the documentation of these decisions and revisions were also made prior to Validation documentation.

***NSWG composition and membership:*** The NSWG's membership<sup>35</sup> has remained unchanged since the first Validation, having last been renewed in February 2016.<sup>36</sup> The only exception is its Chair, Federal Minister of Solid Minerals Development Kayode Fayemi, who stepped down in May 2017.<sup>37</sup> While no new Chair had yet been appointed at the start of the second Validation (11 July 2018), the Permanent Secretary of the Ministry of Finance, Dr Mahmoud Isa-Dutse, has assumed the role of acting NSWG Chair pending appointment of the new Chair.

The documents governing nominations to the NSWG remain the 2007 NEITI Act<sup>38</sup> and the NEITI Board Charter of 2011<sup>39</sup>. Section 2 of the Board Charter and paragraphs 6 and 12(2) of the NEITI Act confirm the President of Nigeria's right to appoint all 15 NSWG members, including the Chairperson and the Executive Secretary.<sup>40</sup> The members of the NSWG can hold office for a maximum of four years. According to the Board Charter, NSWG members may recommend *removal* of its members, but the Charter does not mention members' (or constituencies') ability to *recommend* any appointments. The Charter also recognises the need for representatives to "... represent specific stakeholder groups or sectors."<sup>41</sup>

<sup>29</sup> NEITI (2018), 'Highlights of NSWG Meetings', accessed [here](#) in June 2018.

<sup>30</sup> NEITI (2018), 'Nigeria EITI Annual Progress Report 2017', accessed [here](#) in June 2018.

<sup>31</sup> NEITI (2018), 'NSWG Allowances', accessed [here](#) in June 2018.

<sup>32</sup> NEITI (2018), 'NSWG Board Meetings Attendance', accessed [here](#) in June 2018.

<sup>33</sup> NEITI (2018), 'Addendum to the Board Charter of the Nigeria Extractive Industries Transparency Initiative (NEITI)', accessed [here](#) in July 2018.

<sup>34</sup> NEITI (2017), 'Memorandum of Understanding Between the Nigeria Extractive Industries Transparency Initiative (NEITI) and Companies' Forum of the Extractive Industries Companies', accessed [here](#) in July 2018.

<sup>35</sup> The NSWG formally still consists of 15 members: three from government, one each from industry and civil society, six from the country's six geopolitical zones, two for industry experts and one for the representative from trade union NUPENG.

<sup>36</sup> NEITI (2016), 'NSWG Members: 2016 to date', accessed [here](#) in June 2018.

<sup>37</sup> NEITI (2018), 'NSWG Meeting Minutes of 13 June 2018', accessed [here](#) in July 2018.

<sup>38</sup> Federal Government of Nigeria (2007), 'Nigeria Extractive Industries Transparency (NEITI) Act 2007', accessed [here](#) in June 2018.

<sup>39</sup> NEITI (2011), 'Board Charter for the National Stakeholders Working Group', accessed [here](#) in June 2018.

<sup>40</sup> *Ibid.*, Section 2.1.1, page 4.

<sup>41</sup> *Ibid.*, Section 2.1.3, page 4.

However, the NEITI Board Charter was updated in June 2018<sup>42</sup>, although the precise addendum was published on the NEITI website only after the commencement of the second Validation, on 25 July 2018. While the 2018 amendments to the Board Charter do not alter the nominations mechanisms, new feedback mechanisms to ensure regular consultations by NSWG members of their constituencies were introduced. Despite the lack of changes related to nominations in NEITI's governance documents, there have been a number of clarifications of statutory nominations procedures since the first Validation. NEITI's 2017 annual progress report<sup>43</sup> confirms the President of Nigeria's right to appoint NSWG members but explains that the constituencies themselves submit recommendations to the President following their own selection processes. In addition, a protocol between CSOs and NEITI was developed for ensuring CSOs' ability to nominate their own representatives.<sup>44</sup>

*Civil society representation:* Mr Kolawole Banwo from Civil Society Legislative Advocacy Centre (CISLAC), still retains the Chairmanship of the CSSC. Therefore, the representative of civil society on the NSWG is the same as during the first Validation. Concerns over the lack of consultation in the CSO NSWG member's nomination were addressed after the first Validation. CSOs reacted<sup>45</sup> by restructuring PWYP Nigeria in November 2016<sup>46</sup> and reinforced the CSSC (*see Requirement 1.3, regarding progress on the civil society action plan*).

The NEITI Act and Board Charter only identifies one NSWG seat for civil society. But the revised MoU between the CSSC and NEITI, defines civil society more widely. It includes media, professional associations, labour unions, student unions, citizen's advocacy organisations, NGOs, religious groups as well as community-level organisations. This means that four NSWG members represent civil society according to the CSSC themselves, given their membership of the committee. They include the CSSC Chair (drawn from NGOs), a union representative (from NUPENG<sup>47</sup>) and two representatives of geopolitical zones (one of which represents the media on the CSSC).

Since the first Validation, NEITI and the CSSC conducted a stakeholder mapping exercise, based on several workshops and roadshows, with the aim of broadening CSO participation in EITI implementation.<sup>48</sup> According to consultations with CSOs, more than 60 organisations were identified through this mapping. Several outreach activities and events were performed during 2017 and 2018, amongst others in Awka<sup>49</sup> and Abeokuta<sup>50</sup>.

Regarding the statutory procedures for nominating NSWG representatives, the civil society constituency, coordinated by the CSSC, revised their MoU with NEITI to affirm and endorse the right of the President of Nigeria<sup>51</sup> to appoint all NSWG members, including from civil society. The NEITI Secretariat was also tasked to ensure the transparency of the process of NSWG member nominations and renewals, with the aim of

<sup>42</sup> NEITI (2018), 'Addendum to the Board Charter of the Nigeria Extractive Industries transparency Initiative (NEITI)', accessed [here](#) in July 2018.

<sup>43</sup> NEITI (2018), 'Nigeria EITI Annual Progress Report 2017', accessed [here](#) in June 2018.

<sup>44</sup> NEITI (2018), 'Policy Guidelines on Appointment of CSO Representatives on the NSWG', accessed [here](#) in July 2018.

<sup>45</sup> CISLAC (2016), 'RE: PUBLISH WHAT YOU PAY STATEMENT ON THE APPOINTMENT OF KOLAWOLE BANWO AS CSO REPRESENTATIVE ON NEITI BOARD – THE ISSUES, THE MISREPRESENTATIONS AND THE WAY FORWARD', accessed [here](#) in June 2018.

<sup>46</sup> PWYP Nigeria (2016), 'Publish What You Pay Nigeria Gets New Leadership', accessed [here](#) in June 2018. PWYP Nigeria (2017), 'Publish What You Pay-Nigeria Strengthens CSO Engagement On EITI Standard', accessed here in June 2018.

<sup>47</sup> Nigerian Union of Petroleum and Natural Gas Workers: <http://nupeng.org/> accessed in June 2018.

<sup>48</sup> NEITI (May 2018), 'CSO Remedial Issues on EITI Validation Report on Nigeria: #1.3 a Status Report on Steps Taken to Address the Issues', accessed [here](#) in June 2018.

<sup>49</sup> NEITI (2018), 'Zonal outreach in the South East – Awka', accessed [here](#) in July 2018.

<sup>50</sup> NEITI (2018), 'Zonal outreach in the South East – Abeokuta', accessed [here](#) in July 2018.

<sup>51</sup> NEITI (2017), 'Memorandum of Understanding – Revised 2017 – between NSWG and Civil Society Organisations in Nigeria', accessed [here](#) in July 2018.

clarifying each constituency's rights to nominate their own representatives. Subsequently, a civil society policy was developed providing guidelines on how to nominate CSO representatives to the NSWG<sup>52</sup>, developed by the CSSC and endorsed by the NSWG in June 2018. The policy affirms the right of CSOs to provide a clear recommendation to the President for appointment as the CSO member of the NSWG. While the policy had not been published ahead of the start of Nigeria's second Validation, it has been available on the NEITI website since 20 July 2018.

During consultations, stakeholders from civil society distinguished between short-term and long-term solutions with regards to civil society nominations. Several stakeholders noted that the civil society nominations policy was a stop-gap measure pending revisions to the NEITI Act, although they emphasised that improved constituency coordination mechanisms would ensure that a single clear recommendation for NSWG member would be ready ahead of any new appointment, given the time-consuming nature of consultations with the broader CSO constituency. There was consensus among stakeholders of all constituencies that the revised nominations procedure did not infringe on CSOs' ability to agree their own NSWG representative, even if implementation of the policy had yet to be tested in practice.

***Industry representation:*** The Companies' Forum, chaired by the Executive Director of the Oil Producing Trade Section (OPTS) of the Lagos Chamber of Commerce and Industry (the main industry association for foreign-invested oil and gas companies), is the channel for industry coordination with NEITI.<sup>53</sup> This arrangement was formalised through the MoU between the Companies' Forum and NEITI<sup>54</sup>, signed on 4 July 2018 and published on the NEITI website on 26 July 2018. Nonetheless, the Companies' Forum has been operational since its inauguration in December 2015. It has remained the constituency's practice to appoint the OPTS Executive Director as the industry representative on the NSWG. The representative of Miners' Association of Nigeria (MAN) acts as the vice-Chairperson of the Companies' Forum and is also a NSWG member, albeit formally categorised as an "industry expert" rather than an industry representative. Although the OPTS Executive Director only formally represents foreign-invested oil and gas companies, the Companies' Forum includes representatives from the indigenous oil and gas companies, through their industry association (the Nigerian Association of Indigenous Petroleum Explorers and Producers (NAIPEC)). The Companies' Forum MoU with NEITI confirms the industry NSWG member's responsibility to represent the interests of the Companies' Forum, which was confirmed to be the case in practice by industry representatives consulted. Despite the lack of formalised industry constituency nominations procedures beyond the de facto appointment of the OPTS Executive Director as industry representative, there was consensus among industry stakeholder consulted that Presidential appointment was the most appropriate way of ensuring companies' engagement, given the representation of indigenous companies through the Companies' Forum.

***Government representation:*** While there have been no changes in the government's NSWG nominations procedures or representation since the first Validation, membership continues to rotate in line with officials at each entity represented on the NSWG. As noted at the NSWG's June meeting<sup>55</sup>, NSWG Chair Kayode Fayemi resigned as Minister of Mines and Steels Development in May 2018. While President Buhari had not yet appointed a new NSWG Chair at the time of the second Validation, Permanent Secretary at the Ministry of Finance Dr Mahmoud Isa-Dutse has assumed the role of acting Chair in the interim. There was consensus among stakeholders consulted that the nominations procedures for

<sup>52</sup> NEITI (2018), 'Policy Guideline on Appointment/Nomination of Civil Society Representative on the NEITI Board (the National Stakeholders Working Group, NSWG), access [here](#) in July 2018.

<sup>53</sup> Partnership to Engage, Reform and Learn (PERL, 2017), 'NEITI Stakeholder Mapping and Engagement Framework', table 1 page 25, access [here](#) in June 2018.

<sup>54</sup> NEITI (2017), 'Memorandum of Understanding Between the Nigeria Extractive Industries Transparency Initiative (NEITI) and Companies' Forum of the Extractive Industries Companies', accessed [here](#) in July 2018.

<sup>55</sup> NEITI (2018), 'NSWG Meeting Minutes of 13 June 2018', accessed [here](#) in July 2018.

government NSWG members were sufficiently clear, given that represented entities were clearly defined in the NEITI Act and rotation was in line with government functions.

**Terms of reference:** The main document governing NEITI remains the 2007 NEITI Act<sup>56</sup>. In addition, the NSWG's internal governance is framed by the 2011 NEITI Board Charter<sup>57</sup>, which was amended in June 2018.<sup>58</sup> Although the addendum was published on 25 July 2018, NEITI had already published an overview of its governance on its website prior to the start of the second Validation.<sup>59</sup> The NEITI Act provides the legal basis for establishing NEITI and the NSWG. The Board Charter provides more guidance on the NSWG's internal governance, including clauses on conflict of interest, the establishment of subcommittee structures and a clear delineation of NSWG Board members' roles and responsibilities. Amendments to the Board Charter in 2018 focused on enabling greater engagement of NSWG members with their constituencies. At least nine additional ToRs and MoUs between stakeholders and NEITI also form part of the NEITI's governance structure<sup>60</sup>, if each of the six standing committees and three constituency committees have their own terms of reference, members' lists and minutes.

**Representation:** In addition to the three core constituencies detailed above, the NEITI Act requires NSWG representatives from each of the six geopolitical zones, a common feature of federal and non-federal advisory boards in Nigeria. According to several stakeholders, the representatives of geopolitical zones are not identified as representing any of the constituencies in a traditional sense of EITI implementation. Rather, they represent the interests of stakeholders at state level, including from government, industry and civil society. None of the stakeholders consulted raised concerns over these representatives' integrity nor ability to speak on behalf of their respective constituencies, even if there was consensus that they were not appointed by their respective constituencies. No stakeholders raised concerns over these six NSWG members' independence from other constituencies. Likewise, the two NSWG members appointed as industry experts<sup>61</sup> were considered as acting as technical advisers for the NSWG. The roles, responsibilities and conduct of NSWG members are detailed in section 6 of the NSWG Board Charter<sup>62</sup>, while section 7 details internal governance and procedures. The main amendment to the Board Charter in 2018 consisted of a clause specifying that NSWG members are required to relay updates on activities and developments to their respective constituencies to canvass for feedback and input to NSWG discussions. The highlights of the NSWG's 13 June 2018 meeting was published in June 2018 provided an overview of these key changes.<sup>63</sup>

**Internal governance and procedures:** Despite the lack of formal provisions explicitly allowing NSWG members to table issues for discussion, the direct access of all NSWG members to the NEITI Executive Secretary as part of the Charter's Section 5.1 provide a channel for direct input to the agenda of NSWG meetings. There was consensus among stakeholders consulted that all NSWG members could influence the agenda of NEITI meetings and proceedings in practice, with several concrete examples offered as evidence.

**Decision-making:** The rules for decision-making remain unchanged from the first Validation. While there are no safeguards against one constituency being overruled in decisions by simple-majority vote, there is

<sup>56</sup> Federal Government of Nigeria (2007), 'Nigeria Extractive Industries Transparency (NEITI) Act 2007', accessed [here](#) in June 2018.

<sup>57</sup> NEITI (2011), 'Board Charter for the National Stakeholders Working Group', accessed [here](#) in June 2018.

<sup>58</sup> NEITI (2018), 'NSWG Meeting Minutes of 13 June 2018', accessed [here](#) in July 2018.

<sup>59</sup> NEITI (2018), 'National Stakeholders Working Group (NSWG)', accessed [here](#) in July 2018.

<sup>60</sup> The governing documents include the NEITI Act, the NSWG Board Charter and its addendum, the MoU between the NSWG and Companies' Forum, the MoU between the NSWG and the CSSC, as well as ToRs for the various NSWG committees, which according to the NEITI website amount to seven committees. There may also be additional MoUs or other documents which influences the relationship between the various constituencies and the NSWG.

<sup>61</sup> The President of the Miners' Association of Nigeria, Mr Sani Shehu, and the President of Nigeria Mining and Geosciences Society, Professor Gbenga Okunlola.

<sup>62</sup> NEITI (2011), 'Board Charter for the National Stakeholders Working Group', accessed [here](#) in June 2018. NEITI (2018), 'Addendum to the Board Charter of the Nigeria Extractive Industries transparency Initiative (NEITI)', accessed [here](#) in July 2018.

<sup>63</sup> NEITI (2018), 'Highlights of the NSWG's 13 June 2018 meeting', accessed [here](#) in July 2018.

no evidence from NSWG meeting minutes of any instances of voting, with unanimous decisions the norm for the entire 2016-18 period. There was consensus among stakeholders consulted that all NSWG decisions had been taken by consensus in the 2016-18 period.

**Record-keeping:** The Charter's Section 7.6.2 requires that NSWG meeting minutes contain the main points of discussion, any material or dissenting views and the discussion outcomes. Section 6 requires that draft meeting minutes be circulated to all NSWG members within seven days of the meeting's conclusion and that a final agreed version be circulated within two weeks of the meeting date. While all NSWG decisions are required to be made public under Section 7.6.5, Section 7.6.4 declares NSWG meeting minutes confidential unless parties can show an (unspecified) "legitimate interest", with no detail on procedures for access. Although the requirement to prepare summaries of decisions has been part of the Board Charter since 2011, the NSWG agreed to publish these summaries on the NEITI website in December 2017, with three published as of the start of the second Validation.<sup>64</sup>

**Capacity of the NSWG:** The Board Charter includes provisions for ensuring NSWG members' capacity to fulfil their responsibilities. Section 2.4 requires preservation of institutional memory in the transition between NSWG members, partly through inductions organised by the NEITI Secretariat. The current NSWG underwent induction in April 2016, but NEITI also performed an induction specifically for CSOs in March 2017, as part of their inauguration.<sup>65</sup> The CSSC, supported by the NEITI Secretariat, has undertaken extensive capacity-building as part of their workshops (see *Requirement 1.3*). There is evidence from NSWG meeting minutes and coverage of outreach and dissemination activities that NSWG members broadly have sufficient capacity to fulfil their responsibilities.

**Per diems:** The per diem policy of the NSWG is in line with government regulations<sup>66</sup> issued in 10 June 2010, published on the NEITI website.<sup>67</sup> Available evidence and stakeholder consultations suggest that this per diem policy is followed in practice.

**Attendance:** NSWG attendance records are made publicly available by the end of each year, as part of NEITI's annual progress reports and published on the NEITI website.<sup>68</sup> Overall, NSWG meetings have been quorate, with attendance fluctuating between 80% in 2016, 87% in 2017 and 78% in the first half of 2018.

**National Secretariat:** The NEITI Executive Secretary, who also sits on the NSWG, is appointed for a non-renewable five-year term, under Article 6.3 of the NEITI Act. A description of the NEITI Secretariat as well as organigrams and staff lists are available on the NEITI website.<sup>69</sup> The information was last updated in June 2017 while the organigram was updated in November 2016. There have been no major changes in the organisational structure of the NEITI Secretariat since the first Validation, aside from the establishment of a new department on Policy, Planning and Strategy in December 2016.<sup>70</sup>

## Secretariat's Assessment

The Secretariat is satisfied that the corrective action on multi-stakeholder oversight has been addressed and considers that Nigeria has achieved satisfactory progress on requirement 1.4. In accordance with requirement 1.4, the civil society constituency, in coordination with the NSWG, has revised and clarified its procedures for nominating and appointing its representative to the NSWG. The NSWG have made

<sup>64</sup> NEITI (2018), 'Highlights of NSWG Meetings', accessed [here](#) in June 2018.

<sup>65</sup> NEITI (2017), 'NSWG Meeting Minutes of 13 March 2017', not published.

<sup>66</sup> Under "Special Category" of the Secretary to the Government of the Federation (SGF) Circular No SWC/S/04/S.310/10.

<sup>67</sup> NEITI (2018), 'NSWG Allowances', accessed [here](#) in June 2018.

<sup>68</sup> NEITI (2018), 'NSWG Board Attendance', accessed [here](#) in June 2018.

<sup>69</sup> NEITI (2018), 'The Secretariat', accessed [here](#) in July 2018.

<sup>70</sup> NEITI (8 December 2016), 'NEITI Strategic Plan 2017-21', accessed [here](#) in June 2018. NEITI (2017), 'NSWG Meeting Minutes of 13 March 2017', unpublished, provided by NEITI Secretariat.

these procedures public and confirm the right of each stakeholder group to recommend the nomination of their representatives to the President of Nigeria, who is required to take note of recommendations in appointing NSWG members. Although the revised 'Policy Guideline on Nomination of Civil Society Representative on the NEITI Board' was not publicly available until after the commencement of the second Validation, on 20 July 2018, there is evidence that the broader constituency was made aware of the revised procedures through multiple outreach activities undertaken both by the NEITI Secretariat and the CSSC in the 2017-18 period. The formalisation of the MoU between the Companies' Forum and NEITI has ensured that the industry representative on the NSWG represents the interests of all extractives companies, including indigenous oil and gas companies. While the MoU was only made publicly available after the start of the second Validation, on 26 July 2018, it was signed and circulated to the broader industry constituency on 4 July 2018. Finally, the amendments to the NEITI Board Charter in June 2018 strengthened constituency coordination and consultation requirements.

To further strengthen implementation, Nigeria may wish to consolidate all governance documents related to EITI implementation into a single, publicly-accessible, ToR. Nigeria is also encouraged to ensure safeguards against any single constituency being overruled in NSWG decisions through further amendments to the Board Charter.

### 3.3 Corrective action 3 (#1.5)

In accordance with requirement 1.5.a, the NSWG should maintain a current work plan that sets EITI implementation objectives that reflect national priorities for the extractive industries. In accordance with requirement 1.5.b, the work plan must reflect the results of consultations with key stakeholders. In accordance with requirement 1.5f, the NSWG should ensure that the work plan is reviewed and updated annually.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. Although work plans were 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 first Validation. Validation found that the current work plan, like its predecessors, did not update the objectives of the NSWG, which had remained the same since the four-year strategic work plan was drafted in 2012. As a result, the work plan maintained the same structure and objectives as it did under the EITI Rules. Whereas those work plans were ambitious at the time, many reporting challenges identified in the first Validation were considered linked to the narrow work plan focus on the publication of annual audits. Nonetheless, Validation found that the NSWG used the annual progress report, the communications strategy and other mechanisms to link its activities to national priorities throughout the year.

#### Progress since Validation

The NSWG agreed a five-year strategic plan in 2016.<sup>71</sup> The NEITI Strategic Plan 2017-21<sup>72</sup> sets out NEITI's strategic goals of being "an active and effective facilitator of the reversal of the effects of the resource curse in Nigeria." There is evidence of broad-based consultations with the various constituencies, including civil society<sup>73</sup>, with high-level government support in the form of a foreword written by NSWG

<sup>71</sup> NEITI (2016), 'NEITI NSWG Approves 5-Years Strategic Plan', accessed [here](#) in June 2018.

<sup>72</sup> NEITI (8 December 2016), 'NEITI Strategic Plan 2017-21', accessed [here](#) in June 2018.

<sup>73</sup> NEITI (2017), 'CSSC Meeting Minutes of 23 October 2017', accessed [here](#) in July 2018.

Chair Kayode Fayemi. NEITI also publishes annual work plans<sup>74</sup> alongside summaries of NSWG meeting minutes, NEITI also finalised a Freedom of Information (FOI) Portal<sup>75</sup> in 2017.

**Update and review of work plans:** The NSWG updated the structure of the NEITI annual work plan in both 2016, 2017 and 2018<sup>76</sup>. In 2017 and 2018, the strategic goals of the annual work plan were updated. The 2018 work plan now makes use of the final strategic plan for 2017-2021<sup>77</sup>, including more precise goals and objectives.

**Publicly accessibility:** The 2018 work plan has been published on the NEITI website<sup>78</sup>, alongside all other annual work plans, and are linked to from other sections of the website, including via the Freedom of Information (FOI) Portal.<sup>79</sup>

**Objectives:** Annual work plans set out *priority objectives* that also take national objectives into account, with six objectives in the 2018 work plan.<sup>80</sup>

**Measurable and time-bound activities:** All NEITI work plans include distinct, measurable and time-bound activities linked to specific types of output and key performance indicators.

**Capacity constraints:** The 2018 work plan includes capacity-building measures, also reflected per activity in the financial section.<sup>81</sup> The work plan identifies more general activities such as capacity building for CSOs and media in particular, alongside hardware procurement plans.

**Scope of EITI reporting:** The work plan sets out an activity related to automatic data collection, aimed at improving the efficiency of the current time-consuming data collection exercise. In addition to these efforts NEITI are currently underway in their production of the Fiscal Allocation and Statutory Disbursement report for 2012 to 2016, as noted in the 2018 work plan's budget. These reports were also noted under the first Validation (for 2007 to 2011<sup>82</sup>) for going above and beyond EITI requirements regarding subnational payments and transfers. Lastly, and although not described in the work plan, NEITI is participating in the Commodity Trading pilot with a final report expected shortly.

**Legal or regulatory obstacles:** The 2018 work plan includes references to the need for revisions to the NEITI Act in the longer term. In the short term, the work plan includes plans for more practical reforms through MoUs with other government agencies to facilitate follow-up on NEITI recommendations.

**Recommendations:** The 2018 work plan does not explicitly describe plans for implementing recommendations or corrective actions from Validation, although it does refer to 'remediation activities' and action plans related to follow-up on recommendations from NEITI reporting. Previously, the 2017

<sup>74</sup> NEITI (2018), 'NEITI Country Workplan 2018', accessed [narrative](#) and [financials](#).

<sup>75</sup> NEITI (2018), 'Freedom of Information (FOI) Portal', accessed [here](#) in June 2018.

<sup>76</sup> NEITI (2018), 'Annual work plans', accessed [here](#) in July 2018.

<sup>77</sup> NEITI (8 December 2016), 'NEITI Strategic Plan 2017-21', accessed [here](#) in June 2018.

<sup>78</sup> NEITI (2018), 'NEITI Country Workplan 2018', accessed [narrative](#) and [financials](#).

<sup>79</sup> NEITI (2018), 'Freedom of Information (FOI) Portal', accessed [here](#) in June 2018.

<sup>80</sup> The six objectives for 2018 are: Industry audit reporting; Dissemination of NEITI Industry Audit Report findings to strategic stakeholders, broadening and deepening engagements; Ensure optimum regulation & compliance to NEITI mandate based on the NEITI Act and the EITI requirements; To provide operational, administrative and logistic support; Evaluate governance and anti-corruption initiatives at all levels of governance and provide data-based coordination; and Effective implementation of internal control mechanism through continuous monitoring & evaluation, internal auditing & procurement process.

<sup>81</sup> This includes automated data gathering process which targets NEITI Staff.

<sup>82</sup> NEITI (2016), 'NEITI FASD Summary report 2007', accessed [here](#) in August 2018.

work plan included several activities related to corrective actions from Validation, either through “Remedial issues” activities or through broader stakeholder engagements.

*Costings and funding sources:* The annual work plans of NEITI provide clear costed lines for each activity, with the exception of the individual steps of the reporting cycle. The work plan’s financial section (budget) outlines clearly the sources of funding for each activity. While there are minor discrepancies between the costings of activities between the work plan’s budget and its narrative section<sup>83</sup>, NEITI Secretariat staff explained that these were linked to balancing Federal Government budget allocations and financial support sought elsewhere.

### Secretariat’s Assessment

The Secretariat is satisfied that the corrective action on the annual EITI work plan has been addressed and considers that Nigeria has achieved satisfactory progress on requirement 1.5. The first Validation concluded that Nigeria’s EITI work plans were not consistently updated on an annual basis, with objectives remaining unchanged over the course of each four-year strategic work plan. Since then, the NSWG has updated NEITI’s four-year strategic plan, including objectives, in December 2016 and has revisited objectives through the annual updates to the NEITI work plan in 2017 and 2018. Analysis of the 2018 work plan indicates that all aspects of Requirement 1.5 have been fulfilled and that the broader objective of annual work planning has been met.

### 3.4 Corrective action 4 (#2.2 & #2.3)

In accordance with requirement 2.2.a, the government should ensure annual disclosure of which mining, oil, and gas licenses were awarded and transferred during the year, including in the Nigeria- São Tomé and Príncipe Joint Development Zone, highlighting the technical and financial requirements and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers. In accordance with requirement 2.3, the government should also ensure that the dates of application and coordinates for all oil, gas and mining licenses are publicly available.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting Requirement 2.2. In *oil and gas*, Validation found that the 2013 OG EITI Report confirmed the lack of new license awards in 2013 but did not clarify the number of licenses that were renewed or transferred, including in the Joint Development Zone. While the 2013 EITI Report described the statutory license allocation and transfer procedures, it did not clarify the practice of license transfers in 2013. Meanwhile, insofar as discretionary license allocations were still technically legal, Validation considered that their technical and financial criteria remained unclear. In *solid minerals*, Validation found that the 2013 SM EITI Report did not clarify the number of licenses awarded or transferred to material companies in the year under review, nor the actual practice of license allocations and transfers in 2013. While a general overview of statutory procedures for awarding and transferring mining licenses was provided, it did not include a description of non-trivial deviations, despite significant stakeholder concerns over this issue.

The first Validation concluded that Nigeria had made meaningful progress in meeting Requirement 2.3. In *oil and gas*, Validation found that the 2013 EITI Report provided some of the information mandated under Requirement 2.3, but not license coordinates and dates of application, award and expiry nor guidance on how to access them. While additional information such as dates of award and license coordinates was

<sup>83</sup> Six objectives are included in the narrative while at least twelve distinct core or departmental objectives are identified.

available on third-party open-access websites, the dates of application and expiry were still unavailable to the public. In *solid minerals*, Validation considered that the 2013 EITI Report provided some information under Requirement 2.3, including dates of award and expiry, commodity covered and license-holder name, but not dates of application or license coordinates. Moreover, license information had been provided for only 56 of the 65 material companies, given that nine companies did not report. Validation raised concerns over the lack of information on licenses held by companies reporting significant payments to EITI, raising questions over the comprehensiveness of license data provided. No information on licenses held by non-material companies was provided, although this was not strictly required.

### Progress since Validation - License allocations (#2.2)

With regards to the **corrective action related to requirement 2.2**, NEITI published the 2015 Solid Minerals EITI Report<sup>84</sup> (and standalone appendices) in November 2017 and the 2015 Oil & Gas EITI Report (and standalone appendices) in December 2017. Following NEITI's pre-Validation self-assessments, NEITI subsequently published an 'Extractives Value Chain' section on its website, which included pages covering 'Legal and Institutional Framework, Contracts and Licenses'<sup>85</sup> in the oil and gas sector and the process for awarding OPLs in the 2007 licensing round<sup>86</sup> in April 2018. At the same time, NEITI published a copy of the DPR's register of 99 Oil Mining Leases (OMLs) and 65 Oil Prospecting Leases (OPLs) active in 2015<sup>87</sup> and field legal contract data submitted by oil and gas companies for 2015.<sup>88</sup> NEITI subsequently published an updated section on 'Joint Development Zone (Appendix F)'<sup>89</sup> and the DPR's 'Due diligence checklist for Ministerial consent' for oil and gas license transfers<sup>90</sup> on 6 July 2018. For solid minerals, NEITI published a '2015 Solid Minerals Audit - Supplementary Report'<sup>91</sup> on 10 July 2018, which provided additional information on the mineral licensing process.

Subsequent to the start of the second Validation on 11 July 2018, NEITI an updated version of the DPR's 2007 licensing round guidance<sup>92</sup>, DPR's checklist for assessing requests for conversions of OPLs into OMLs<sup>93</sup> and the full list of original bidders for the three OPLs awarded in 2015<sup>94</sup> on 20 July 2018, a new version of the DPR license register<sup>95</sup>, which included dates of application for 22 of the 99 OMLs active in 2015, on 3 August 2018 and a description of the process of transferring participating interests in JDZ-Blocks<sup>96</sup> on 6 August 2018.

<sup>84</sup> Page number references to the 2015 EITI Oil and Gas and Solid Minerals Reports refer to page numbers of the printed version (not PDF).

<sup>85</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>86</sup> NEITI (April 2018), 'Process for awarding OPLs under the guidance information for prospective bidders in the year 2007 licensing round', accessed [here](#) in July 2018.

<sup>87</sup> NEITI (April 2018), 'OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>88</sup> NEITI (April 2018), '2015 Field legal contract submissions by reporting companies', accessed [here](#) in July 2018.

<sup>89</sup> NEITI (July 2018), 'Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria', accessed [here](#) in July 2018.

<sup>90</sup> DPR, 'Due diligence checklist for Ministerial consent', accessed [here](#) in July 2018.

<sup>91</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>92</sup> NEITI (July 2018), 'Process for awarding OPLs under the guidance information for prospective bidders in the year 2007 licensing round', accessed [here](#) in July 2018.

<sup>93</sup> DPR (2016), 'Check list of requirement for the conversion of OPL to OML and renewal of OML', accessed [here](#) in July 2018.

<sup>94</sup> NEITI (July 2018), '2007 Bid Round Results', accessed [here](#) in July 2018.

<sup>95</sup> NEITI (August 2018), 'Revised OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>96</sup> NEITI (August 2018), 'Process for assignment of participating interest in the JDZ', accessed [here](#) in August 2018.

## Oil & gas

**Awards/transfers:** The ‘Licensing, Contracts and Disclosures’ section of the NEITI website<sup>97</sup> explains that the award of three OPLs<sup>98</sup> was finalised in 2015 following litigation-related delays of the original block awards following the 2007 licensing round. Both the 2015 O&G EITI Report<sup>99</sup> and Appendix F<sup>100</sup> confirm the award of Block-1 within the Nigeria-Sao Tome and Principe (NSTP) Joint Development Zone (JDZ) in 2015.

In terms of *transfers* of interests in oil and gas licenses, the ‘Licensing, Contracts and Disclosures’ section of the NEITI website<sup>101</sup> confirms the transfer of two OMLs<sup>102</sup> in 2015. While the 2015 O&G EITI Report does not comment on the existence of any transfers of interests in licenses in the NSTP-JDZ in 2015, all stakeholders consulted (including from the Joint Development Authority (JDA) itself) confirmed the lack of transfers in JDZ-Blocks in 2015.

**Award/transfer process:** In terms of license *awards*, the ‘Legal and Institutional Framework, Contracts and Licenses’<sup>103</sup> webpage describes the statutory processes for awarding oil and gas licenses through licensing rounds and for converting an OPL into an OML<sup>104</sup>, including a brief description of (and link<sup>105</sup> to) the March 2007 guidance from DPR for prospective bidders in the 2007 licensing round. The process of farming out abandoned or unproductive oil and gas fields to indigenous companies as “marginal fields” through licensing rounds is also described, including a link to the June 2002 Technical And Commercial Field Specific Bid Tender Submission Requirements for Marginal Fields<sup>106</sup>. While the process for awarding licenses by the NSTP-JDZ is not described in the 2015 O&G EITI Report, ‘Joint Development Zone (Appendix F)’ published in July 2018 provides an overview of the licensing process in the JDZ.<sup>107</sup>

In terms of license *transfers*, the ‘Legal and Institutional Framework, Contracts and Licenses’<sup>108</sup> webpage describes the statutory process for transferring oil and gas licenses (or interests therein), while the August 2014 guidelines for obtaining Federal Minister of Petroleum’s consent to transferring interests in oil and gas assets are published on the NEITI website.<sup>109</sup>

The process for transferring petroleum rights in the NSTP-JDZ is not described in the 2015 O&G EITI Report. During consultations, the Nigeria-Sao Tome and Principe Joint Development Agency (NSTP-JDA) confirmed that they had not reported the precise procedures to NEITI. The agency agreed to produce and publish such information, with a description of the process of transferring participating interests in JDZ-

<sup>97</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>98</sup> OPL2001, OPL2002 and OPL2003.

<sup>99</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.45-46.

<sup>100</sup> NEITI (July 2018), ‘Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria (Appendix F)’, p.6.

<sup>101</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>102</sup> OML 29 from Shell to Aiteo Eastern, and OML 18 from Shell to Eroton.

<sup>103</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>104</sup> NEITI (April 2018), ‘Process of conversion of OPL to OML’, accessed [here](#) in July 2018.

<sup>105</sup> DPR (March 2007), ‘Guidance Information: For prospective bidders in the year 2007 licensing round’, accessed [here](#) in July 2018.

<sup>106</sup> DPR (June 2002), ‘Marginal fields: technical and commercial field specific bid tender submission requirements’, accessed [here](#) in July 2018.

<sup>107</sup> NEITI (July 2018), ‘Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria (Appendix F)’, pp.5-6.

<sup>108</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>109</sup> DPR (August 2014), ‘Guidelines and procedures for obtaining Minister’s consent to the assignment of interest in oil and gas assets’, accessed [here](#) in July 2018.

Blocks published on the NEITI website<sup>110</sup> on 6 August 2018, after the commencement of the second Validation.

*Technical and financial criteria:* In terms of license awards, while the 2015 O&G EITI Report does not describe the technical and financial criteria assessed in license awards, the DPR's 2007 licensing round guidance published on the NEITI website<sup>111</sup> provides the bid criteria for the 2007 licensing round. The section describing the process for awarding OPLs in the 2007 licensing round published in April 2018<sup>112</sup> provides a detailed description of financial criteria assessed, but only refers to the applicant's general "technical capacity, capability and track record" without clearly describing the specific technical criteria assessed. Following stakeholder consultations, an updated version of the DPR's 2007 licensing round guidance published on the NEITI website<sup>113</sup> on 20 July 2018, subsequent to the start of the second Validation, provides detailed technical and financial criteria assessed for pre-qualifying bidders.

In terms of criteria assessed in the process of converting an OPL into an OML, the 'Process of conversion of OPL to OML' document<sup>114</sup> on the NEITI website refers to the applicant's "sufficient financial and technical capability" without clearly defining the criteria assessed. Government stakeholders explained that there was no set of specific criteria assessed as part of the conversion process, although they confirmed that the DPR followed a defined checklist in assessing conversion applications. Following stakeholder consultations, this checklist was published on the NEITI website<sup>115</sup> on 20 July 2018, subsequent to the start of the second Validation.

While the 2015 O&G EITI Report does not describe technical and financial criteria assessed in license awards in the NSTP-JDZ, the 'Joint Development Zone (Appendix F)' provides an overview of the technical and financial criteria assessed in license award applications in the JDZ.<sup>116</sup>

In terms of license transfers, the 'Legal and Institutional Framework, Contracts and Licenses'<sup>117</sup> webpage refers to general criteria for transferring interests in oil and gas licenses, albeit only in general terms linked to (unspecified) "sufficient technical knowledge, experience and sufficient financial resources". The DPR's August 2014 guidelines for transferring interests in licenses<sup>118</sup> provides only general reference to technical and financial criteria, without defining them. The 'Due diligence checklist for Ministerial consent' for oil and gas license transfers published on the NEITI website<sup>119</sup> provide only general reference to "sufficient technical knowledge and experience and sufficient financial resources" and "statement of technical capability and experience" without clearly defining the specific technical and financial criteria assessed for license transfers. Government officials consulted explained that the DPR tended to examine the same criteria assessed during the process of pre-qualifying applicants for OPL awards, although this was not a formalised process. The officials confirmed that the DPR did not have a list of specific technical and financial criteria assessed during transfers of participating interests in oil and gas licenses.

<sup>110</sup> NEITI (August 2018), 'Process for assignment of participating interest in the JDZ', accessed [here](#) in August 2018.

<sup>111</sup> DPR (March 2007), 'Guidance Information: For prospective bidders in the year 2007 licensing round', accessed [here](#) in July 2018.

<sup>112</sup> NEITI (April 2018), 'Process for awarding OPLs under the guidance information for prospective bidders in the year 2007 licensing round', accessed [here](#) in July 2018.

<sup>113</sup> NEITI (July 2018), 'Process for awarding OPLs under the guidance information for prospective bidders in the year 2007 licensing round', accessed [here](#) in July 2018.

<sup>114</sup> NEITI (April 2018), 'Process of conversion of OPL to OML', accessed [here](#) in July 2018.

<sup>115</sup> DPR (2016), Check list of requirement for the conversion of OPL to OML and renewal of OML', accessed [here](#) in July 2018.

<sup>116</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.6.

<sup>117</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>118</sup> <http://www.neiti.gov.ng/index.php/extractives/oil-and-gas/category/173-eog-references?download=689:og-guideline-on-asset-divestment-161014>

<sup>119</sup> DPR, 'Due diligence checklist for Ministerial consent', accessed [here](#) in July 2018.

As with the license transfer process, the NSTP-JDA confirmed that they had not reported the precise criteria assessed in transfers of participating interests. The agency agreed to produce and publish such information. The overview of the process for transferring participating interests in JDZ-Blocks published on 6 August 2018, after the commencement of the second Validation, does not clearly define the criteria assessed in transfers of participating interests, beyond reference to the proposed assignee's "technical/financial knowledge capacity".<sup>120</sup> During consultations, representatives from the NSTP-JDA confirmed that the same criteria applied to both license awards and transfers of participating interests.

***License awardee information:*** In terms of license *awards*, the 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>121</sup> provides the license-holder names for the three OPLs<sup>122</sup> awarded in 2015. The 2015 O&G EITI Report lists the identity and interests of the three partners in consortium that was awarded JDZ-Block 1 in 2015.<sup>123</sup>

In terms of license *transfers*, the field legal contract data submitted by oil and gas companies<sup>124</sup> and the 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>125</sup> provide the identity of the former and new owners of two OMLs in which there were interest transfers in 2015. While the 2015 O&G EITI Report does not comment on the existence of any transfers of interests in licenses in the NSTP-JDZ in 2015, all stakeholders consulted confirmed the lack of transfers in JDZ-Blocks in 2015.

***Non-trivial deviations:*** In terms of license *awards*, the 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>126</sup> explains that the award of three OPLs<sup>127</sup> in 2015 was undertaken without any non-trivial deviations from statutory procedures.

While the 2015 O&G EITI Report does not refer to any non-trivial deviations in the allocation of JDZ-Block 1 aside from providing a link<sup>128</sup> to the relevant NSTJDA press release, the 'Joint Development Zone (Appendix F)' report published in July 2018 states that JDZ-Block 1 was re-awarded "based on set out commercial and technical criteria"<sup>129</sup>, although it does not explicitly confirm the lack of non-trivial deviations in its allocation. However, representatives consulted from government and the NEITI Secretariat confirmed that this statement was intended to refer to the lack of non-trivial deviations from statutory procedures in the award of JDZ-Block 1 in 2015.

In terms of license *transfers*, the 2015 O&G EITI Report does not highlight any deviations in the transfers of interests in licenses in 2015. the 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>130</sup> confirms the lack of non-trivial deviations in the transfer of the two OMLs in 2015.

***Bidding process:*** While the 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>131</sup> provides the names of the license-holders for the three OPLs awarded in 2015, it does not provide the list of

<sup>120</sup> NEITI (August 2018), 'Process for assignment of participating interest in the JDZ', accessed [here](#) in August 2018.

<sup>121</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>122</sup> Jahcon International Ltd (OPL2001), Hi-Rev E&P Ltd (OPL2002) and Oil & Gas Industrial Services (OPL2003).

<sup>123</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.45-46.

<sup>124</sup> <http://www.neiti.gov.ng/index.php/extractives/oil-and-gas/category/173-eog-references?download=688:og-field-legal-contract-data-completed-by-companies>

<sup>125</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>126</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>127</sup> OPL2001, OPL2002 and OPL2003.

<sup>128</sup> <http://www.nstjda.com/new-jdz-block-1-production-sharing-contractor-psc/>

<sup>129</sup> NEITI (July 2018), 'Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria (Appendix F)', p.5.

<sup>130</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>131</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

original unsuccessful bidders for these blocks during the 2007 licensing round. However, following stakeholder consultations, NEITI published the full list of original bidders for the three OPLs awarded in 2015 on its website<sup>132</sup> on 20 July 2018, subsequent to the start of the second Validation.

While it is unclear from the 2015 O&G EITI Report whether JDZ-Block 1 was awarded through competitive bidding<sup>133</sup>, the 'Joint Development Zone (Appendix F)' report published in July 2018 clarifies that JDZ-Block 1 was awarded through competitive tender and provides a list of unsuccessful bidders.<sup>134</sup>

### *Solid minerals*

***Awards/transfers:*** In terms of license *awards*, the 2015 SM EITI Report confirms the award of 1230 new licenses in 2015, including 455 exploration leases and 11 mining leases.<sup>135</sup> A list of 78 licenses<sup>136</sup> awarded in 2015 is provided in the main report, disaggregated by commodity.<sup>137</sup> However, the 2015 mining license awards in the 2015 SM EITI Report's appendix 3 list 902 license awards in 2015.<sup>138</sup> During stakeholder consultations, representatives from the NEITI Secretariat and the IA confirmed that there had been 902 solid minerals licenses awarded in 2015. They explained that the 1230 licenses referred to in the 2015 SM EITI Report included the 309 reconnaissance permits, which were not the equivalent of licenses. Upon examination, it appears that reconnaissance permits do not confer any exclusive rights for exploration, implying that stakeholders' views that they do not represent licenses in the sense of Requirement 2.3.a is reasonable.

In terms of license *transfers*, while the 2015 SM EITI Report claimed that no licenses were transferred in 2015 aside from the consolidation of seven exploration leases into one by Dangote Industries Ltd<sup>139</sup>, the 2015 supplementary report published in July 2018 clarified that there were seven license awards and a consolidation of seven exploration licenses by Dangote in 2015.<sup>140</sup>

***Award/transfer process:*** In terms of license *awards*, the 2015 SM EITI Report provides only a cursory explanation that licenses are awarded on a first-come-first-served basis, alongside a link to the MCO's Guidelines for Mineral Title Applications<sup>141,142</sup> but does not describe *transfers*. However, the 2015 supplementary report published in July 2018 provides a description of the process for awarding and transferring licenses in the solid minerals sector.<sup>143</sup>

***Technical and financial criteria:*** While the 2015 SM EITI Report does not describe the criteria assessed in license *awards* and *transfers*, guidelines on the MCO website<sup>144</sup> related to license awards refer to

<sup>132</sup> NEITI (July 2018), '2007 Bid Round Results', accessed [here](#) in July 2018.

<sup>133</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.45-46.

<sup>134</sup> NEITI (July 2018), 'Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria (Appendix F)', pp.5-6.

<sup>135</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>136</sup> 13 licenses awarded in gold, 11 in iron ore, 16 in lead-zinc, six in limestone, three in coal, eight in gypsum, six in granite, 25 in sand and three in marble.

<sup>137</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.26-30.

<sup>138</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', pp.7-48.

<sup>139</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>140</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.4-5.

<sup>141</sup> <http://www.minesandsteel.gov.ng/wp-content/uploads/2016/10/Guidelines-for-Mineral-Title-Applications.pdf>

<sup>142</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>143</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.4-7.

<sup>144</sup> <http://www.miningcadastre.gov.ng/additional-documents-and-forms/>

evidence of technical and financial capacities<sup>145</sup> through the submission of staff CVs and credentials, signed financial statements and accounts. However, documents on the MCO website do not clarify the way in which such capacities are assessed, or whether there is a threshold for assessing technical or financial capacities. However, the 2015 supplementary report published in July 2018 provides details of the financial criteria assessed in license applications and a link to further information online.<sup>146</sup>

*License awardee information:* In terms of license *awards*, the 2015 SM EITI Report lists the names of companies having been awarded the 78 mining licenses presented by commodity<sup>147</sup>, while its appendix 3 lists the companies having received 902 licenses in 2015<sup>148</sup>.

In terms of license *transfers*, while the 2015 SM EITI Report claimed that no licenses were transferred in 2015 aside from the consolidation of seven exploration leases into one by Dangote Industries Ltd<sup>149</sup>, the 2015 supplementary report published in July 2018 clarified that there were seven license awards and a consolidation of seven exploration licenses by Dangote in 2015.<sup>150</sup>

*Non-trivial deviations:* While the 2015 SM EITI Report does not provide any information on deviations from statutory procedures in license awards and transfers in 2015, the 2015 supplementary report published in July 2018 states that there were no non-trivial deviations in either awards or transfers of solid minerals licenses in 2018.<sup>151</sup> While the basis for the supplementary report's assessment is unclear from the report itself, the IA confirmed during consultations that it had confirmed the lack of non-trivial deviations in 2015 license awards through consultations with the MCO.

*Bidding process:* The 2015 SM EITI Report clarifies that mining licenses are not awarded through bidding.<sup>152</sup>

### Progress since Validation – License registers (2.3)

With regards to the **corrective action related to requirement 2.3**, NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published a new page covering 'Legal and Institutional Framework, Contracts and Licenses'<sup>153</sup> in the oil and gas sector in April 2018 as part of the NEITI website's Value Chain section. Concurrently, NEITI published a copy of the DPR's register of 99 Oil Mining Leases (OMLs) and 65 Oil Prospecting Leases (OPLs) active in 2015<sup>154</sup> and field legal contract data submitted by oil and gas companies for 2015.<sup>155</sup> NEITI subsequently published an updated section on 'Joint Development Zone (Appendix F)'<sup>156</sup> on 6 July 2018. For solid minerals, NEITI subsequently published a '2015 Solid Minerals

<sup>145</sup> By technical competence, it is meant that an applicant must employ a person or persons who possess adequate qualifications and experience in mining and must be registered with the Council for Mining Engineers and Geoscientists and any other professional bodies.

<sup>146</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.3-4.

<sup>147</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.26-30.

<sup>148</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', pp.7-48.

<sup>149</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>150</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.4-5.

<sup>151</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.5.

<sup>152</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>153</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>154</sup> NEITI (April 2018), 'OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>155</sup> NEITI (April 2018), '2015 Field legal contract submissions by reporting companies', accessed [here](#) in July 2018.

<sup>156</sup> NEITI (July 2018), 'Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria', accessed [here](#) in July 2018.

Audit - Supplementary Report<sup>157</sup> on 10 July 2018, which highlighted the launch of the MMSD's Integrated Automation & Interactive Solid Minerals Portal (IAISMP) on 9th November 2017.<sup>158</sup> NEITI also published a list of 4305 solid minerals licenses<sup>159</sup> on 10 July 2018 sourced from the MCO, which include all information listed under Requirement 2.3.b aside from dates of application and license coordinates.

### *Oil & gas*

***Licenses held by material companies:*** NEITI published a copy of the DPR's license register on its website, listing information on 65 OPLs and 99 OMLs.<sup>160</sup> This includes information on all active oil and gas licenses, including those held by non-material companies. The 29 oil and gas companies considered material in the 2015 O&G EITI Report held 23 OPLs and 82 OMLs in 2015.

The updated section on 'Joint Development Zone (Appendix F)' published in July 2018 confirms the lack of a publicly-available license register for the JDZ but confirms the availability of license [unspecified] information upon request.<sup>161</sup> Appendix E provides a link to an August 2017 presentation on the JDA website<sup>162</sup>, which provides the names of operator and partners for the four active oil and gas blocks in the JDZ. The International Secretariat's analysis, confirmed through stakeholder consultations, is that none of the seven oil and gas companies operating in the JDZ<sup>163</sup> were considered material in the 2015 O&G EITI Report.

***License-holder names:*** The DPR's license register<sup>164</sup> provides the names of license-holding companies for all 65 OPLs and 99 OMLs active in 2015. The JDA Monitoring and Inspection Department presentation on the JDA website<sup>165</sup> provides names of operator and partners for the four active blocks in the JDZ.

***License coordinates:*** The 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>166</sup> states that the IA was not able to secure coordinates for any of the licenses active in 2015. While the webpage states that the DPR publishes a 2D map of oil and gas licenses, the DPR website only provides contact details to purchase the map. However, The 'Licensing, Contracts and Disclosures' section provides links to two private initiatives (Oil Spill Tracker and Gas Flare Tracker), which provide coordinates for all oil and gas licenses. However, representatives from development partners and the NEITI Secretariat explained that these coordinates had been sourced in 2013 and could thus not be considered to be updated to 2015. They explained that the coordinates of licenses changed following operators' relinquishments of sections of the OPLs and OMLs. NEITI Secretariat staff highlighted their consistent efforts to follow up with DPR in order to secure coordinates for all oil and gas licenses, including four official letters<sup>167</sup> and around 20 phone calls in the 2017-18 period. All stakeholders consulted confirmed that oil and gas license coordinates were not publicly-accessible. After extensive discussions, DPR representatives explained that concession blocks had been drawn by different surveyors at different times for different purposes using

<sup>157</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>158</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.1.

<sup>159</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix B', accessed [here](#) in July 2018.

<sup>160</sup> NEITI (April 2018), 'OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>161</sup> NEITI (July 2018), 'Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria (Appendix F)', p.7.

<sup>162</sup> NISP-JDA (August 2017), 'Monitoring and inspection department', accessed [here](#) in July 2018.

<sup>163</sup> PAPIS Energy, Nakudu Nigeria Ltd, Equator Hydrocarbons Ltd, A.A. Rano Oil Ltd/JDZ Investment International Ltd, Oranto Petroleum Ltd, EHRC, and Foby Engineering Company Ltd.

<sup>164</sup> NEITI (April 2018), 'OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>165</sup> PAPIS Energy, Nakudu Nigeria Ltd, Equator Hydrocarbons Ltd, A.A. Rano Oil Ltd/JDZ Investment International Ltd, Oranto Petroleum Ltd, EHRC, and Foby Engineering Company Ltd.

<sup>166</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>167</sup> The four official letters from NEITI to DPR regarding coordinates were sent on 5 April, 24 July and 23 November 2017 as well as on 6 April 2018.

contemporary techniques. With the advent of newer and more efficient technologies, the official explained that the DPR had discovered apparent inaccuracies in the concession coordinates leading to overlaps and gaps in the concession areas. The DPR had thus engaged a consultant to work with operators to harmonize block coordinates, a process they expected to complete by the end of 2019.

The JDA Monitoring and Inspection Department presentation on the JDA website<sup>168</sup> does not provide license coordinates for the four active blocks in the JDZ.

**Dates:** The DPR's license register<sup>169</sup> provides the dates award and expiry for all 23 OPLs and 82 OMLs held by material companies in 2015. The register provides dates of application for 22 of the 23 OPLs, but does not provide dates of application for any of the OMLs. While the 'Licensing, Contracts and Disclosures' section of the NEITI website<sup>170</sup> states that the IA was not able to secure application dates for any of the licenses active in 2015, NEITI Secretariat staff explained that they had provided estimates of dates of application for OPLs based on the deadlines for submission of bids during the relevant licensing rounds. While the date of application for OPL 221 is not publicly-accessible, all publicly-available evidence indicates that OPL 221 was relinquished by Total in November 2013<sup>171</sup>, meaning it was not an active license in 2015. However, consultations with stakeholders from government and the NEITI Secretariat confirmed that the dates of application for conversions of OPLs into OMLs for OMLs held by material companies were not publicly-accessible. Upon consultation, a government official explained that the DPR had records of the dates of application for OMLs, but that these were not digitised and remained in the DPR's hard-copy files. On 3 August 2018, after the commencement of the second Validation, NEITI published a new version of the DPR license register<sup>172</sup>, which included dates of application for 22 of the 99 OMLs active in 2015. Of the 23 OPLs held by material companies, the revised register provides dates of application for eight of OPLs, while dates of application of 15 OPLs are still missing. Consultations with NEITI Secretariat staff revealed significant follow-up by NEITI with the DPR to secure dates of application for publication in July 2018, including numerous emails and phone calls. Staff explained that they intended to include requests for dates of application from material companies as part of data collection for the 2016 O&G EITI Report.

The JDA Monitoring and Inspection Department presentation on the JDA website<sup>173</sup> does not provide the dates of application, award or expiry for the four active blocks in the JDZ.

**Commodity:** While the DPR's license register<sup>174</sup> does not provide the commodity(ies) covered by each of the 65 OPLs and 99 OMLs active in 2015, representatives from government, the NEITI Secretariat and the IA confirmed that all licenses covered both crude oil and natural gas.

The JDA Monitoring and Inspection Department presentation on the JDA website<sup>175</sup> confirms that the four active blocks in the JDZ cover both crude oil and natural gas.

<sup>168</sup> PAPIS Energy, Nakudu Nigeria Ltd, Equator Hydrocarbons Ltd, A.A. Rano Oil Ltd/JDZ Investment International Ltd, Oranto Petroleum Ltd, EHRC, and Foby Engineering Company Ltd.

<sup>169</sup> NEITI (April 2018), 'OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>170</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>171</sup> Total (2014), '2014 Financial Transparency: Example of Total in Nigeria (2013 data)', accessed [here](#) in July 2018.

<sup>172</sup> NEITI (August 2018), 'Revised OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>173</sup> PAPIS Energy, Nakudu Nigeria Ltd, Equator Hydrocarbons Ltd, A.A. Rano Oil Ltd/JDZ Investment International Ltd, Oranto Petroleum Ltd, EHRC, and Foby Engineering Company Ltd.

<sup>174</sup> NEITI (April 2018), 'OPL and OML data 2015', accessed [here](#) in July 2018.

<sup>175</sup> PAPIS Energy, Nakudu Nigeria Ltd, Equator Hydrocarbons Ltd, A.A. Rano Oil Ltd/JDZ Investment International Ltd, Oranto Petroleum Ltd, EHRC, and Foby Engineering Company Ltd.

## Solid minerals

**Licenses held by material companies:** Appendix 3 of the 2015 SM EITI Report provides information on 902 mining licenses awarded in 2015<sup>176</sup>, but not on all mining licenses active in 2015. However, the 2015 SM EITI Report refers to the MCO's register of licenses<sup>177</sup>, albeit without describing the information available from the MCO. According to MMSD's new license registry, there were 3795 active solid minerals licenses as of March 2018.<sup>178</sup> The list of 4305 solid minerals licenses<sup>179</sup> published on the NEITI website in July 2018 includes licenses held both by material and non-material companies and does not require any registration to access. As highlighted in the 2015 Solid Minerals Supplementary Report, the MMSD's GeoMining Investor Portal<sup>180</sup> provides all information listed under Requirement 2.3.b aside from dates of application. The MMSD portal required log-in credentials, which are available upon request from the MCO.

**License-holder names:** The list of 4305 solid minerals licenses<sup>181</sup> published on the NEITI website in July 2018 provides license-holder names for all licenses, while MMSD's mining title's registry includes the name and registry filing code (RC Number) for the corporate registry in Nigeria.<sup>182</sup> The MMSD's GeoMining Investor Portal<sup>183</sup> provides license-holder names for all active and non-active licenses.

**License coordinates:** The list of 4305 solid minerals licenses<sup>184</sup> published on the NEITI website in July 2018 did not provide coordinates of the licenses. However, it is possible to zoom in on the MMSD's GeoMining Investor Portal<sup>185</sup> to estimate coordinates of each license. During consultations however, government representatives confirmed that detailed license coordinates were publicly-accessible free of charge from the MCO's head office and demonstrated this to the International Secretariat.

**Dates:** The list of 4305 solid minerals licenses<sup>186</sup> published on the NEITI website in July 2018 and the MMSD's GeoMining Investor Portal<sup>187</sup> provide dates of award and expiry for all licenses, but no dates of application. During consultations however, government representatives confirmed that dates of application were publicly-accessible free of charge for all solid minerals from the MCO's head office and demonstrated this to the International Secretariat.

**Commodity:** The list of 4305 solid minerals licenses<sup>188</sup> published on the NEITI website in July 2018 and the MMSD's GeoMining Investor Portal<sup>189</sup> provide the mineral commodity(ies) covered by each license.

## Secretariat's Assessment

**The International Secretariat's assessment is that the corrective action related to license allocations has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 2.2.**

<sup>176</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', pp.7-48.

<sup>177</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>178</sup> Ministry of Mines and Steel Development website, 'All mining titles', accessed [here](#) in July 2018.

<sup>179</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix B', accessed [here](#) in July 2018.

<sup>180</sup> MMSD GeoMining Investor Portal, accessed [here](#) in July 2018.

<sup>181</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix B', accessed [here](#) in July 2018.

<sup>182</sup> See the license entry for Exploration License #19459 as an example, where Kamdax Nigeria Ltd is identified by RC Number RC 216206, accessed [here](#) in July 2018.

<sup>183</sup> MMSD GeoMining Investor Portal, accessed [here](#) in July 2018.

<sup>184</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix B', accessed [here](#) in July 2018.

<sup>185</sup> MMSD GeoMining Investor Portal, accessed [here](#) in July 2018.

<sup>186</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix B', accessed [here](#) in July 2018.

<sup>187</sup> MMSD GeoMining Investor Portal, accessed [here](#) in July 2018.

<sup>188</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix B', accessed [here](#) in July 2018.

<sup>189</sup> MMSD GeoMining Investor Portal, accessed [here](#) in July 2018.

The 2015 O&G EITI Report and associated documents discloses which oil and gas licenses were awarded and transferred during the year, including in the NSTP-JDZ, confirming the lack of non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers. While NEITI provided an overview of the process for awarding and transferring licenses, it had omitted (prior to the start of the second Validation) some of the technical and financial criteria assessed during license awards and transfers as well as the list of bidders for the three licenses awarded in 2015 following a process of competitive tender. However, following stakeholder consultations, NEITI published the missing criteria and the full list of bidders for the three licenses awarded in 2015 on its website on 20 July 2018, subsequent to the start of Validation.

The 2015 SM EITI Report and associated documents disclose which solid minerals licenses were awarded and transferred during the year, highlighting any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers. The process for awarding and transferring solid minerals licenses is described, including the technical and financial criteria assessed.

Should the Board accept to take account of information on oil and gas license awards and transfers (both within Nigeria and in the NSTP-JDZ) published subsequent to the start of the second Validation, the International Secretariat's assessment would be that the corrective action related to license allocations has been addressed, and that Nigeria would have made satisfactory progress on Requirement 2.2.

In accordance with Requirement 2.2, Nigeria should ensure annual disclosure of which mining, oil and gas licenses were awarded and transferred in the year(s) under review, highlighting the technical and financial requirements and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.

The International Secretariat's assessment is that the corrective action related to license registers has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 2.3.

In oil and gas, NEITI has published information on all licenses held by material companies covering all data points per Requirement 2.3, aside from dates of application for 15 of the 23 production licenses (OMLs) held by material companies and license coordinates for all licenses.

In solid minerals, the 2015 SM EITI Report and associated documents (including the MMSD's GeoMining Investor Portal) provide all information per Requirement 2.3 aside from dates of application and license coordinates. However, the International Secretariat has confirmed that this missing data is publicly-accessible free of charge upon request to the MCO's head office.

In accordance with Requirement 2.3, Nigeria is required to maintain a publicly available register or cadastre system(s), including comprehensive information on licenses held by all oil and gas companies. In the interim Nigeria should ensure that future EITI Reports provide DPR data for all information set out under EITI Requirement 2.3.b for all licenses held by oil and gas companies covered by EITI Reports.

### 3.5 Corrective action 5 (#2.4)

In accordance with requirement 2.4, the NSWG should document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or

underway. The next EITI Reports should provide an overview of the contracts and licenses that are publicly available, and include a reference or link to the location where these are published.

### Findings from the first Validation

The first Validation concluded that Nigeria had made inadequate progress in meeting this requirement. In both solid minerals as well as oil and gas, Validation found that the 2013 EITI Reports did not clarify government policy on contract disclosure, nor any planned or ongoing related reforms. The reports did not comment on actual contract disclosure practice, despite the fact that some 31 oil and gas contracts were accessible in the public domain.

### Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an ‘Overview of Operating Contracts Disclosure in The Nigerian Oil and Gas Industry’<sup>190</sup> on the Value Chain section of its website in April 2018, which provided clarification of the policy and practice of contract transparency in the oil and gas sector. NEITI subsequently published a ‘2015 Solid Minerals Audit - Supplementary Report’<sup>191</sup> on 10 July 2018, which further documented the lack of government policy on contract disclosure.<sup>192</sup>

**Government policy:** In *oil and gas*, while the ‘Operating Contracts Disclosure in The Nigerian Oil and Gas Industry’<sup>193</sup> published on the NEITI website refers to the DPR’s confirmation of the lack of a formal government policy on contract disclosure prior to July 2017, when a National Petroleum Policy and the National Gas Policy was passed requiring transparency of “declarations and operations”. It also highlights President Buhari’s commitment to contract disclosure at the London May 2016 Anti-Corruption Summit, which was included in the 2017-19 OGP National Action Plan.

In *solid minerals*, the 2015 SM EITI Report refers to the MCO’s confirmation of the lack of operating contracts in the sector and describes the lack of explicit restrictions on the public disclosure of licenses.<sup>194</sup> The 2015 supplementary report published in July 2018 documented some of the government’s other efforts in open contracting, such as in procurement.<sup>195</sup>

**Practice:** In *oil and gas*, the ‘Operating Contracts Disclosure in The Nigerian Oil and Gas Industry’<sup>196</sup> published on the NEITI website confirms that a full list of contracts is held both by DPR and NNPC, which “usually” signs contracts on refers to publicly-available contracts on the Resource Contracts portal and the Open Oil contracts database, with links provided. The NEITI website provides a list of 13 oil and gas contracts (JV agreements and PSCs) that are publicly accessible.<sup>197</sup>

<sup>190</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>191</sup> NEITI (July 2018), ‘2015 Solid Minerals Audit - Supplementary Report’, accessed [here](#) in July 2018.

<sup>192</sup> NEITI (July 2018), ‘2015 Solid Minerals Audit - Supplementary Report’, pp.5-6.

<sup>193</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>194</sup> NEITI (July 2018), ‘2015 Solid Minerals Audit - Supplementary Report’, p.23.

<sup>195</sup> NEITI (July 2018), ‘2015 Solid Minerals Audit - Supplementary Report’, pp.5-6.

<sup>196</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>197</sup> NEITI (July 2018), ‘Review of publicly-accessible oil and gas contracts’, accessed [here](#) in July 2018.

In *solid minerals*, the 2015 SM EITI Report confirms the lack of operating contracts in the sector and provides a description of Community Development Agreements (CDAs) required by law.<sup>198</sup>

**Accessibility:** In *oil and gas*, the ‘Operating Contracts Disclosure in The Nigerian Oil and Gas Industry’<sup>199</sup> published on the NEITI website refers to an unspecified number of publicly-available contracts on the Resource Contracts portal and the Open Oil contracts database, with links provided. The field legal contract data completed by companies<sup>200</sup> provides 45 of 54 producing companies’ disclosure of key terms<sup>201</sup> of their contracts.

### Secretariat’s Assessment

The International Secretariat’s assessment is that the corrective action related to contract disclosure has been addressed and considers that Nigeria has made satisfactory progress on Requirement 2.4. While there are only licenses, no contracts, in the solid minerals sector, Nigeria has clarified the government’s policy on contract disclosure and reviewed actual practice in the oil and gas sector.

In accordance with Requirement 2.4, Nigeria may wish to follow up with key government entities to ensure that actual disclosure practice for oil and gas contracts is consistent with the government’s policy.

### 3.6 Corrective action 6 (#2.6 and #6.2)

In accordance with requirement 2.6, the NSWG should provide an explanation of the prevailing rules and practices related to SOEs’ retained earnings and reinvestment. The government should also ensure annual disclosure of any changes in government ownership in SOEs or their subsidiaries, and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies. In accordance with requirement 6.2, the NSWG should consider the existence and materiality of any quasi-fiscal expenditures undertaken by SOEs and subsidiaries in the extractive industries and ensure that all material quasi-fiscal expenditures are disclosed.

In accordance with requirement 6.2, the NSWG should agree on a reporting process on quasi-fiscal expenditures from state owned enterprises with a view to achieving a level of transparency commensurate with other payments and revenue streams, including subsidiaries of state-owned enterprises and joint ventures.

### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting Requirement 2.6 in oil and gas. While the requirement was considered unlikely to be applicable in solid minerals, the Board called for the NSWG to clarify the status of state participation in the sector. In oil and gas, the NSWG was considered to have undertaken significant efforts to disclose information on the operation of Nigerian National Petroleum Corporation (NNPC) and its subsidiaries. Validation found that the 2013 EITI Report provided information on some SOEs, the rules governing financial relations between the state and SOEs both statutorily and in practice, some information on changes in state ownership and on loans contracted by SOEs. The 2013 EITI Report provided significant information on significant practical deviations in the transfer of NNPC equity in JVs holding oil and gas licenses, although these appear to have been completed prior to 2013. However, Validation highlighted gaps in the list of SOEs disclosed through EITI reporting

<sup>198</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.23.

<sup>199</sup> NEITI (June 2018), ‘Legal and Institutional Framework, Contracts and Licenses’ section of the website, accessed [here](#) in July 2018.

<sup>200</sup> <http://www.neiti.gov.ng/index.php/extractives/oil-and-gas/category/173-eog-references?download=696:og-summary-of-beneficial-ownership-information>

<sup>201</sup> Including type of commercial arrangement, shareholding structure, OPL/OML number and date of award.

given the existence of five NNPC trading subsidiaries and several new JVs established as a result of IOC divestments. Validation noted that the divestments by four IOCs from their stakes in JVs may have created up to 14 new JV cash call structures. Finally, the 2013 EITI Report did not address any loans or loan guarantees extended by the Federal Government of Nigeria (FGN) or SOEs to companies operating in the oil and gas sector.

The first Validation concluded that Nigeria had made meaningful progress in meeting Requirement 6.2. Validation found that this requirement was not applicable in solid minerals. While the 2013 OG EITI Report provided NNPC-NAPIMS' disclosures of quasi-fiscal expenditures undertaken by NNPC JVs (and one wholly-private company), none of the stakeholders consulted during Validation considered these JVs to be SOEs. These expenditures appeared to be social expenditures that had been mis-categorised. While the 2013 OG EITI Report also disclosed subsidy payments for refined products, it included 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, Validation considered that the NSWG did 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.

### Progress since Validation – State participation (#2.6)

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published a section on "Revenue collection"<sup>202</sup> for oil and gas in the Value Chain section of its website in April 2018. NEITI also published an updated section on 'Determination of Materiality (Appendix E)'<sup>203</sup> and an updated 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)'<sup>204</sup> on 6 July 2018, which provides a detailed description of NNPC's retained earnings, reinvestments and third-party funding in 2015. For solid minerals, NEITI published a new 'Appendix C: determination of materiality'<sup>205</sup> and a '2015 Solid Minerals Audit - Supplementary Report'<sup>206</sup> on 10 July 2018, which confirmed the lack of state participation in the solid minerals sector in 2015.<sup>207</sup>

Subsequent to the start of the second Validation on 11 July 2018, NEITI published a comprehensive list of all PSCs active in 2015 on its website<sup>208</sup>, including the eight PSCs in which NNPC holds interests, on 27 July 2018.

In *solid minerals*, the 2015 SM EITI Report confirms the lack of state participation in the sector in 2015<sup>209</sup>, referring to signed confirmation by the Bureau of Public Enterprises provided in Appendix 12. While the letter from BPE only confirms the lack of transactions in 2015 rather than the lack of government

<sup>202</sup> NEITI (April 2018), 'Revenue collection', accessed [here](#) in July 2018.

<sup>203</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>204</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', accessed [here](#) in July 2018.

<sup>205</sup> NEITI (July 2018), '2015 Solid Minerals Audit – Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>206</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>207</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.6.

<sup>208</sup> NEITI (July 2018), List of PSCs with equity holdings, accessed [here](#) in July 2018.

<sup>209</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.24.

ownership in extractives companies<sup>210</sup>, Appendix C and the 2015 supplementary report published in July 2018 confirm the lack of state participation in the solid minerals sector in 2015.<sup>211212</sup>

With regards to the **corrective action related to requirement 2.6**, in *oil and gas*, the 2015 O&G EITI Report confirms the existence and materiality of state participation in the sector.<sup>213</sup>

***Materiality***: While the 2015 O&G EITI Report does not explicitly assess the materiality of transactions involving NNPC, the government's unilateral government disclosure of extractives revenues shows that six revenue flows included in the scope of reconciliation were collected by NNPC-COMD.<sup>214</sup> The section on 'Determination of Materiality (Appendix E)' published in July 2018 confirms that NNPC and its subsidiaries and joint ventures are the only form of state participation in the oil and gas sector.<sup>215</sup>

***Financial relationship with government***: The 2015 Oil & Gas Report, the NEITI website's section on "Revenue collection"<sup>216</sup> for oil and gas provide an overview of the statutory financial relations between NNPC, some of its subsidiaries, and the government. The government's only direct interest in the oil and gas sector is in NNPC, with all stake participations in the oil and gas sector held indirectly through NNPC and its subsidiaries.

In terms of NNPC's *interests in oil and gas projects*, the 2015 Oil & Gas Report provides an overview of NNPC's responsibilities in line with different production arrangements, including JVs<sup>217</sup>, Alternative Funding Arrangements for JVs<sup>218</sup> and PSCs.<sup>219</sup> NEITI has also provided some description of the actual practice of NNPC's financing of production arrangements in 2015, including the value of Parliament-approved 2015 JV Budget Appropriations published on the NEITI website<sup>220</sup> and the value of NNPC's accumulated outstanding cash-call liabilities to NNPC/SPDC/TEPNG/NAOC and NNPC/MPN in the 2015 O&G EITI Report.<sup>221</sup>

In terms of NNPC's *own financial relations with government*, the NEITI website's section on "Revenue collection"<sup>222</sup> for oil and gas provides an overview of statutory relations in line with the 1977 NNPC Act, including its duty to remit dividends to the Federation Account, its ability to retain earnings to cover expenses (with broad authorisation for treatment of expenses), and its ability to raise third-party debt financing (e.g. by overdraft). Government stakeholders consulted confirmed that NNPC could not raise third-party equity financing but noted that it could establish joint-ventures with private investors, which they considered the equivalent. The 2015 O&G Report highlights deviations from statutory NNPC's financial relations with the government in practice, providing figures for NNPC's expenditures on gas infrastructure projects<sup>223</sup> and a list of USD 597.9m in non-cash call expenditures by NNPC, funded from

<sup>210</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', p.49.

<sup>211</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.6.

<sup>212</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', pp.9-10.

<sup>213</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.18-19,25-26,28-29,50.

<sup>214</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.18-19,25-26,28-29.

<sup>215</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.5.

<sup>216</sup> NEITI (April 2018), 'Revenue collection', accessed [here](#) in July 2018.

<sup>217</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.36-37,75-79,82-84.

<sup>218</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.43-44.

<sup>219</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.41.

<sup>220</sup> <http://www.neiti.gov.ng/index.php/extractives/oil-and-gas/category/173-eog-references?download=683:og-iv-budget-2015-appropriation>

<sup>221</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.83-84.

<sup>222</sup> NEITI (April 2018), 'Revenue collection', accessed [here](#) in July 2018.

<sup>223</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.79-80.

the two cash call accounts without appropriation<sup>224</sup>, together with NNPC's response to these findings.<sup>225</sup> The updated 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)' published in July 2018 provides a detailed description of NNPC's retained earnings, reinvestments and third-party funding in 2015. The "Revenue collection" section of the NEITI website confirms that NNPC does not receive funding from the Federal Government or national budget and that NNPC recorded a deficit in its 2015 financial performance, implying that NNPC did not pay dividends to the Federation Account in 2015.

In terms of NNPC's *financial relations with its subsidiaries*, the 2015 O&G EITI Report provides brief descriptions of the financial relations between NNPC and NAPIMS<sup>226</sup>, COMD<sup>227</sup>, NPDC<sup>228</sup> and NLNG<sup>229</sup> only. The NEITI website's section on "Revenue collection"<sup>230</sup> for oil and gas clarifies that all NNPC subsidiaries are limited liability companies, implying that they are able to retain earnings, reinvest in their operations and raise third-party funding. For NNPC joint ventures, the webpage explains that they receive funding from NNPC in accordance with NNPC's equity interest. While it does not explicitly state whether these joint ventures can retain earnings, reinvest or raise third-party funding, the statement that they are limited liability companies implies that they can do so, especially based on statements regarding other subsidiaries of NNPC. Stakeholders consulted from government and the NEITI Secretariat confirmed that all of NNPC's subsidiaries were statutorily entitled to retain earnings, reinvest and raise third-party funding.

**Government ownership:** While the 2015 O&G EITI Report provides the list of NNPC interests in 11 Joint Venture arrangements<sup>231,232</sup>, it does not list the PSCs in which NNPC participates nor provide a comprehensive list of NNPC's subsidiaries and joint ventures, aside from reference to NNPC's 49% interest in NLNG.<sup>233</sup> However, the NEITI website's section on "Revenue collection"<sup>234</sup> for oil and gas provides a list of 22 companies in which NNPC holds a majority interest, including the specific participating interest. Following stakeholder consultations, the NEITI Secretariat published a comprehensive list of all PSCs active in 2015 on its website<sup>235</sup>, including the eight PSCs in which NNPC holds an interest and the percentage interest held by NNPC. This document was published on 27 July 2018, subsequent to the start of the second Validation.

Although none of NEITI's publications highlight the existence of two NLNG subsidiaries, the NLNG corporate website<sup>236</sup> lists two companies in which NLNG holds 100% interest: Bonny Gas Transport Ltd and NLNG Ship Management Ltd. Both of these subsidiaries are engaged in LNG transportation and LNG tanker ship management, rather than upstream extractives activities.

<sup>224</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.80-81.

<sup>225</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.84.

<sup>226</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.84.

<sup>227</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.50.

<sup>228</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.76.

<sup>229</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.96.

<sup>230</sup> NEITI (April 2018), 'Revenue collection', accessed [here](#) in July 2018.

<sup>231</sup> Two of the JVs (NPDC/Chevron and NPDC/SPDC, on OMLs 11, 13, 20, 49 and 51) are categorised as "Non-Equity Assets operated by NPDC on behalf of NNPC the operatorship role aims to transfer knowledge/ technical capacity of NPDC to develop local capacity".

<sup>232</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.75-76.

<sup>233</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.40.

<sup>234</sup> NEITI (April 2018), 'Revenue collection', accessed [here](#) in July 2018.

<sup>235</sup> NEITI (July 2018), List of PSCs with equity holdings, accessed [here](#) in July 2018.

<sup>236</sup> NLNG website, 'Subsidiaries' webpage', accessed [here](#) in July 2018.

While the 2015 Oil & Gas Report provides an overview of NNPC's responsibilities in line with different production arrangements, including JVA's<sup>237</sup>, Alternative Funding Arrangements for JVs<sup>238</sup> and PSCs<sup>239</sup>, it does not provide an overview of terms associated with NNPC's interests in its subsidiaries. However, the oil and gas "Revenue collection"<sup>240</sup> section on the NEITI website explains that NNPC provides funding to these subsidiaries in line with its equity interest, implying that NNPC's equity interests in its subsidiaries are held on commercial terms.

**Ownership changes:** While the 2015 O&G EITI Report does not refer to any changes in state participation in 2015, despite reference to outstanding liabilities associated with the SPDC divestments in 2010-12<sup>241</sup>, the section on 'Determination of Materiality (Appendix E)' published in July 2018 confirms that there were no changes in state participation in the oil and gas sector in 2015.<sup>242</sup>

**Loans and guarantees:** The 2015 O&G EITI Report describes two outstanding loans to extractives companies, one from NNPC to Pan Ocean and one from the Federal Government to NLNG.<sup>243</sup>

The 2015 O&G EITI Report provides the value of the outstanding debt from Pan Ocean to NNPC, an explanation of the loan and the terms of its repayment.<sup>244</sup> The report states that the debt has been repaid (although the timing of the repayment is unclear from the report) and notes that NNPC was constituting a committee to recover the unpaid accumulated interest on the loan.<sup>245</sup> Representatives from government and the NEITI Secretariat confirmed that the Pan Ocean loan had been repaid in 2012, but noted that the unpaid accumulated interest on the loan was still outstanding in 2015.

The 2015 O&G EITI Report provides the value of the outstanding loan from the Federal Government to NLNG as of December 2015 and confirms the value of NLNG repayments in 2015.<sup>246</sup> While NEITI's publications did not detail the terms of the original NLNG loans, factsheets published on the NLNG website<sup>247</sup> list a USD 1.8bn loan secured in 2002 and a USD 1.06bn loan secured in 2003 secured from the shareholders in the NLNG project, which include NNPC. However, there is no information in the public domain about the terms of the loans to NLNG, namely the interest rate charged and loan tenor.

Stakeholders consulted from government, industry and the NEITI Secretariat confirmed the lack of loans or guarantees extended directly by the Federal Government to any extractives company in 2015.

## Progress since Validation – Quasi-fiscal expenditures (#6.2)

With regards to the **corrective action related to requirement 6.2**, in *solid minerals*, the 2015 SM EITI Report and NSWG confirms the lack of quasi-fiscal expenditures in 2015, given the lack of state participation in the sector.<sup>248,249</sup>

<sup>237</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.36-37,75-79,82-84.

<sup>238</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.43-44.

<sup>239</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.41.

<sup>240</sup> NEITI (April 2018), 'Revenue collection', accessed [here](#) in July 2018.

<sup>241</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.76.

<sup>242</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.6.

<sup>243</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.56,96.

<sup>244</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.56.

<sup>245</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.56.

<sup>246</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.96.

<sup>247</sup> See NLNG (2014), 'Facts & Figures on NLNG 2014', accessed [here](#), and 'Facts & Figures on NLNG 2016', accessed [here](#), in July 2018.

<sup>248</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.44.

<sup>249</sup> NEITI (2018), 'NSWG Meeting Minutes of 13 June 2018', accessed [here](#) in July 2018.

In *oil and gas*, the 2015 O&G EITI Report confirms that SOEs such as NNPC undertake quasi-fiscal expenditures<sup>250</sup> and describes the subsidies on oil products and the PPPRA's role in providing guidelines and managing the Petroleum Support Fund (link provided to 2009 guidelines).<sup>251</sup> The updated section on 'Determination of Materiality (Appendix E)' published in July 2018 describes NEITI's assessment of the materiality of these quasi-fiscal expenditures, which at 3.41% of government oil and gas revenues were below the 5% materiality threshold and thus unilaterally disclosed by NNPC, PPPRA and DMO.<sup>252</sup>

The "Social and economic spending" webpage of the 'Value Chain' section of the NEITI website explains that NNPC makes deductions from proceeds of domestic crude oil sales to cover the subsidies on petroleum products in excess of budgetary-approved levels, and confirms that these amount to quasi-fiscal expenditures.<sup>253</sup> The main report provides the total value of fuel (kerosene and Premium Motor Spirit) subsidies paid in 2015 and the value of subsidies covered by the national budget.<sup>254</sup> A comparison of fuel volumes allocated for refined oil imports and actual imports by NNPC and other marketers is provided.<sup>255</sup>

While the 2015 O&G EITI Report does not explicitly confirm that off-budget subsidies by NNPC represent the only form of quasi-fiscal expenditures in the oil and gas sector, there was consensus among stakeholders consulted from government, including NNPC, the NEITI Secretariat, development partners and the IA that this represented the only form of quasi-fiscal expenditures in the year under review. While many stakeholders conceded that assurances over the comprehensiveness of disclosures of NNPC's quasi-fiscal expenditures were hampered by the lack of access to the SOE's audited financial statements, they considered that the NEITI reporting was comprehensive to the best of their knowledge.

### Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to state participation has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 2.6. While this requirement has been demonstrated to be not applicable to solid minerals in 2015, NEITI's publications on 2015 (including the 2015 O&G EITI Report and associated documents subsequently published in 2018) confirmed that state participation in NNPC gives rise to material revenues. While NEITI provided a list of companies and joint ventures in which NNPC held equity, it did not provide a comprehensive list of PSCs in which NNPC held participating interests as of the start of Validation (11 July 2018). However, NEITI published this comprehensive list of PSCs and NNPC's participating interests on 20 July 2018, subsequent to the start of Validation.

NEITI has confirmed the lack of changes in state participation in 2015 and provided an overview of terms associated with NNPC equity in its subsidiaries, joint ventures and PSCs. NEITI has provided an overview of the statutory rules governing the financial relations between NNPC and the government and highlighted deviations in practice. Finally, NEITI has provided an overview of NNPC loans to oil and gas companies and stakeholders have confirmed the lack of sovereign loans or guarantees to oil and gas companies in 2015. While NEITI has not provided the detailed terms of the original loans to NLNG (such as interest rate and tenor), the detailed information on loan repayments provides adequate information on the repayment of the loan.

<sup>250</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.39.

<sup>251</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.174.

<sup>252</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.15.

<sup>253</sup> NEITI website, 'Social and economic spending' webpage of the 'Value Chain' section, accessed [here](#) in July 2018.

<sup>254</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.39.

<sup>255</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.175-178,179-181,182.

Should the Board accept to take account of information on NNPC's participating interests in PSCs published subsequent to the start of the second Validation, the International Secretariat's assessment would be that the corrective action related to state participation had been addressed, and that Nigeria would have made satisfactory progress on Requirement 2.6.

In accordance with Requirement 2.6, Nigeria should ensure that a comprehensive list of all state participations in the oil and gas industry are publicly-accessible, including all subsidiaries. This should be accompanied by a description of the prevailing rules and practices regarding the financial relationship between the government and each state-owned enterprise, e.g. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. To ensure that a comprehensive view of the financial relations within the NNPC Group and between NNPC and the government is publicly accessible, Nigeria is encouraged to publish NNPC's financial statements audited in line with international standards. This would provide greater certainty over the comprehensiveness of NEITI's disclosures on state participation in the oil and gas sector.

On balance, the International Secretariat's assessment is that the corrective action related to the quasi-fiscal expenditures has been addressed and considers that Nigeria has made satisfactory progress on Requirement 6.2. The 2015 SM EITI Report confirms the lack of quasi-fiscal expenditures in solid minerals given the lack of state participation in the sector. In oil and gas, the 2015 O&G EITI Report provides an overview of off-budget fuel subsidies provided by NNPC, confirming that they represent quasi-fiscal expenditures, and provides a level of transparency commensurate with other payments and revenue streams. While the lack of access to NNPC's audited financial statements hamper any assessment of the comprehensiveness of NEITI's reporting of its quasi-fiscal expenditures, there was consensus among stakeholders consulted that the 2015 EITI Report provided a comprehensive overview of NNPC's quasi-fiscal expenditures to the best of their knowledge. The International Secretariat has not found evidence in the public domain of additional quasi-fiscal expenditures in 2015, despite evidence of additional quasi-fiscal expenditures in previous years. To strengthen implementation, Nigeria is strongly encouraged to ensure NNPC's audited financial statements are publicly accessible, to ensure that its quasi-fiscal activities expenditures are comprehensively considered and disclosed.

### 3.7 Corrective action 7 (#3.2 & #3.3)

In accordance with requirements 3.2 and 3.3, the NSWG should ensure future EITI Reports provide disaggregated production values as well as export volumes and values for all key minerals produced including crude oil and natural gas.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting Requirement 3.2. Validation considered that Nigeria had gone beyond the basic requirement in reconciling oil and gas production lifting figures. In oil and gas, the EITI Report had also provided production volumes for crude oil and natural gas. While it was possible to calculate production values for crude oil, there was insufficient information to do so for natural gas. In solid minerals, the EITI Report provided production volumes for the eight most significant minerals by volume, but not values nor pricing information.

The first Validation concluded that Nigeria had made meaningful progress in meeting Requirement 3.3. Validation found that EITI Reports provided export volumes for crude oil, natural gas and oil export values, but not the value of natural gas exports. The reports also provided the export values for the three largest solid mineral exports that accounted for roughly two thirds of solid mineral exports, but only

export volumes for material companies rather than for total exports, nor data from the Abuja-based West African Gas Pipeline Authority (WAGPCo).

### Progress since Validation – Production data (#3.2)

With regards to the **corrective action related to requirement 3.2**, NEITI published the 2015 Solid Minerals EITI Report (and standalone appendices) in November 2017 and the 2015 Oil & Gas EITI Report (and standalone appendices) in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published Appendix A to the 2015 O&G EITI Report<sup>256</sup> on 12 April 2018, which provided a detailed reconciliation of physical product flows for crude oil and natural gas, and Appendix D on 'Pricing of Federation Crude'<sup>257</sup> on 6 July 2018, which provided detailed information on oil and gas pricing. On 10 July 2018, NEITI published a '2015 Solid Minerals Audit - Supplementary Report'<sup>258</sup>, which provides 2015 production volumes and values for solid minerals.

**Production volumes:** For *oil and gas*, the 2015 O&G EITI Report provides 2015 production volumes for crude oil (including the unitized Zafiro crude blend)<sup>259</sup> and for natural gas.<sup>260</sup> Crude oil production figures are disaggregated by operator, type of production arrangement and by month, while natural gas production volumes are disaggregated by type of end-use and producing company.<sup>261</sup> The report also details losses due to sabotage and theft<sup>262</sup> and describes the methodology for calculating production volume figures.<sup>263</sup> Reconciliation of crude oil production and lifting volumes is provided as in previous EITI Reports.<sup>264</sup> Appendix A published in April 2018 provided crude oil and natural gas lifting volumes.<sup>265</sup> While lifting volumes do not take account of technical losses at well-head, they provide an adequate proxy for total production in Nigeria. The 'Production' webpage of the 'Value Chain' section of the NEITI website provides production volumes for crude oil and natural gas.<sup>266</sup>

For *solid minerals*, the 2015 SM EITI Report provides 2015 production volumes for 17 minerals, disaggregated by commodity.<sup>267</sup> These aggregate production volumes are disaggregated by state in appendix 11<sup>268</sup>, although these figures are different from those in the main report. The inconsistencies were corrected in the 2015 supplementary report published in July 2018.<sup>269</sup>

**Production values:** For *oil and gas*, while the value of oil production can be calculated using the 2015 average oil price provided in the 2015 O&G EITI Report<sup>270</sup>, the report does not explicitly provide the value of Nigeria's total oil production in 2015, even if it does provide the value of natural gas sales in 2015.<sup>271</sup> While Appendix D published in April 2018 and Appendix A published in April 2018 do not provide an explicit value of production for oil or gas in 2015, they provide sufficient pricing information to enable

<sup>256</sup> NEITI (April 2018), 'Oil & Gas Audit Report - Appendix A', accessed [here](#) in July 2018.

<sup>257</sup> NEITI (July 2018), 'Pricing of Federation Crude - Appendix D', accessed [here](#) in July 2018.

<sup>258</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>259</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.51, 117-120,123-124,130-131,136.

<sup>260</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.145-148.

<sup>261</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.145-151.

<sup>262</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.140-143,170.

<sup>263</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.128-129.

<sup>264</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.121-122,132-133,134-138.

<sup>265</sup> NEITI (April 2018), 'Oil & Gas Audit Report - Appendix A', pp.59-104,138-188.

<sup>266</sup> NEITI website, 'Production' webpage of the Value Chain section, accessed [here](#) in July 2018.

<sup>267</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.32.

<sup>268</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', p.123.

<sup>269</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.10-12.

<sup>270</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.47.

<sup>271</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.31,59.

readers to calculate estimates of production values for both oil and gas. The 'Production' webpage of the 'Value Chain' section of the NEITI website provides production values for crude oil and natural gas.<sup>272</sup>

For *solid minerals*, the 2015 SM EITI Report provides 2015 production values for 17 minerals, disaggregated by commodity<sup>273</sup>, with the same discrepancies with figures provided in Appendix 11.<sup>274</sup> The inconsistencies were corrected in the 2015 supplementary report published in July 2018.<sup>275</sup>

### Progress since Validation – Export data (#3.3)

With regards to the **corrective action related to requirement 3.3**, NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published a spreadsheet of NLNG exports in 2015 'Appendix G'<sup>276</sup> on 10 July 2018.

Export volumes: For *oil and gas*, the 2015 O&G EITI Report provides total 2015 export volumes for crude oil and monthly export volumes for LPG, EGP and EGTL gas.<sup>277</sup> The 'Production' webpage of the 'Value Chain' section of the NEITI website provides export volumes for crude oil and natural gas.<sup>278</sup> While the 2015 O&G EITI Report did not provide 2015 export volumes of LNG, the spreadsheet of NLNG exports in 2015 (Appendix G) published in July 2018 provides export volumes for LNG, condensate, LPG (Propane) and LPG (Butane).

For *solid minerals*, the 2015 SM EITI Report provides export volumes for nine minerals<sup>279</sup> exported in 2016 both in aggregate per commodity<sup>280</sup> and disaggregated by company and destination in Appendix 4.<sup>281</sup> However, Table 16a highlights the significant drop in mineral export data between 2014 and 2015 and Recommendation 9.2 highlights discrepancies between government (Customs Service and CBN) and company export data.

Export values: For *oil and gas*, the 'Production' webpage of the 'Value Chain' section of the NEITI website provides export values for crude oil and natural gas.<sup>282</sup> While the 2015 O&G EITI Report did not provide 2015 export values of LNG, the spreadsheet of 'NLNG exports in 2015 (Appendix G)' published in July 2018 provides export values for LNG, condensate, LPG (Propane) and LPG (Butane).

For *solid minerals*, the 2015 SM EITI Report provides export volumes for nine minerals<sup>283</sup> exported in 2016 both in aggregate per commodity<sup>284</sup> and disaggregated by company and destination in Appendix 4.<sup>285</sup>

<sup>272</sup> NEITI website, 'Production' webpage of the Value Chain section, accessed [here](#) in July 2018.

<sup>273</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.32.

<sup>274</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', p.123.

<sup>275</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.10-12.

<sup>276</sup> NEITI (July 2018), 'NLNG exports 2015 (Appendix G)', accessed [here](#) in July 2018.

<sup>277</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.58,118.

<sup>278</sup> NEITI website, 'Production' webpage of the Value Chain section, accessed [here](#) in July 2018.

<sup>279</sup> lead, copper, zinc, columbite, zircon, manganese, tin and gold.

<sup>280</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.34-36.

<sup>281</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', p.49.

<sup>282</sup> NEITI website, 'Production' webpage of the Value Chain section, accessed [here](#) in July 2018.

<sup>283</sup> lead, copper, zinc, columbite, zircon, manganese, tin and gold.

<sup>284</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.34-36.

<sup>285</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', p.49.

## Secretariat's Assessment

The Secretariat is satisfied that the corrective action on transparency in production data has been addressed and considers that Nigeria has achieved satisfactory progress on requirement 3.2. The 2015 O&G and SM EITI Reports provided the 2015 production volumes and values for all commodities (minerals, oil and gas) produced in 2015, albeit only providing a reference oil price rather than the value of production. Having identified this gap in March 2018, NEITI published additional annexes that provided the value of 2015 production for both oil and gas.

To further strengthen implementation, NEITI is encouraged to work with relevant government agencies and companies to ensure timely and reliable publication of production data for all commodities produced, on an annual, quarterly or monthly basis.

The Secretariat is satisfied that the corrective action on transparency in export data has been addressed and considers that Nigeria has achieved satisfactory progress on requirement 3.3. The 2015 O&G and SM EITI Reports provided the 2015 export volumes and values for every commodity (minerals, oil and gas) exported in 2015, aside from LNG. Having identified this gap in March 2018, NEITI published additional annexes, which included 2015 export volumes and values for both oil and gas.

To further strengthen implementation, NEITI may wish to consider working with relevant government partners such as the Customs Service and NBS to ensure timely and reliable export data is publicly available for all extractives commodities produced, on an annual, quarterly or monthly basis.

### 3.8 Corrective action 8 (#4.1)

In accordance with requirement 4.1.b, the NSWG should ensure that future EITI Reports clearly include all revenue streams listed under requirement 4.1.b in the scope of reconciliation. In accordance with requirement 4.1.c, the NSWG should also ensure that the Independent Administrator assesses the materiality of non-reporting companies and government entities as well as provide its opinion on the comprehensiveness and reliability of the EITI Report.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. In *oil and gas*, Validation found that, while the 2013 EITI Report had defined materiality thresholds for selecting material companies and revenue streams, listed material entities, described material revenue streams and identified omissions in reporting, the materiality threshold for selecting companies appeared to have changed during the course of reporting without documented approval from the NSWG. The 2013 EITI Report did not appear to provide a comprehensive list of material companies. The reconciled revenue streams 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 appeared to be outdated: while the 2013 EITI Report referred to NLNG dividends and loan repayments as a single revenue flow, the Validator understood from NLNG's own corporate disclosures that it had completed its loan repayments on 15 December 2010.

In *solid minerals*, Validation found that the 2013 EITI Report defined materiality thresholds for selecting revenue streams and companies, as well as discrepancies, described material revenue streams, listed

material companies, identified non-reporting companies (and their share of reported government solid minerals revenues) as well as government entities and provided part of the government's full unilateral disclosure. However, the report contained neither a materiality threshold for discrepancies, nor an assessment of the materiality of omissions in government reporting, or the IA's assessment of the comprehensiveness of the EITI Report. Most of the government's unilateral disclosures are not disaggregated by revenue stream.

### Progress since Validation

With regards to the **corrective action related to requirement 4.1**, NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an updated section on 'Determination of Materiality (Appendix E)'<sup>286</sup> for oil and gas and a section on 'Joint Development Zone (Appendix F)'<sup>287</sup> on 6 July 2018. For solid minerals, NEITI subsequently published a new 'Appendix C: determination of materiality'<sup>288</sup> to the 2015 SM EITI Report and a '2015 Solid Minerals Audit - Supplementary Report'<sup>289</sup> on 10 July 2018, which described NEITI's materiality decisions for the 2015 reconciliation.<sup>290</sup>

Subsequent to the start of the second Validation on 11 July 2018, NEITI published the government's full unilateral disclosure of revenues from all solid minerals companies in the document 'Full Unilateral Government Disclosure (Appendix E)'<sup>291</sup> on 25 July 2018.

### Oil & gas

**Materiality threshold for revenue streams:** The 2015 O&G EITI Report confirms the NSWG's approval of the materiality threshold for selecting revenues on 11 August 2017, based on the NSWG Technical Committee's recommendation.<sup>292</sup> The report states that all financial flows in the upstream oil and gas sector were included in the scope of reconciliation with a zero materiality threshold<sup>293</sup>, and provides a list of the 13 revenue streams included in the scope of reconciliation.<sup>294</sup>

However, following NEITI's pre-Validation self-assessment work in early 2018, an updated section on 'Determination of Materiality (Appendix E)' published in July 2018 provides a somewhat different description of the materiality threshold for selecting revenue streams for reconciliation. The appendix explains that the NSWG adopted two different materiality thresholds: one for compliance with the EITI Standard and a different one for compliance with the NEITI Act, which requires all revenue streams to be reconciled. Based on a revised materiality threshold of 5% of government oil and gas revenues adopted for compliance with the EITI Standard, which provided a targeted reconciliation coverage of 94.98% of government oil and gas revenues. The 5% materiality threshold translates to individual revenue streams amounting to more than around USD 1.3bn each in 2015.

<sup>286</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>287</sup> NEITI (July 2018), 'Report on the 2015 oil and gas industry audit for Joint Development Zone (JDZ) Sao Tome and Principe (STP) and Nigeria', accessed [here](#) in July 2018.

<sup>288</sup> NEITI (July 2018), '2015 Solid Minerals Audit – Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>289</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>290</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.6-7.

<sup>291</sup> NEITI (July 2018), 'Full Unilateral Government Disclosure (Appendix E)', accessed [here](#) in July 2018.

<sup>292</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.17.

<sup>293</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.17-18.

<sup>294</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.85.

On the basis of the 5% threshold, Appendix E lists four revenue streams<sup>295</sup> considered material for the 2015 reconciliation.<sup>296</sup> Based on provisions of the NEITI Act, Appendix E clarifies that all payments, including those below the 5% materiality threshold, from material oil and gas companies were reconciled.<sup>297</sup> Although the revised 5% materiality threshold results in the exclusion of several revenue flows listed under Requirement 4.1.b (including Corporate Income Tax, Signature Bonus, and NLNG dividends), their exclusion is justified on the grounds of a quantitative materiality threshold. In addition, the revenue streams considered non-material were still reconciled in line with provisions of the NEITI Act.<sup>298</sup>

Although one development partner raised concerns over the possible exclusion of capital gains tax revenues in 2015 related to the divestments by IOCs from their interests in certain onshore oil and gas blocks, such as SPDC's sale of interests in OMLs 18, 24, 25 and 29 and ConocoPhillips' sale of interests in OMLs 60-63 (both transactions closing in 2014), the IA stated categorically that it had reviewed information on capital gains tax in 2015 and found that there had been no revenues collected linked to these divestments. The IA explained that it had identified capital gains tax revenues from the IOCs' divestments in 2016, which would be covered in the 2016 O&G EITI Report.

While one government official consulted explained that DPR had levied a premium of 1% of the value of transactions in the case of IOC divestments from interests in onshore, the IA noted that it had not identified any revenues under this category in the year under review (2015) despite the existence of several IOC divestments concluded in 2015.

***Descriptions of material revenue streams:*** The 2015 O&G EITI Report provides descriptions of 13 material revenue flows including PPT<sup>299</sup>, Education Tax<sup>300</sup>, NLNG loan repayment, interest and dividend<sup>301</sup> (although this only represented dividends in 2015 following repayment of loan and interest in December 2010<sup>302</sup>), Pipeline transportation fee<sup>303</sup>, NDDC levy<sup>304</sup>, NCDMB levy<sup>305</sup>, Gas Flared Penalty<sup>306</sup>, Signature bonus<sup>307</sup>, Royalty gas<sup>308</sup> and NESS fee.<sup>309</sup> While the main report does not provide descriptions of Royalty oil<sup>310</sup>, Company income tax on gas (CIT Gas)<sup>311</sup> or Concessional Licence and Acreage Rental<sup>312</sup>, Appendix E published in July 2018 provides a description of all material revenue streams.<sup>313</sup>

<sup>295</sup> Domestic crude, Federation equity and profit oil, Petroleum Profits Tax, and Royalty oil. See NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.4-5.

<sup>296</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.3-4.

<sup>297</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.17.

<sup>298</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.17.

<sup>299</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.86.

<sup>300</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.90.

<sup>301</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.95-96.

<sup>302</sup> It should be noted that, in the same way as highlighted during the first Validation, the classification of "NLNG loan repayment, interest and dividend" has been outdated since the full repayment of the NLNG loan and interest on 15 December 2010. See evidence of this full repayment in NLNG (2015), 'NLNG 2015 Facts and Figures', accessed [here](#) in July 2018, pp.57-59.

<sup>303</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.97-98.

<sup>304</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.98.

<sup>305</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.102.

<sup>306</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.105.

<sup>307</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.109.

<sup>308</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.110.

<sup>309</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.113.

<sup>310</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.92.

<sup>311</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.111.

<sup>312</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.112.

<sup>313</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.4-5.

**Materiality threshold for companies:** The 2015 O&G EITI Report confirms the NSWG's approval of the materiality thresholds for companies on 11 August 2017, based on the NSWG Technical Committee's recommendation.<sup>314</sup> The report states that all oil and gas producing companies and all oil and gas companies making payments to the government were included in the scope of reconciliation.<sup>315</sup> However, the report then clarifies that all producing oil and gas companies were included in the scope of reconciliation, while those companies not producing but that made "material" payments to government in 2015 were the subject of unilateral disclosures (presumably by government).<sup>316</sup> Appendix E published in July 2018 clarifies that the materiality threshold for selecting companies was set as producing companies that made payments of over USD 5m of either Royalty oil or Petroleum profits tax.<sup>317</sup> This resulted in the selection of 29 material companies.<sup>318</sup> However, Appendix E also clarifies that, for the purposes of compliance with the NEITI Act, the 2015 O&G EITI Report also required all 54 producing companies to participate in reporting of all revenues. The NSWG's materiality decisions were confirmed ex post at its 13 June 2018 meeting.<sup>319</sup>

**Material companies:** While the PPT reconciliation results in the 2015 O&G EITI Report provide a list of 54 material oil and gas companies<sup>320</sup>, Appendix E clarifies that only 29 oil and gas companies (30 including NNPC) were considered material for the 2015 reconciliation and lists the material companies.<sup>321</sup>

**Material company reporting:** The 2015 O&G Report does not explicitly clarify whether all material companies submitted completed reporting templates. However, stakeholders consulted from the NEITI Secretariat and the IA confirmed that all material oil and gas companies submitted reporting templates.

**Material government entities:** Appendix E clarified that there were four material government entities<sup>322</sup> collecting material revenues and lists seven other government entities<sup>323</sup> that were asked to report despite not collecting material revenues.<sup>324</sup> The role and responsibilities of every material government entity are described in the oil and gas 'Legal and Institutional Framework, Contracts and Licenses'<sup>325</sup> on the NEITI website.

**Government reporting:** It is unclear from the 2015 O&G Report and Appendix E whether all material government entities reported all extractives revenues, or whether there were any gaps in reporting. However, stakeholders consulted from the NEITI Secretariat and the IA confirmed that all material government entities submitted reporting templates.

**Discrepancies:** The 2015 O&G EITI Report sets the materiality threshold for discrepancies at 0.05% "of the aggregate revenue stream".<sup>326</sup> Stakeholders consulted from the NEITI Secretariat and the IA explained that this referred to 0.05% discrepancies per revenue flow and per company. The 2015 O&G Report

<sup>314</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.17.

<sup>315</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.17-18.

<sup>316</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.18.

<sup>317</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.15.

<sup>318</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.16-18.

<sup>319</sup> NEITI (July 2018), 'Highlights of NSWG's 13 June 2018 meeting', accessed [here](#) in July 2018.

<sup>320</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.87-88.

<sup>321</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.15-16.

<sup>322</sup> NNPC, CBN, FIRS and DPR.

<sup>323</sup> Nigeria Sao Tome Joint Development Authority, Petroleum Products Pricing Regulatory Agency, Office of the Accountant General of the Federation, Niger Delta Development Commission, Federal Ministry of Finance, Nigerian Content Development and Monitoring Board, and Revenue Mobilization and Fiscal Allocation Commission.

<sup>324</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.16.

<sup>325</sup> NEITI (June 2018), 'Legal and Institutional Framework, Contracts and Licenses' section of the website, accessed [here](#) in July 2018.

<sup>326</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.17-18.

presents the aggregate results of reconciliation, disaggregated by revenue flow<sup>327</sup>, and by revenue flow and company.<sup>328</sup> The report presents explanations for discrepancies where applicable<sup>329</sup> and provides calculations of outstanding liabilities for key revenue flows, disaggregated per company.<sup>330</sup>

**Full government disclosure:** The 2015 O&G EITI Report presents full unilateral government disclosure for all 17 financial and five in-kind revenue streams.<sup>331</sup>

### *Solid minerals*

**Materiality threshold for revenue streams:** The 2015 SM EITI Report does not describe a materiality threshold for selecting revenue streams, but rather provides a list of 51 taxes and fees levied on mining companies.<sup>332</sup> Based on the reconciliation results presented in the report however, it appears that a total of 18 revenue flows<sup>333</sup> were included in the scope of reconciliation.<sup>334</sup> While it is unclear from the main report whether the other 31 revenue flows in the sector were excluded from the scope of reporting, Appendix C and the 2015 supplementary report (both published in July 2018) clarify that NEITI included all flows collected by FIRS in the scope of reporting in addition to royalties as the only sector-specific levy, totalling five material revenue streams.<sup>335336</sup> While an explicit quantitative materiality threshold for selecting revenue streams for reconciliation is not provided, it can be calculated as 0.01% of total revenues collected from extractives companies.<sup>337</sup> During consultations, the IA confirmed that the NSWG's materiality decisions were based on full unilateral disclosure of government revenues from solid minerals companies in 2015, noting that it was not considered possible that any significant revenue stream accruing to government could have been omitted from the scope of reconciliation.

Based on the materiality decisions detailed in Appendix C and the 2015 supplementary report, it appears that a number of revenue streams listed under Requirement 4.1.b<sup>338</sup> were excluded from the scope of reconciliation.<sup>339</sup> However, it can be argued that their exclusion can be justified on materiality grounds, as noted above.

**Descriptions of material revenue streams:** While all revenue streams in the mining sector are listed in the main report<sup>340</sup>, the material solid minerals revenues included in the scope of reconciliation are not

<sup>327</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.32.

<sup>328</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.87-115.

<sup>329</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.87-115.

<sup>330</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.94-95,101,104-105,107-108,111,115-116.

<sup>331</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.18-19,25-26,28-29.

<sup>332</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.15.

<sup>333</sup> VAT, CIT, EDT, WHT, PAYE (FCT), Mining titles(s) application processing fee, Mining titles(s) annual service fees, Mining title(s) fee for processing of renewal application, Penalty fee for late renewal of mining titles (application), Application for transfer mining titles fees, Application for relinquishment of mining title fees, Royalty, Blasting certificates, Permit to erect a magazine, Permit to mix ANFO, Licence to buy explosives, Explosives magazine licence, and Permit to export minerals for commercial purposes.

<sup>334</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.54.

<sup>335</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.6-7.

<sup>336</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.9.

<sup>337</sup> The revenues collected by FIRS account for 98% of revenues from solid minerals companies. The smallest of the FIRS-collected revenue flows (by value) is Education Tax, at 7.02% of government revenues from solid minerals companies. The five material revenue streams account for 99.99% of total revenues collected from solid minerals companies. This implies that none of the single other non-material revenue streams accounted for more than 0.01% of government revenues from solid minerals companies.

<sup>338</sup> Licence fees, rental fees, entry fees and other considerations for licences and/or concessions.

<sup>339</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.9.

<sup>340</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.15.

described in the main report. However, Appendix C published in July 2018 provides a description of all revenue flows in the solid minerals sector.<sup>341</sup>

***Materiality threshold for companies:*** The main report, Appendix C and the 2015 supplementary report describe the NSWG's approach to the materiality of companies, confirming its decision to include companies having made NGN 3m or more in royalty payments in 2015.<sup>342343344</sup> The report justifies the materiality threshold being calculated on the basis of royalty, since this is the only sector-specific payment flow from companies to government.<sup>345346</sup> During consultations, the IA and NEITI Secretariat staff explained that the use of royalties as the basis for selecting companies ensured that no company making material payments to government in relation to solid minerals activities could have been excluded from the scope of reconciliation, given that royalties was the single sector-specific revenue stream.

***Material companies:*** Appendices 5, 7 and 8 to the 2015 SM EITI Report provides the list of 42 material solid minerals companies included in the scope of reconciliation<sup>347</sup>, while Appendix 6 provides a list of 439 companies that made royalty payments in 2015 but that were below the materiality threshold and hence excluded from the scope of reporting.<sup>348</sup>

***Material company reporting:*** While it appears based on reconciliation results that all 42 material companies reported, even if seven companies do not appear to have reported initially<sup>349</sup>, the 2015 SM EITI Report also explains that "some [*unspecified*] companies" kept their corporate records offshore, which made it impossible to reconcile their tax payments to FIRS.<sup>350</sup> While the report cites the example of one company<sup>351</sup> that was "uncooperative with the audit", it does not provide a comprehensive list of companies that did not submit reporting templates. However, stakeholders consulted from the NEITI Secretariat and the IA confirmed that all 42 material companies submitted reporting templates.

***Material government entities:*** While the 2015 SM EITI Report provides a list of eight Federal Government entities<sup>352</sup> that collect revenues from solid minerals companies<sup>353</sup>, the list of five material revenue streams in Appendix C reveals that only two government entities were considered to collect material payments, namely FIRS and MID. However, based on the reconciliation results in the 2015 SM EITI Report, it is evident that a third government entity, MCO, was required to report revenues collected.<sup>354</sup> During consultations, NEITI Secretariat staff explained that the selection of five material revenue streams had been confirmed only subsequent to the publication of the 2015 SM EITI Report, resulting in the discrepancy between three material government entities in the main 2015 SM EITI Report and two in the Appendix C published in July 2018.

<sup>341</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', pp.1-8.

<sup>342</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.15.

<sup>343</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.6-7.

<sup>344</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.9.

<sup>345</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.15.

<sup>346</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.9.

<sup>347</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', pp.50,62-63.

<sup>348</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', pp.51-61.

<sup>349</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.52.

<sup>350</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.53.

<sup>351</sup> Mercury Mining Investment Limited.

<sup>352</sup> Federal Inland Revenue Service (FIRS), Mining Cadastre Office (MCO), Mines Inspectorate Department (MID), Federal Ministry of Finance (FMoF), Nigeria Customs Service (NCS), Federal Ministry of Environment (FMoE), Nigeria Geological Survey Agency (NGSA) and Central Bank of Nigeria (CBN).

<sup>353</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.15.

<sup>354</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.37,38,50.

**Government reporting:** The reconciliation results indicate that three Federal Government entities<sup>355</sup> reported in the 2015 SM EITI Report.<sup>356</sup> Representatives from the NEITI Secretariat and the IA confirmed that all material government entities had fully reported.

**Discrepancies:** The main report presents the initial reporting, adjustments and final unreconciled discrepancies disaggregated by company, but not by revenue flow.<sup>357</sup> The value of total net unreconciled discrepancies can be calculated as 4.34% of total reconciled government revenues.<sup>358</sup> Despite the lack of disaggregation of discrepancies by revenue stream, the report notes that 99.99% of the final unreconciled discrepancies were due to variances between revenues reported by the FIRS portal and those reported by state FIRS offices and recommends a manual reconciliation between FIRS portal and state FIRS offices.<sup>359</sup>

**Full government disclosure:** While the report provides the government's unilateral disclosure of total revenues, including from non-material companies, for royalty<sup>360</sup>, it only provides the value of government revenues from companies in the scope of reconciliation for the other revenue streams included in the scope of reconciliation.<sup>361</sup> Following stakeholder consultations, the NEITI Secretariat published FIRS's full unilateral disclosure of revenues in the document 'Full Unilateral Government Disclosure (Appendix E)'<sup>362</sup>, published subsequent to the start of the second Validation on 25 July 2018. The document presents total revenues collected by FIRS from all 681 solid minerals license-holders, for each of the four material FIRS-collected revenue streams<sup>363</sup> included in the scope of reconciliation.

## Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to comprehensiveness of reporting has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 4.1. The 2015 O&G and SM EITI Reports and associated documents provide, for both oil and gas and solid minerals, a definition of the materiality thresholds for payments and companies to be included in reconciliations, including a justification for why the thresholds were set at these levels. The NSWG was involved in setting the materiality thresholds for payments and for companies. All material companies and government entities reported comprehensively all material payments and revenues in the 2015 EITI Reports. While the exclusion from reconciliation of revenue flows listed in Requirement 4.1.b poses a procedural challenge, the International Secretariat considers that the broader objective of revenue transparency was achieved given the NSWG's justification for excluding these revenue flows on quantitative materiality grounds. Full unilateral government disclosures of material revenues, including from non-material companies, were provided for oil and gas, but only for one of the five material revenue streams (royalties) in the solid minerals sector.

Should the Board accept to take account of information on full unilateral government disclosures of material revenue streams from solid minerals published subsequent to the start of the second Validation, the International Secretariat's assessment would be that the corrective action related to comprehensiveness of reporting had been addressed, and that Nigeria would have made satisfactory progress on Requirement 4.1.

<sup>355</sup> FIRS, MID and MCO.

<sup>356</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.37,38,50.

<sup>357</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.52.

<sup>358</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.52.

<sup>359</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.53.

<sup>360</sup> NEITI (November 2017), 'Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)', pp.51-61..

<sup>361</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.54.

<sup>362</sup> NEITI (July 2018), 'Full Unilateral Government Disclosure (Appendix E)', accessed [here](#) in July 2018.

<sup>363</sup> Corporate Income Tax, Withholding Tax, Value-Added Tax and Education Tax.

In accordance with Requirement 4.1, Nigeria should ensure that aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds, be publicly disclosed. Nigeria should ensure that full government unilateral disclosure of extractives revenues is comprehensive and sufficiently disaggregated as per 4.1.d. Using these disclosures Nigeria is further encouraged to revisit its materiality threshold for selecting both oil and gas companies and revenue flows to strike a balance between the need to demonstrate the comprehensiveness of reconciliation in line with EITI Requirement 4.1.c and Provision 3.b of the NEITI Act requiring full disclosure by all extractive industry companies of revenue due to or paid to the Federal Government. Given the lack of explicit reference to reconciliation in the NEITI Act, Nigeria may wish to consider the extent to which unilateral disclosure, supported by strong audit and assurance, may be sufficient for smaller revenue streams.

### 3.9 Corrective action 9 (#4.3)

In accordance with requirement 4.3, the NSWG should assess the existence of infrastructure provisions in oil and gas contracts during the scoping phase to ensure that companies' disclosures are categorised according to strict definitions.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. While Validation recognised that this requirement did not apply in the *solid minerals* sector in Nigeria, it did apply to the oil and gas sector in 2013. For *oil and gas*, the 2013 OG EITI Report disclosed terms and assessed performance of barter of crude oil for refined products as well as some information on infrastructure provisions. However, the Secretariat noted that these infrastructure provisions may have been social expenditures mis-categorised as infrastructure provisions. The Secretariat noted that NNPC had switched to a system of Direct-Sale-Direct-Purchase in late 2015 to replace OPAs and RPEAs., and that Trafigura had published its 2013 payments to governments report that covered EITI implementing countries in 2013.

#### Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an updated 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)'<sup>364</sup> and an updated section on 'Barter arrangements (OPA)'<sup>365</sup> on 6 July 2018. NEITI has also published a copy of the OPA contract template on its website.<sup>366</sup> In solid minerals, NEITI subsequently published a new 'Appendix C: determination of materiality'<sup>367</sup> to the 2015 SM EITI Report on 10 July 2018.

In *solid minerals*, the 2015 SM EITI Report<sup>368</sup> and Appendix C<sup>369</sup> confirm the lack of active barter or infrastructure agreements in the solid minerals sector 2015, albeit without providing the basis for NEITI's

<sup>364</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', accessed [here](#) in July 2018.

<sup>365</sup> NEITI (July 2018), 'Barter arrangements (OPA)', accessed [here](#) in July 2018.

<sup>366</sup> NEITI (July 2018), 'Typical terms of OPA signed by NNPC', accessed [here](#) in July 2018.

<sup>367</sup> NEITI (July 2018), '2015 Solid Minerals Audit – Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>368</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.39.

<sup>369</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.10.

assessment of the non-applicability of the requirement. However, NEITI Secretariat staff explained that it had concluded that there were no barter or infrastructure arrangements in line with the definition provided in Requirement 4.3 based on a comprehensive review of sector regulations and of the market structure.

In *oil and gas*, the 2015 O&G EITI Report describes alternative production arrangements, consisting of Offshore Processing Agreements (OPAs) and Refined Products Exchange Agreement (RPEAs, or Swaps), and confirms that Swaps had been discontinued prior to 2015.<sup>370</sup> The report describes OPAs as the exchange of crude oil from NNPC for the delivery of refined products to NNPC. While a list of losses on OPAs totalling USD723.3m, disaggregated for each of the six OPAs, is provided in the main report<sup>371</sup>, there was no information in the main report on the detailed terms of the OPAs, volumes covered under OPAs in 2015, nor the basis for calculating losses.<sup>372</sup> Following NEITI's pre-Validation self-assessment, the July 2018 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)' provides the volumes of crude oil<sup>373</sup> covered by OPAs in 2015 in aggregate<sup>374</sup>, with volumes and values of crude oil exported under OPAs provided by quarter<sup>375</sup> and a reconciliation of crude oil volumes lifted under OPAs between NNPC-COMD lifting profiles and its sales profiles, with discrepancies of 1.1% of reconciled volumes.<sup>376</sup> The 'Barter arrangement (OPA)' section published on the NEITI website in July 2018 provides an extensive description of the OPA, including a description of the arrangement, including volumes of crude oil and refined products involved in 2015, disaggregated by trading company involved and by type of refined product.

### Secretariat's Assessment

The Secretariat is satisfied that the corrective action related to barter and infrastructure arrangements has been addressed and considers that Nigeria has achieved satisfactory progress on requirement 4.3.

The 2015 SM EITI Report confirms the lack of barter or infrastructure arrangements in the solid minerals sector in 2015. The 2015 O&G EITI Report and associated documents identify Offshore Processing Agreements (OPAs) as barter and provides a comprehensive description of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream, and the materiality of these agreements relative to conventional contracts.

### 3.10 Corrective action 10 (#4.4)

In accordance with requirement 4.4, the NSWG should assess the materiality of any transportation revenues and disclose such revenues should they be assessed as material.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. Validation found that, while this requirement was likely not applicable in the solid minerals sector, in oil and gas the 2013 EITI Report described arrangements for the transportation and storage of crude oil by

<sup>370</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.156.

<sup>371</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.156-157,159.

<sup>372</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.157-158.

<sup>373</sup> 89.067m barrels of crude oil were covered by OPAs in 2015.

<sup>374</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.9.

<sup>375</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.43.

<sup>376</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.10.

JVs in which NNPC holds a majority stake even if it did not assess the materiality of any such transportation revenues (crude handling charges).

### Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an updated section on 'Determination of Materiality (Appendix E)'<sup>377</sup> on 6 July 2018, which described the NSWG's approach to the materiality of transport revenues.

In *solid minerals*, the 2015 SM EITI Report confirms the lack of transport revenues collected by the government or SOEs in 2015<sup>378</sup>, albeit without providing the basis for the NSWG's assessment of the non-applicability of the requirement. However, NEITI Secretariat staff explained that the NSWG had based its assessment on the lack of transportation of minerals via railway or toll roads.

In *oil and gas*, the 2015 O&G EITI Report describes revenues from the use of pipelines owned by joint ventures (JVs) in which NNPC holds a majority interest, and categorises this revenue stream as a transportation revenue.<sup>379</sup> The report explains that pipeline fees are only levied on the transport of crude oil and that NNPC is entitled to pipeline fees from all JVs it is involved in. While the report states that the JV operator is responsible for determining the fees paid by third parties for use of the pipeline infrastructure<sup>380</sup>, it does not provide the set of applicable rates in 2015. During consultations, NEITI Secretariat staff explained that the JVs operating the pipelines had not provided the tariffs applicable to third-party use of crude oil pipeline infrastructure. The updated section on 'Determination of Materiality (Appendix E)' published in July 2018 describes the NSWG's approach to assessing the materiality of transport revenues and confirms the NSWG's view that transport revenues, at 0.1% of total government oil and gas revenues, were not material.<sup>381</sup> The NSWG confirmed its materiality decisions ex post at its 13 June 2018 meeting.<sup>382</sup> The 2015 O&G Report provides SPDC's unilateral disclosure of transportation (pipeline) fees paid to NNPC from one of the JVs in which it is involved (SPDC).<sup>383</sup> In consultations, NEITI Secretariat staff and the IA confirmed that none of the other JVs aside from SPDC had reported any transportation revenues. Secretariat staff explained that they considered that disclosures of transport revenues in the 2015 O&G EITI Report were comprehensive, given that they had received confirmation from other JVs such as NAOC that they had not received any such revenues in 2015.

While the 2015 O&G EITI Report does not refer to any transportation revenues linked to the domestic natural gas pipeline infrastructure operated by NNPC's subsidiary Nigerian Gas Company (NGC)<sup>384</sup> in 2015, the International Secretariat understands that there were no such purely transportation-related revenues collected by NGC in 2015. The 2008 National Domestic Gas Supply and Pricing Policy recommended a transportation fee of USD 0.30 per mmbtu (m British thermal unit), regardless of the distance transported.<sup>385</sup> According to a development partner, a letter from former Minister of Petroleum Diezani

<sup>377</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>378</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.39.

<sup>379</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.39,97-98.

<sup>380</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.97-98.

<sup>381</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.7-8.

<sup>382</sup> NEITI (2018), 'Highlights of the NSWG's 13 June 2018 meeting', accessed [here](#) in July 2018

<sup>383</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.39,98.

<sup>384</sup> This was the case prior to the unbundling of the Nigerian Gas Company in March 2016, segregating the Nigerian Gas Processing and Transportation Company Limited (NGPTC) from the Nigerian Gas and Marketing Company (NGMC).

<sup>385</sup> The Government of the Federal Republic of Nigeria (2008), 'The National Domestic Gas Supply and Pricing Policy', accessed [here](#) in July 2018.

Alison-Madueke had set a domestic gas transport price of USD 0.30 per thousand scf (standard cubic feet). Based on the volumes of total domestic gas sales in 2015 provided in the 2016 DPR annual report<sup>386</sup>, of 445.26 million mcf (the equivalent of around 461.7m mmbtu), rough calculations would indicate that NGC would have collected around USD 138.5m in 2015. However, NEITI Secretariat staff explained that, in 2015, NGC purchased gas from gas producers and sold it to gas off-takers (industrial users and power plants), bundling the transport price together with the final sales price. They thus considered that the fee charged for transporting gas could not be considered a form of transport revenue in the sense of Requirement 4.4.

Although NLNG's 2016 Facts and Figures publication describes the existence of two wholly-owned subsidiaries of NLNG (Bonny Gas Transport (BGT) Limited and NLNG Ship Management Limited (NSML)) involved in the transportation of LNG<sup>387</sup>, neither the 2015 O&G EITI Report nor NSWG meeting minutes refer to the existence of any transportation revenues collected through these two NLNG subsidiaries. However, NLNG is not categorised as a SOE for EITI reporting purposes, given the government's minority (49%) ownership of the company, and the EITI Report confirms the lack of transfer of NLNG dividends by NNPC to the Federation Account in 2015 (*see Requirement 2.6*). It can thus be argued that the collection of dividends by NLNG from its two LNG transport subsidiaries does not represent transportation revenues collected by a SOE in the sense of Requirement 4.4.

### Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to transport revenues has been addressed and considers that this requirement is not applicable to Nigeria in the year under review (2015). The 2015 SM EITI Report confirms the lack of transport revenues related to solid minerals in 2015. The 2015 O&G EITI Report and associated documents provide a description of transport revenues in oil and gas, related to pipeline transportation of crude oil, and the operator's unilateral disclosure of such transport revenues in 2015. The EITI Report clarifies that transport revenues were not considered material in 2015. Although there is no evidence of the NSWG considering the materiality of revenues collected by NLNG from the transportation of LNG through its two dedicated subsidiaries, the EITI Report clarifies that NLNG is not considered a SOE for EITI reporting purposes given that the government only holds a minority interest in the company.

To further strengthen implementation, Nigeria is encouraged to ensure additional information on transport revenues in the oil and gas sector (third-party pipeline use fees) is publicly disclosed, including relevant tariffs and the methodology for calculating them. Nigeria may also wish to assess the feasibility of reconciling transport revenues, as encouraged by Requirement 4.4.v.

### 3.11 Corrective action 11 (#4.6)

In accordance with requirement 4.6, the NSWG should assess the materiality of direct subnational payments and ensure that any material direct subnational payments are reconciled.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. In some respects, Validation recognised that the NSWG had made efforts to go beyond Requirement 4.6 in publishing a standalone FASD Report where the management and allocation of nine states' revenues

<sup>386</sup> DPR (2016), '2016 oil and gas annual report', accessed [here](#) in July 2018, p.61.

<sup>387</sup> Nigeria LNG (2016), '2016 Facts & Figures', accessed [here](#) in July 2018, p.7.

were disclosed. The EITI Reports provided 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 did not appear to have considered the materiality of subnational direct payments, had not set a materiality threshold for such payments and had not reconciled such payments with subnational governments' receipts for 2013, or any other year thereafter.

### Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an updated section on 'Determination of Materiality (Appendix E)'<sup>388</sup> on 6 July 2018, which described the NSWG's approach to assessing the materiality of direct subnational payments in the oil and gas sector. On 10 July 2018, NEITI published a new 'Appendix C: determination of materiality'<sup>389</sup> to the 2015 SM EITI Report and a '2015 Solid Minerals Audit - Supplementary Report'<sup>390</sup>, which provided additional information on the NSWG's approach to direct subnational payments in solid minerals.

#### Oil & gas

The 2015 O&G EITI Report provides the aggregate value of each of three types of direct subnational payments (withholding tax, PAYE and NLNG dividends) in 2015<sup>391</sup>, albeit without a specific materiality threshold to justify the exclusion of these direct subnational payments from the scope of reconciliation. The updated section on 'Determination of Materiality (Appendix E)' in oil and gas published in July 2018 confirms that there are three types of direct subnational payments<sup>392</sup>, in addition to statutory payments to NDDC that, while categorised as a subnational entity by the NSWG<sup>393</sup>, are considered mandatory social expenditures (*see Requirement 6.1*). Appendix E and NSWG meeting minutes confirms that each of the three direct subnational payment flows were below the 5% materiality threshold and were thus only disclosed unilaterally by the FIRS, not reconciled with company payments.<sup>394,395</sup> During consultations, NEITI Secretariat staff and the IA confirmed that the three direct subnational payments in oil and gas had been excluded from the scope of reconciliation using the same 5% materiality threshold used for selecting material revenue streams in line with Requirement 4.1.

#### Solid minerals

The 2015 SM EITI Report describes six types of direct subnational payments<sup>396</sup> to State Boards of Internal Revenue and one type of subnational payment<sup>397</sup> to Local Government Councils.<sup>398</sup> While Appendix C

<sup>388</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>389</sup> NEITI (July 2018), '2015 Solid Minerals Audit – Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>390</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>391</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.29.

<sup>392</sup> WHT, VAT and PAYE.

<sup>393</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.9.

<sup>394</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.9.

<sup>395</sup> NEITI (2018), 'Highlights of the NSWG's 13 June 2018 meeting', accessed [here](#) in July 2018.

<sup>396</sup> Annual surface rent, National Inland Waterways Authority (NIWA), Pay As You Earn (PAYE), Business premises, Development levy and Withholding tax.

<sup>397</sup> Property rates.

<sup>398</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.39.

published in July 2018 lists only six types of direct subnational payments<sup>399,400</sup>, the supplementary report also published in July 2018 provided unilateral disclosure of seven types of direct subnational payments (aggregated for all companies).<sup>401</sup> During consultations, representatives from the NEITI Secretariat and the IA confirmed that there were seven types of direct subnational payments in the solid minerals sector, noting the typo in Appendix C. The main report also provides the value of material companies' unilateral disclosures of the seven types of direct subnational payments<sup>402</sup>, disaggregated by revenue flow but not by company<sup>403</sup> and by company but not revenue flow.<sup>404</sup> While neither the 2015 SM EITI Report nor associated documents provide an explicit materiality threshold as a basis for excluding direct subnational payments from the scope of reconciliation, representatives from the NEITI Secretariat explained that the same materiality threshold for selecting material revenue streams under Requirement 4.1 had been used to justify the exclusion of these payments from the scope of reconciliation. In addition, they noted that five of the seven direct subnational payment streams were common to all companies and not specific to solid minerals.

### Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to direct subnational payments has been addressed and considers that this requirement was not applicable to Nigeria in the year under review (2015). Through the 2015 O&G and SM EITI Reports, and associated documents, NEITI has demonstrated that it does not consider direct subnational payments, either in oil and gas or in solid minerals, to be material. Although NEITI's documents do not justify this exclusion from the scope of reconciliation using an explicit materiality threshold, stakeholder consultations confirmed that NEITI adopted the same materiality threshold for direct subnational payments as for all other revenue streams collected at the Federal level (see *Requirement 4.1*).

To further strengthen implementation, Nigeria may wish to consider including explicit materiality thresholds for assessing the materiality of direct subnational payments in its EITI reporting.

### 3.12 Corrective action 12 (#4.8)

In accordance with requirement 4.8.b, the NSWG should ensure that data in EITI Reports be no older than the second to last complete accounting period, e.g. an EITI Report published in calendar/financial year 2016 must be based on data no later than calendar/financial year 2014.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. Pending any decision from the EITI Board on Nigeria's request for a six-month extension to the reporting deadline for its 2013 EITI Reports, the 2013 EITI Reports were published more than five months after the 31 December 2015 deadline. The Board recognised that, while there was a case for concluding that Nigeria had made satisfactory progress, since any extension request could be argued to be irrelevant given that any suspension resulting from the denial of the extension request would have been automatically lifted (see requirement 8.2), the EITI Standard did not specify whether, in these circumstances, the requirement was then considered met. The EITI Board clarified that consistent delays

<sup>399</sup> Annual surface rents (Grounds Rents), National Inland Water Ways Authority (NIWA), Pay As You Earn (PAYE), Business Premises, Development Levy, Withholding Tax.

<sup>400</sup> NEITI (July 2018), 'Report on the 2015 audit of export and domestic crude oil, gas and feedstock (Appendix C)', p.10.

<sup>401</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.2.

<sup>402</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.39.

<sup>403</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.39.

<sup>404</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.55.

in Nigeria's EITI reporting and the lack of Board approval for their extension request meant that Nigeria had achieved only meaningful progress in meeting this requirement.

### Progress since Validation

With regards to the **corrective action related to requirement 4.8**, NEITI published the 2015 Solid Minerals EITI Report in November 2017 and the 2015 Oil & Gas EITI Report in December 2017, both within two years of the end of the fiscal period covered. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published on 6-10 July 2018 seven standalone appendices (in addition to the Appendices published alongside the 2015 EITI Reports in 2017), covering the reconciliation of physical flows, license data, export and domestic sales, pricing of Federation crude oil, NEITI's materiality decisions for the 2015 reconciliation, the NSTP-JDZ and NLNG exports, as well as a supplementary report and appendices for the 2015 SM EITI Report.

The 2015 O&G and SM EITI Reports both confirm the cash basis of accounting used for EITI reporting. While they do not explicitly confirm the NSWG's approval of the reporting period (calendar-year 2015), review of NSWG meeting minutes indicates that the NSWG approved the reporting period at its 11 August 2017 meeting.<sup>405</sup>

### Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to timeliness of reporting has been addressed and considers that Nigeria has made satisfactory progress on Requirement 4.8. The 2015 EITI Reports covering solid minerals and oil and gas were both published in 2017, within two years of the end of the fiscal period covered. While additional information was published subsequent to two years after the end of the fiscal period covered, the reconciled financial data was published in a sufficiently timely manner.

To further strengthen implementation, Nigeria is encouraged to pursue its efforts to publish more up-to-date EITI data, leveraging on existing government and company disclosure systems, to ensure higher relevance and usefulness for public debate and public policy-making.

## 3.13 Corrective action 13 (#4.9)

In accordance with requirement 4.9.b.iii and the standard Terms of Reference for the Independent Administrator agreed by the EITI Board, the NSWG and Independent Administrator should:

- a. examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his/her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.

<sup>405</sup> NEITI (August 2017), 'Minutes of the NSWG's 11 August 2017 meeting', unpublished, provided by the NEITI Secretariat.

- b. ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
- c. ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness and reliability of the report.

### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. Validation highlighted 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 was found to consistently precede the IA's review of auditing procedures, and Validation found a lack of clarity in 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, was also identified as a concern, although there was no evidence of any instances when the EITI disclosures were tampered with.

In oil and gas specifically, the 2013 OG 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, Validation found that 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, Validation found that the IA had not included an assessment of the overall reliability of information in the 2013 OG EITI Report and identified instances where contextual information was not clearly sourced.

In solid minerals, the 2013 SM 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, Validation found that 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, Validation found that the IA had not included a clear assessment of the reliability of information in the 2013 SM EITI Report.

## Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an updated section on 'Determination of Materiality (Appendix E)'<sup>406</sup> on 6 July 2018, which provided an overview of compliance with agreed quality assurance on the part of reporting entities in the oil and gas sector. NEITI also published a '2015 Solid Minerals Audit - Supplementary Report'<sup>407</sup> and 'Appendix C: determination of materiality'<sup>408</sup> on 10 July 2018, which further detailed NEITI's approach to ensuring the reliability of reconciled financial data.

Subsequent to the start of the second Validation on 11 July 2018, NEITI published the government's full unilateral disclosure of 2015 revenues from all solid minerals companies in the document 'Full Unilateral Government Disclosure (Appendix E)'<sup>409</sup> on 25 July 2018, providing the basis for calculating the coverage of the 2015 solid minerals reconciliation exercise.

*Terms of Reference and procurement of the Independent Administrators:* Procurement of the IA continues to be governed by the 2007 Public Procurement Act, which vests authority for the constitution of the committee charged with technical evaluations of bids to the Chairman of the Tenders Board, interpreted as the NSWG's Board Tenders Committee (BTC). The procurement of the IA is undertaken according to the Prior Review and Procurement Method Thresholds established under the 2007 Public Procurement Act's Quality and Cost Based Selection (QCBS) method.<sup>410</sup>

For the 2015 O&G EITI Report, the firm Haruna Yahaya & Co (Chartered Accountants) was contracted as the IA on 31 July 2017. The appointment followed a selection process undertaken by the BTC and was approved by the NSWG. The ToR for the IA for the 2015 O&G EITI Report were approved by the NSWG at its 13 March 2017 meeting.<sup>411</sup> The content of the ToR deviates from the standard language of the ToR for the IA approved by the EITI Board, with substantial changes to the structure of the ToR. In particular, NEITI included around 20 pages of guidance in lieu of the standard Annex 1 on materiality decisions, although the key required information was provided. As for previous EITI Reports, the ToR confirms that initial data collection is undertaken by the NEITI Secretariat, rather than the IA. Despite the lack of explicit confidentiality arrangements to ensure the integrity of information collected by the NEITI Secretariat prior to reconciliation by the IA, consultations with the IA and the NEITI Secretariat revealed that none of the stakeholders consulted considered this a potential risk. Indeed, they argued that the subsequent field visits (so-called "validations") undertaken by the IA, based on supporting documents, provided ex post verification of the integrity of information initially reported to the NEITI Secretariat. The overview of the IA's "validation" methodology provided in Appendix 3 ("Audit checklist") of Appendix A to the 2015 O&G EITI Report<sup>412</sup> published in April 2018 confirms these stakeholder views. NEITI has since revised the ToRs used for contracting IAs (for the 2016 EITI Report) to ensure conformity with the language and processes of the 'agreed upon procedures for EITI Reports'<sup>413</sup> of the EITI Board.

<sup>406</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>407</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>408</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>409</sup> NEITI (July 2018), 'Full Unilateral Government Disclosure (Appendix E)', accessed [here](#) in July 2018.

<sup>410</sup> See 'documentation of progress' section of Requirement 4.9 in the initial assessment for Nigeria's first Validation (2016) for more information.

<sup>411</sup> NEITI (March 2017), 'Minutes of the NSWG's 13 March 2017 meeting', unpublished, provided by the NEITI Secretariat.

<sup>412</sup> NEITI (April 2018), 'Oil & Gas Audit Report - Appendix A', accessed [here](#) in July 2018, pp.28-32.

<sup>413</sup> EITI (2016), 'Standard Terms of Reference for Independent Administrator services', accessed [here](#) in July 2018.

For the 2014 and 2015 SM EITI Reports, the firm Amedu Onekpe & Co (Chartered Accountants) was contracted as the IA on 22 August 2016. The appointment followed a selection process undertaken by the BTC and was approved by the NSWG. The ToR for the IA for the 2014 and 2015 SM EITI Reports were approved by the NSWG at its 6 December 2016 meeting.<sup>414</sup> The content of the ToR is broadly consistent with the standard ToR for the IA approved by the EITI Board, albeit with data collection undertaken by the NEITI Secretariat. However, consultations with the NEITI Secretariat and the IA confirmed that “validation” visits similar to the oil and gas reporting were undertaken in solid minerals, thereby ensuring the integrity of financial data pre-reconciliation.

***Agreement on the reporting templates:*** While the 2015 SM EITI Report explicitly confirms the NSWG’s approval of the reporting templates for solid minerals<sup>415</sup>, the 2015 O&G EITI Report does not explicitly confirm the same approval for oil and gas reporting templates. Nevertheless, review of NSWG meeting minutes and stakeholder consultations confirm that the NSWG approved the reporting templates for the 2015 O&G EITI Report at its 11 August 2017 meeting.<sup>416</sup>

### *Oil & gas*

***Review of audit practices:*** For *companies*, the 2015 O&G EITI Report describe statutory audit procedures for oil and gas companies.<sup>417</sup> The main report confirms that 51 of the 56 material companies provided the IA with copies of their audited financial statements<sup>418</sup>, while Appendix 4 in the document ‘Appendix A’ published in April 2018 provides the names of material companies that did not provide copies of their 2015 audited financial statements.<sup>419</sup>

For *government*, the 2015 O&G EITI Report describes statutory audit procedures for government agencies by the Office of the Auditor General of the Federation (OAGF).<sup>420</sup> The main report does not state whether all material government entities’ 2015 financial statements were audited, aside from stating that the JDZ Authority (NSPJDA) had not yet appointed an external auditor<sup>421</sup> and that the 2015 audited financial statements for the Petroleum Support Fund were not made available to the IA.<sup>422</sup> Appendix 4 in the document ‘Appendix A’ published in April 2018 shows that only five of the ten government entities<sup>423</sup> included in the scope of reporting provided copies of their 2015 audited financial statements.<sup>424</sup> However, stakeholder consultations with NEITI Secretariat staff and the IA clarified that one of the five government entities for which ‘Appendix A’ states 2015 audited financial statements were provided, i.e. NNPC, represented a typo. There was consensus among all stakeholders consulted that NNPC had in fact not provided copies of their 2015 audited financial statements to the IA or to NEITI.

<sup>414</sup> NEITI (December 2016), ‘Minutes of the NSWG’s 6 December 2016 meeting’, unpublished, provided by the NEITI Secretariat.

<sup>415</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.16.

<sup>416</sup> NEITI (August 2017), ‘Minutes of the NSWG’s 11 August 2017 meeting’, unpublished, provided by the NEITI Secretariat.

<sup>417</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.20.

<sup>418</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.21.

<sup>419</sup> NEITI (April 2018), ‘Oil & Gas Audit Report - Appendix A’, accessed [here](#) in July 2018, pp.33-34.

<sup>420</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.21.

<sup>421</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.46.

<sup>422</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.183.

<sup>423</sup> Appendix 4 of Appendix A states that NNPC, PPPRA, NDDC, NCDMB and FIRS provided copies of their 2015 audited financial statements, while OAGF, CBN, DPR, JDA and FMF did not.

<sup>424</sup> NEITI (April 2018), ‘Oil & Gas Audit Report - Appendix A’, accessed [here](#) in July 2018, pp.33-34.

**Assurance methodology:** The 2015 O&G EITI Report describes quality assurances for EITI reporting<sup>425,426</sup>, but recommends that the OAuGF provide attestation letters for all government EITI reporting in future.<sup>427</sup> Appendix E published in July 2018 describes the required management attestation statement from companies, which references audited financial statements.<sup>428</sup> The inclusion of management attestation marks a significant change over quality assurances agreed for previous O&G EITI Reports. Detailed checklists for 'data validation' procedures are also provided in Appendix 3 of 'Appendix A'<sup>429</sup> published in April 2018, covering operators of joint ventures, PSCs, service contracts and NLNG.

**Confidentiality:** While the 2015 O&G EITI Report does not explicitly describe mechanisms to ensure the confidentiality of data pre-reconciliation, page 24 of Appendix A clarifies certain procedures for ensuring adequate confidentiality is ensured for reporting entities, conforming with the standard procedures agreed by the EITI Board. The 2015 report also refers to the IA's work being conducted on the basis of ISRS 4400 on engagements to perform agreed upon procedures regarding financial information<sup>430</sup>, which implies that adequate confidentiality provisions were put in place.

**Reconciliation coverage:** While the 2015 O&G EITI Report does not provide the coverage of the reconciliation exercise based on the government's full unilateral disclosure, the 'Determination of Materiality (Appendix E)'<sup>431</sup> published on 6 July 2018 provides the target reconciliation coverage<sup>432</sup> in line with materiality decisions, presented as a share of total oil and gas revenues. Given assurances from stakeholders (including NEITI Secretariat staff and the IA) that all material companies reported in full (see *Requirement 4.1*), all stakeholders consulted confirmed that the final reconciliation coverage was in line with the target. The comprehensiveness of reporting was confirmed ex post by the NSWG at its 13 June 2018 meeting.<sup>433</sup>

**Assurance omissions:** The 2015 O&G EITI Report provides the number of reporting entities that provided the required quality assurance<sup>434</sup>, and names which companies provided audited financial statements and letters of attestation.<sup>435</sup> In addition to these appendixes, a more detailed study of companies' compliance to NEITI reporting (and quality assurance) was published in 2017.<sup>436</sup> Although NEITI does not assess the materiality of each their individual omissions,<sup>437</sup> Appendix E published in July 2018 lists the three companies that did not provide audited financial statements and the 16 companies that did not provide management sign-off on their reporting templates.<sup>438</sup> While Appendix E provides an assessment of the materiality of payments from the three companies that did not provide financial statements (10.34% of

<sup>425</sup> Quality assurances for EITI reporting consisted of copies of audited financial statements from companies; management certification of consistency with audited financial statements; copies of government entities' audited financial statements "where possible"; high-level certification from government entities with audited financial statements of consistency with their audited financial statements; a more complete high-level certification from government entities without audited financial statements.

<sup>426</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.16,21.

<sup>427</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.22.

<sup>428</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.22.

<sup>429</sup> NEITI (April 2018), 'Oil & Gas Audit Report - Appendix A', accessed [here](#) in July 2018, pp.28-32.

<sup>430</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.2,17.

<sup>431</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.4.

<sup>432</sup> The target reconciliation coverage in light of the materiality decisions was 94.98%.

<sup>433</sup> NEITI (2018), 'Highlights of the NSWG's 13 June 2018 meeting', accessed [here](#) in July 2018.

<sup>434</sup> The report states that 51 of 56 companies provided copies of their audited financial statements, 48.21% of companies provided management certification of consistency with their audited financial statements, five of 10 government entities provided their audited financial statements, 33.3% of government entities with audited financial statements provided high-level certification letters. However, the report does not confirm the number of government entities without audited financial statements that provided high-level certification letters.

<sup>435</sup> NEITI (April 2018), 'Oil & Gas Audit Report - Appendix A', accessed [here](#) in July 2018.

<sup>436</sup> NEITI (2017), 'Compliance Report: NEITI 2015 Oil & Gas Data Submissions', accessed [here](#) in July 2018.

<sup>437</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.21.

<sup>438</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.22.

government oil and gas revenues) and of the 16 companies that did not sign off on their reporting templates (42.36%), it does not provide the detail of payments disaggregated by non-complying company. However, the results of reconciliation presented in Appendix E<sup>439</sup> provide the value of payments for each material company, from which an estimate of the materiality of payments from each non-complying company can be based. Appendix E explains that most non-complying companies expressed a lack of conviction over the need for quality assurances for their reporting, given that the attestation requirement was a new quality assurance agreed for the 2015 reconciliation for the first time.<sup>440</sup>

**Data reliability assessment:** The 2015 O&G EITI Report provides the IA's assessment of the comprehensiveness and reliability of reconciled data.<sup>441</sup> While the IA's assessment is that the reconciled data is a "true representation" of financial flows, it only states that the data provided was "necessary for the Report", without explicitly confirming the comprehensiveness of reconciled data. An overview of the IA's work is provided in the 2015 O&G EITI Report.<sup>442</sup> While Appendix E notes that the majority (16 of 29) of material companies did not provide the required management attestation for their reporting templates, it states that "the NSWG is satisfied with the comprehensiveness and reliability of the reconciled financial data"<sup>443</sup>, although it does not provide the IA's assessment of the comprehensiveness and reliability of reconciled data. However, during consultations, the IA unequivocally stated that it considered the reconciled financial data in the 2015 O&G EITI Report was comprehensive and reliable, noting that it considered its statement that the data was "necessary for the Report" to indicate its satisfaction over the comprehensiveness of reconciled data.

**Sourcing of information:** All data appears to be consistently sourced throughout the 2015 O&G EITI Report and sections published independently on the NEITI website. The report includes NNPC's responses to several findings, which are clearly sourced.<sup>444</sup>

**Summary tables:** The IA appears to have prepared summary data tables for the 2015 O&G EITI Report produced in line with provisions of the IA's ToR, available the Nigeria page of the global EITI website.<sup>445</sup> While the NEITI website does not publish the summary tables as such, the NEITI data dashboard launched in June 2018 presents NEITI data for both solid minerals and petroleum sectors in open data format.<sup>446</sup>

**Recommendations:** While the 2015 O&G EITI Report does not refer to any recommendations from previous EITI Reports or Validation, an overview of NEITI's follow-up on previous EITI recommendations is available through

The 2015 O&G EITI Report provides a list of 27 recommendations for specific entities<sup>447</sup> based on the 2015 EITI Report.<sup>448</sup> These recommendations are also found throughout the 2015 O&G Report.<sup>449</sup>

<sup>439</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.19-21.

<sup>440</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.22.

<sup>441</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.20,22.

<sup>442</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.14-17,86.

<sup>443</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.23.

<sup>444</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.48,52,54,61.

<sup>445</sup> See Nigeria country page, EITI website, accessed [here](#) in June 2018.

<sup>446</sup> NEITI website, NEITI Dashboard, accessed [here](#) in June 2018.

<sup>447</sup> including 8 for NNPC, 3 for NNPC-COMD, 2 for CBN, 2 for NAPIMS, 1 for NDDC, 4 for DPR, 3 for FIRS and 3 broader recommendations related to the domestic pipeline grid, NNPC's role as player and regulator, as well as the PIB.

<sup>448</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.184-202.

<sup>449</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.61,68,70,71-72,81,90,96,101,105,108,110,116,133,155-156,159-160,178,182.

## *Solid minerals*

**Review of audit practices:** The 2015 SM EITI Report does not clarify whether the IA reviewed material entities' 2015 financial statements, nor provide an assessment of whether all material entities had 2015 financial statements audited to international standards. However, during consultations, the IA confirmed that it had reviewed audit practices for the year under review in preparing the EITI Report and noted that all 42 material companies had provided copies of their 2015 audited financial statements. The IA also considered that the OAuGF's provision of certification for the three reporting government entities' EITI reporting was sufficient to ensure the reliability of government reporting, regardless of the review of government audit practices for the year under review.

**Assurance methodology:** The 2015 SM EITI Report and the 2015 supplementary report published in July 2018 describe the quality assurances requested for EITI reporting for both companies and government.<sup>450,451,452</sup>

**Confidentiality:** While the 2015 SM EITI Report does not explicitly describe mechanisms to ensure the confidentiality of data pre-reconciliation, it refers to the IA's work being conducted on the basis of ISRS 4400 on engagements to perform agreed upon procedures regarding financial information<sup>453</sup>, which implies that adequate confidentiality provisions were put in place.

**Reconciliation coverage:** The 2015 SM EITI Report provides the target reconciliation coverage in terms of royalties, but not total government solid minerals revenues, based on the materiality threshold for selecting companies<sup>454</sup>, but does not provide the final reconciliation coverage based on final reporting. Following stakeholder consultations however, the NEITI Secretariat published FIRS's full unilateral disclosure of revenues in the document 'Full Unilateral Government Disclosure (Appendix E)'<sup>455</sup>, published subsequent to the start of the second Validation on 25 July 2018. The document presents total revenues government revenues from all 681 solid minerals license-holders, from which it is possible to calculate the reconciliation coverage of 89.53% for solid minerals revenues in 2015.

**Assurance omissions:** While the 2015 SM EITI Report does not confirm whether all reporting companies and government entities provided the requested quality assurances, Appendix 9 presents management sign-off slips from 29 of the 42 material companies<sup>456</sup>, but not the OAuGF certification of government reporting. While the 2015 supplementary report published in July 2018 refers to an Appendix 4 that purportedly shows the sign-off between companies, government and the IA "agreeing with the reconciliation outcome"<sup>457</sup>, this appears to have been a typo in reference to Appendix 9, which provided scanned copies of all 29 complying companies' management attestations. While the 2015 SM EITI Report does not explicitly state that the OAuGF provided certification of government reporting templates, it does state, in the sentence following the description of the requirement for the OAuGF to provide sign-off, that the IA "obtained all the information and explanations which we considered necessary to provide sufficient and appropriate evidence to give reasonable assurance that the data provided are free from material

<sup>450</sup> Assurances included management sign-off for companies and OAuGF certification of government reporting templates, as well as supporting documentation for each transaction (e.g. receipts).

<sup>451</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.7.

<sup>452</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.17.

<sup>453</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.17,40.

<sup>454</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.16.

<sup>455</sup> NEITI (July 2018), 'Full Unilateral Government Disclosure (Appendix E)', accessed [here](#) in July 2018.

<sup>456</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.107-121.

<sup>457</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.8.

*misstatement.*<sup>458</sup> During consultations, the IA confirmed that it had obtained certification from the OAuGF for the three government entities' reporting templates.

***Data reliability assessment:*** While the 2015 SM EITI Report includes the IA's assessment that reconciled financial data is "free from material misstatement"<sup>459</sup>, it does not include the IA's assessment of the comprehensiveness of the reconciliation. The main report also provides an overview of the IA's work.<sup>460</sup> The 2015 supplementary report published in July 2018 states that "company payments were fully reconciled"<sup>461</sup>, implying that the reconciliation was comprehensive. During consultations, the IA unequivocally stated that it considered the reconciled financial data in the 2015 SM EITI Report to be comprehensive and reliable, noting that it considered its statement in the main report to adequately reflect this assessment.

***Sourcing of information:*** Despite gaps in sourcing of production and export data, the 2015 SM EITI Report consistently sources information in the report, which also indicates that all views in the report are those of the IA.<sup>462</sup>

***Summary tables:*** The IA appears to have prepared summary data tables for the 2015 SM EITI Report produced in line with provisions of the IA's ToR, available on the Nigeria page of the global EITI website.<sup>463</sup> While the NEITI website does not publish the summary tables as such, the NEITI data dashboard launched in June 2018 presents NEITI data for both solid minerals and petroleum sectors in open data format.<sup>464</sup>

***Recommendations:*** The 2015 SM EITI Report provides an overview of NEITI's follow-up on past recommendations of EITI SM Reports.<sup>465</sup> A set of nine new recommendations based on 2015 reporting are also presented.<sup>466</sup>

## Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to data reliability has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 4.9. In accordance with Requirement 4.9, the reconciliations of payments and revenues for both solid minerals and oil and gas have been undertaken by two IAs, appointed by the NSWG, and applying international professional standards. The ToRs used for the production of the 2015 SM and O&G EITI Reports were not consistent with the standard ToR and agreed upon procedures issued by the EITI Board. However, it is evident that all key steps in the reconciliation process have been maintained despite procedural deviations from the standard ToRs. While initial data collection was undertaken by the NEITI Secretariat, the International Secretariat understands that appropriate safeguards have been established to preserve the integrity of financial information pre-reconciliation. Subsequent to data collection, the IA performed a detailed assessment of source documents to verify all reported data. The final 2015 EITI Reports, and associated documents, provide statements from the IA on the comprehensiveness and reliability of the (financial) data presented, even if these would benefit from more clarity in the full text of

<sup>458</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.17.

<sup>459</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.17,40.

<sup>460</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.14-15,17,39.

<sup>461</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.8.

<sup>462</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.1.

<sup>463</sup> See Nigeria country page, EITI website, accessed [here](#) in June 2018.

<sup>464</sup> NEITI website, NEITI Dashboard, accessed [here](#) in June 2018.

<sup>465</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.63-69.

<sup>466</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.70-74.

the reports. The reports include informative summaries of the work performed by the IAs and the limitations of the assessments provided. The NSWG and IA subsequently performed ex-post confirmations of the procedural choices and materiality decisions, as evident from minutes of the NSWG's 13 June 2018 meeting.<sup>467</sup> NEITI have subsequently revised the ToRs used for contracting IAs for the 2016 EITI Report to ensure it conforms with the standard ToR approved by the EITI Board. There is clear evidence that NEITI has followed up on recommendations of past EITI Reports and Validation and that the 2015 EITI Reports present clear recommendations both for solid minerals and oil and gas. While the 2015 O&G EITI Report indicates the coverage of the reconciliation exercise, based on the government's disclosure of total revenues, the 2015 SM EITI Report only indicates the coverage of reconciliation of royalties, not in terms of total government revenues from the solid minerals sector.

Should the Board accept to take account of information on total government revenues from solid minerals published subsequent to the start of the second Validation (*see Requirement 4.1*), which allow for the calculation of a final reconciliation coverage in terms of total government revenues from solid minerals, the International Secretariat's assessment would be that the corrective action related to data reliability had been addressed, and that Nigeria had made satisfactory progress on Requirement 4.9.

In accordance with Requirement 4.9, Nigeria should ensure that the final reconciliation coverage is provided for both solid minerals and oil and gas, in light of any reporting omissions.

### 3.14 Corrective action 14 (#5.2)

In accordance with requirement 5.2.a, the NSWG should assess the materiality of subnational transfers prior to data collection and ensure that the specific formula for calculating transfers to individual states and Local Government Areas be disclosed, to support an assessment of discrepancies between budgeted and executed subnational transfers.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. Validation found that 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 OG EITI Report referred to monthly FAAC reports, it did not provide guidance on how to access these reports, although Validation noted that monthly FAAC reports, providing budgeted FAAC allocations and actual FAAC disbursements, were available on the MoF website. Finally, Validation found that amnesty payments to former Niger Delta militants appeared to have been mis-categorised as subnational transfers in the 2013 OG EITI Report since these were transfers from Federal Government entities to private individuals directly and were not linked to extractive industry revenues.

<sup>467</sup> NEITI (2018), 'NSWG Meeting Minutes of 13 June 2018', accessed [here](#) in July 2018.

## Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published, for oil and gas, an updated section on 'Determination of Materiality (Appendix E)'<sup>468</sup> on 6 July 2018 and a new 'Appendix C: determination of materiality'<sup>469</sup> to the 2015 SM EITI Report on 10 July 2018. For solid minerals, NEITI published a '2015 Solid Minerals Audit - Supplementary Report'<sup>470</sup> on 10 July 2018.

Subsequent to the start of the second Validation on 11 July 2018, NEITI published a spreadsheet with calculations of transfers to each of the eight oil and gas producing states according to the formula for the April-December 2018 period<sup>471</sup> on 27 July 2018.

### Oil & gas

The 2015 O&G EITI Report does not refer to any subnational transfers linked to oil and gas revenues. However, the updated section on 'Determination of Materiality (Appendix E)' describes the statutory subnational transfers of 13% of oil and gas revenues to the eight oil-producing states in Nigeria.<sup>472</sup> Appendix E provides the specific formula for calculating subnational transfers for both crude oil and natural gas revenues.<sup>473</sup> Appendix E refers to information on subnational transfers routinely published on the NBS website<sup>474</sup>, which reveals transfers to nine oil-producing states in 2015.<sup>475</sup> During consultations, representatives from the NEITI Secretariat and the IA confirmed that there were only eight oil and gas-producing states in Nigeria in 2015, following the relinquishment of oil-producing Bakassi peninsula from Cross River State to Cameroon in 2008 and prior to the start of oil production in Lagos State in 2016. Staff explained that the transfers to the ninth State (Cross River) reported by NBS in 2015 would have related to delayed payments from a previous year, implying that there were discrepancies between the value of transfers according to the formula and executed transfers. During consultations, NEITI Secretariat staff explained that while subnational transfers of oil derivations were calculated separately from those of gas derivations, the two types of transfers (for oil and gas) were transferred to States together in one lump sum on a monthly basis.

On 27 July 2018, after the commencement of the second Validation, NEITI published a spreadsheet with calculations of transfers to each of the eight oil and gas producing states according to the formula (on a monthly basis) for the April-December 2016 period<sup>476</sup>, with discrepancies compared to actual transfers highlighted in red, although calculations of transfers are not available for the January-April 2016 period. There is no publicly-accessible assessment of annualised discrepancies between the value of executed transfers per state and what should have been transferred according to the revenue-sharing formula. In addition, there is no publicly-accessible explanation of the reasons for NBS data showing that Cross Rivers state received subnational transfers of the 13% derivation despite the lack of oil and gas production in the State in 2015.

<sup>468</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>469</sup> NEITI (July 2018), '2015 Solid Minerals Audit – Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>470</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>471</sup> NEITI (27 July 2018), '13% Derivations Disbursement 2015', accessed [here](#) in July 2018.

<sup>472</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.9-12.

<sup>473</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.10-11.

<sup>474</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', p.11.

<sup>475</sup> See 'Monthly FAAC Allocation 2015' on NBS website, 'NBS e-library' section, accessed [here](#) in July 2018.

<sup>476</sup> NEITI (27 July 2018), '13% Derivations Disbursement 2015', accessed [here](#) in July 2018.

## Solid minerals

The 2015 SM EITI Report confirms the existence of subnational transfers of mining revenue, in the form of allocations of 13% of mining revenues accruing to the Federation Account to relevant mineral-producing states.<sup>477</sup> While the main report and the supplementary report (in July 2018) provide the general formula for calculating subnational transfers<sup>478,479</sup>, they do not provide a calculation of what should have been transferred to each mineral-producing state in 2015 according to the revenue-sharing formula. There is also some confusion in the various NEITI documents over whether subnational transfers occurred in 2015. The 2015 SM EITI Report states there were no subnational transfers since July 2016 given challenges in identifying the geographic source of mining revenues.<sup>480</sup> However, Appendix C states that the first disbursement of subnational transfers<sup>481</sup> took place in July 2016.<sup>482</sup>

During consultations, representatives from government and the NEITI Secretariat confirmed that there had been no subnational transfers of the 13% solid minerals derivation in 2015 and that the first transfer of its kind occurred in July 2016. There was also consensus that it was not possible to calculate the value of subnational transfers to each State according to the formula in 2015, given the lack of specific revenue-sharing formula set by the Revenue Mobilization Allocation and Fiscal Commission (RMFAC) until 2016. Secretariat staff explained that RMFAC normally accumulated the 13% solid minerals derivation over several years before transferring it, given the low value of solid minerals revenues that did not yet warrant annual transfers of the 13% derivation. There was thus consensus among stakeholders consulted that there were no subnational transfers of solid minerals revenues in 2015 and that it would not have been possible to calculate the value of subnational transfers that should have been executed in 2015 in line with the revenue-sharing formula.

## Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to subnational transfers has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 5.2.

The 2015 O&G EITI Report, and associated documents, describe statutory subnational transfers linked to oil and gas revenues and provide the revenue-sharing formula. While the value of subnational transfers of oil and gas revenues is publicly accessible, disaggregated by state, there was no information in the public domain at the start of the second Validation (11 July 2018) assessing discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the Federal Government and each State. While NEITI published an assessment of discrepancies between executed transfers and calculations according to the formula subsequent to the start of the second Validation, these calculations only covered the April-December 2016 period, not for January-April 2016.

The 2015 SM EITI Report, and associated documents, describe statutory subnational transfers linked to solid minerals revenues and provide the general revenue-sharing formula. While the report did not provide the value of executed subnational transfers of solid minerals revenues in 2015, nor assess discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing

<sup>477</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.41.

<sup>478</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.41.

<sup>479</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.1.

<sup>480</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.41.

<sup>481</sup> Appendix C states that, from the amount accrued between November 2011 and July 2016, "the sum of NGN1,289,991,953.64, was shared for the first time in July 2016 as 13% derivation to entitled beneficiaries."

<sup>482</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.10.

formula and the actual amount that was transferred between the Federal Government and each State, the International Secretariat understand that there were no such subnational transfers in 2015 and that the specific revenue-sharing formula for calculating the split in transfers between various States had not yet been issued in 2015.

In accordance with Requirement 5.2, Nigeria should provide the specific formula for calculating subnational transfers linked to extractives revenues to individual States for the fiscal period under review, disclose any material subnational transfers and any discrepancies between (i) the transfer amount calculated in accordance with the relevant revenue sharing formula and (ii) the actual amount that was transferred between the central government and each relevant State.

### 3.15 Corrective action 15 (#6.1)

In accordance with requirement 6.1.a, the NSWG should agree a clear distinction between mandatory and voluntary social expenditures prior to data collection. Where beneficiaries of mandatory social expenditures are a third party, i.e. not a government agency, the NSWG should ensure that the name and function of the beneficiary be disclosed.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. Validation found that this requirement was not applicable in the oil and gas sector, although the 2013 OG 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 was considered encouraging, although the mis-categorisation of certain social expenditures as infrastructure provisions and quasi-fiscal expenditures was identified as a concern. In solid minerals, the 2013 SM 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.

#### Progress since Validation

NEITI published the 2015 Solid Minerals EITI Report, with standalone appendices, in November 2017 and the 2015 Oil & Gas EITI Report, with standalone appendices, in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published an updated section on 'Determination of Materiality (Appendix E)'<sup>483</sup> on 6 July 2018, which provided additional detail on the NSWG's assessment of the existence of mandatory social expenditures in oil and gas. For solid minerals, NEITI published a new 'Appendix C: determination of materiality'<sup>484</sup> to the 2015 SM EITI Report and a '2015 Solid Minerals Audit - Supplementary Report'<sup>485</sup> on 10 July 2018.

<sup>483</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', accessed [here](#) in July 2018.

<sup>484</sup> NEITI (July 2018), '2015 Solid Minerals Audit – Appendix C: determination of materiality', accessed [here](#) in July 2018.

<sup>485</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

Subsequent to the start of the second Validation on 11 July 2018, NEITI published detailed data, disaggregated in line with Requirement 6.1.a, on reporting solid minerals companies' disclosures of their mandatory social expenditures in the document 'Social Responsibility – Appendix D'<sup>486</sup>, on 25 July 2018.

### *Oil & gas*

The 2015 O&G EITI Report covered only social expenditures under MoUs with host communities, categorised as voluntary despite the requirement to conclude such MoUs as a precondition for DPR's approval of annual work programmes.<sup>487</sup> However, Appendix E published in July 2018 describes two types of mandatory social expenditures in oil and gas, consisting of payments to the Niger Delta Development Corp. (NDDC) and the Nigerian Content Development and Monitoring Board (NCDMB).<sup>488</sup> There was consensus among stakeholders consulted that the only forms of mandatory social expenditures in oil and gas were payments to NDDC and NCDMB. While Appendix E describes the rates of NDDC and NCDMB levies<sup>489</sup>, it only implies (without explicitly stating) that such payments are always made in cash in providing the value of such payments in 2015. It is clear that such mandatory social expenditures are always transferred to government entities (NDDC and NCDMB respectively). The value of company contributions to NDDC and NCDMB are disclosed and reconciled in the 2015 O&G EITI Report.<sup>490</sup> During consultations, representatives from the NEITI Secretariat, industry and the IA confirmed that contributions to NDDC and NCDMB are always paid in cash directly to these government beneficiaries.

The 2015 O&G EITI Report also presents 30 companies' unilateral disclosures of voluntary social expenditures, albeit not disaggregated by type or project.<sup>491</sup>

### *Solid minerals*

The 2015 SM EITI Report explains that there are mandatory social expenditures in the solid minerals sector<sup>492</sup>, but does not describe relevant legal or contractual provisions related to social expenditures, nor types of social expenditures required by statute. Appendix C and the 2015 supplementary report published in July 2018 clarify that the only form of mandatory social expenditures in solid minerals are those under Community Development Agreements (CDAs) mandated under the Mining Act.<sup>493494</sup> While the main report provides the value of aggregate mandatory social expenditures by 14 reporting companies, it does not disaggregate between cash and in-kind mandatory social expenditures, nor highlight the identity of non-government beneficiaries. However, subsequent to stakeholder consultations, the NEITI Secretariat published detailed data on reporting companies' disclosures of their mandatory social expenditures in the document 'Social Responsibility – Appendix D'<sup>495</sup>, published subsequent to the start of the second Validation on 25 July 2018. This document presented mandatory social expenditures by company, disaggregated between cash and in-kind expenditures, with the deemed value and description of in-kind expenditures, and with the identity of non-governmental beneficiaries clearly highlighted.

<sup>486</sup> NEITI (July 2018), 'Social Responsibility – Appendix D', accessed [here](#) in July 2018.

<sup>487</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.37-38.

<sup>488</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.12-13.

<sup>489</sup> NEITI (July 2018), 'Determination of Materiality (Appendix E)', pp.12-13.

<sup>490</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.98-105.

<sup>491</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.38-39.

<sup>492</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.44.

<sup>493</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.10.

<sup>494</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, pp.10-11.

<sup>495</sup> NEITI (July 2018), 'Social Responsibility – Appendix D', accessed [here](#) in July 2018.

The 2015 SM EITI Report also discloses 18 companies' reporting of voluntary social expenditures under corporate social responsibility programmes<sup>496</sup>, albeit not disaggregated between cash and in-kind expenditures, nor highlighting the identity of any non-government beneficiaries.

### Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to social expenditures has been partly addressed and considers that Nigeria has made meaningful progress with improvements on Requirement 6.1. The 2015 O&G EITI Report describes mandatory social expenditures in oil and gas, comprehensively disclosing and reconciling these expenditures. While the report does not explicitly confirm that all such mandatory social expenditures are paid in cash to government beneficiaries, there is consensus among stakeholders consulted that this is the case. The 2015 SM EITI Report describes mandatory social expenditures in solid minerals and discloses these comprehensively, albeit only in aggregate per reporting company, without clearly identifying non-government beneficiaries where applicable nor describing in-kind expenditures and their deemed value.

Should the Board accept to take account of information on the detail of mandatory social expenditures in solid minerals, which clearly identify non-government beneficiaries and describe in-kind expenditures and their deemed value, published subsequent to the start of the second Validation, the International Secretariat's assessment would be that the corrective action related to social expenditures had been addressed, and that Nigeria had made satisfactory progress on Requirement 6.1. It could also be argued that Nigeria has gone beyond the minimum requirements by providing additional information on discretionary social expenditures in both solid minerals and oil and gas, as encouraged by the EITI Standard.

In accordance with Requirement 6.1, Nigeria should ensure that public disclosure of mandatory social expenditures be disaggregated by type of payment (distinguishing cash and in-kind) and beneficiary, clarifying the name and function of any non-government beneficiaries of mandatory social expenditures.

### 3.16 Corrective action 16 (#6.3)

In accordance with requirements 6.3, the NSWG should ensure that the size of the oil and gas sector in absolute terms, the solid mineral sector's share of government revenues in relative terms, the value of oil and gas exports in absolute and relative terms and the size of solid minerals employment in absolute terms for the year(s) under review.

#### Findings from the first Validation

The first Validation concluded that Nigeria had made meaningful progress in meeting this requirement. In oil and gas, the 2013 OG EITI Report provided the sector's size relative to GDP, albeit 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, Validation found that the low estimate of sector employment was a concern in light of stakeholders' comments. In solid minerals, the 2013 SM 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

<sup>496</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.44.

relative but not absolute terms. It also provided an overview of informal activities and some information on the location of mining activities.

### Progress since Validation

With regards to the **corrective action related to requirement 6.3**, NEITI published the 2015 Solid Minerals EITI Report (with standalone appendices) in November 2017 and the 2015 Oil & Gas EITI Report (with standalone appendices) in December 2017. Following pre-Validation self-assessments of the 2015 EITI Reports, NEITI subsequently published the Value Chain section of its website in April 2018, which provided additional details on the oil and gas sector's contribution to the economy. For solid minerals, NEITI published a '2015 Solid Minerals Audit - Supplementary Report'<sup>497</sup> on 10 July 2018, which properly sourced the macroeconomic data.

Share of GDP: In *oil and gas*, the "Social and economic spending" webpage of the 'Value Chain' section of the NEITI website provides the value of the oil and gas sector's contribution to GDP in 2015 in absolute and relative terms.<sup>498</sup>

In *solid minerals*, the 2015 SM EITI Report provides the sector's contribution to GDP in absolute and relative terms<sup>499</sup>, albeit without providing the source of GDP data. The 2015 supplementary report republished this data, properly sourced from the NBS.<sup>500</sup>

Government revenues: In *oil and gas*, the 2015 O&G EITI Report provides the value of 2015 government revenues from the sector in absolute terms<sup>501</sup>, albeit not as a share of total government revenues. In *solid minerals*, the 2015 SM EITI Report provides the value of government solid minerals revenues in absolute terms, albeit unsourced<sup>502</sup>, but not relative to total government revenues. Nevertheless, the value of total Federal Government revenues in 2015 is widely available, including from the CBN<sup>503</sup> and the Budget Office of the Federation<sup>504</sup>, from which it is possible to calculate the relative contribution of solid minerals and oil and gas to government revenues drawing on NEITI data.

Exports: In *oil and gas*, the "Social and economic spending" webpage of the 'Value Chain' section of the NEITI website provides the value of oil and gas exports in 2015 in absolute and relative terms.<sup>505</sup>

In *solid minerals*, the 2015 SM EITI Report provides the value of solid minerals exports in 2015, in absolute terms and relative to non-oil exports.<sup>506</sup> However, the 2015 supplementary report provides the value of 2015 solid minerals exports in absolute terms and relative to total oil and non-oil exports.<sup>507</sup>

<sup>497</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', accessed [here](#) in July 2018.

<sup>498</sup> NEITI website, 'Social and economic spending' webpage of the 'Value Chain' section, accessed [here](#) in July 2018.

<sup>499</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.45.

<sup>500</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', pp.8-9.

<sup>501</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, pp.18-19,25-26,27-29.

<sup>502</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.45.

<sup>503</sup> CBN (2016), 2015 Statistical Bulletin: Public Finance Statistics, accessed [here](#) in July 2018.

<sup>504</sup> Budget Office of the Federation (2016), '2016 Budget', accessed [here](#) in July 2018.

<sup>505</sup> NEITI website, 'Social and economic spending' webpage of the 'Value Chain' section, accessed [here](#) in July 2018.

<sup>506</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.47.

<sup>507</sup> NEITI (July 2018), '2015 Solid Minerals Audit - Supplementary Report', p.9.

**Employment:** In *oil and gas*, the “Social and economic spending’ webpage of the ‘Value Chain’ section of the NEITI website provides total employment figures for 2015<sup>508</sup> and a link<sup>509</sup> to disaggregated company reporting of employment on the NEITI website.

In *solid minerals*, the 2015 SM EITI Report provides 42 material companies’ reporting of their 2015 staff numbers in absolute terms<sup>510</sup>, although the detail of company employment reporting in Appendix 2 shows that only 31 of the 42 material companies reported any employment data.<sup>511</sup> While the main report did not provide solid minerals employment as a share of total employment, the 2015 supplementary report published in July 2018 provided statistics for total employment<sup>512</sup>, with sufficient data to calculate the relate contribution to total employment.

**Location:** In *oil and gas*, the 2015 O&G EITI Report provides a map of the inland oil and oil products pipelines in Nigeria<sup>513</sup>, while the ‘Production’ webpage of the ‘Value Chain’ section of the NEITI website provides a map of oil and gas sedimentary basins.

In *solid minerals*, the 2015 SM EITI Report indicates the location of production<sup>514</sup>, while Appendix 11 provides production data disaggregated by state.<sup>515</sup>

### Secretariat’s Assessment

The Secretariat is satisfied that the corrective action on transparency in the extractive industries’ contribution to the economy has been addressed and considers that Nigeria has achieved satisfactory progress on requirement 6.3. The 2015 O&G EITI Report, and associated documents published on the NEITI website, and the 2015 SM EITI Report provide estimates of the contribution, in absolute and relative terms, of both oil and gas and solid minerals to GDP, government revenues, exports and employment, identifying the location of production.

## 4. Conclusion

Having reviewed the steps taken by Nigeria to address the 16 corrective actions requested by the EITI Board as of the commencement of its second Validation (11 July 2018), it can be reasonably concluded that 10 of the 16 corrective actions have been fully addressed and that Nigeria has made meaningful progress in implementing the EITI Standard, with *considerable improvements across several individual requirements*. The outstanding gaps relate to license allocation (Requirement 2.2) and register of licenses (Requirement 2.3), state participation (Requirement 2.6), comprehensiveness of reporting (Requirement 4.1), data quality and assurance (Requirement 4.9), subnational transfers (Requirement 5.2) and social expenditures (Requirement 6.1).

Should the Board choose to exercise its discretion in accepting to take account of new information published subsequent to the commencement of the second Validation (11 July 2018) related to Requirements 2.2, 2.6, 4.1, 4.9 and 6.1, it could be reasonably concluded that 14 of the 16 corrective actions had been fully addressed and that Nigeria had made meaningful progress in implementing the EITI

<sup>508</sup> NEITI website, ‘Social and economic spending’ webpage of the ‘Value Chain’ section, accessed [here](#) in July 2018.

<sup>509</sup> <http://www.neiti.gov.ng/index.php/extractives/oil-and-gas/category/173-eog-references?download=684:summary-of-employment-data>

<sup>510</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.48.

<sup>511</sup> NEITI (November 2017), ‘Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)’, p.6.

<sup>512</sup> NEITI (July 2018), ‘2015 Solid Minerals Audit - Supplementary Report’, p.9.

<sup>513</sup> NEITI (December 2017), 2015 Oil and Gas EITI Report, p.70.

<sup>514</sup> NEITI (November 2017), 2015 Solid Minerals EITI Report, p.31.

<sup>515</sup> NEITI (November 2017), ‘Appendices to NEITI 2015 Solid Minerals Industry Audit Report (2015 SM EITI Report)’, p.123.

Standard, with *considerable improvements across several individual requirements*. The outstanding gaps would relate to register of licenses (Requirement 2.3) and subnational transfers (Requirement 5.2).

## Annexes

TABLE 1: FUNDING SOURCES OF 2018 WORK PLAN<sup>516</sup>

Funding source	Amount	
Federal Government of Nigeria	NGN	688 259 464.00
Committed donor funds	NGN	51 000 000.00
Funding shortfall	NGN	191 855 555.00
<b>Total</b>	<b>NGN</b>	<b>931 115 019.00</b>

Table 2: NSWG Attendance overviews for 2016-2018

### NSWG MEETINGS ATTENDANCE FOR 2016

SN	NAMES	11.mar	03.apr	12.jul	06.des	% ATTENDANCE
1	Kayode Fayemi (Chairman)	Present	Present	Present	Present	100 %
2	Waziri Adio	Present	Present	Present	Present	100 %
3	Mahmoud Isa Dutse/Proxy	Present	Present	Present	Present	100 %
4	Ann Adaeze Onyekwena	Present	Present	Present	Present	100 %
5	Gbenga Okunlola	Present	Present	Present	Present	100 %
6	Sani Shehu	Present	Present	Present	Present	100 %
7	Lawan Gana Lantewa	Present	Present	Present	Present	100 %
8	Gbenga Onayiga	Present	Present	Present	Present	100 %
9	Benard Verr	Present	Present	Present	Absent	75 %
10	Emmanuel Chiejina	Present	Present	Absent	Present	75 %
11	Kolawole Banwo	Absent	Present	Present	Present	75 %
12	Achese Igwe	Present	Present	Absent	Present	75 %
13	Hannatu Musawa	Absent	Absent	Present	Present	50 %
14	Kachikwu/Baru/Proxy	Absent	Absent	Present	Absent	25 %
15	Bunmi Toyibo	Absent	Absent	Absent	Present	25 %
<b>AVERAGE</b>						<b>80 %</b>

**Colour Chart:**

	Present
	Absent

### NSWG MEETINGS ATTENDANCE FOR 2017

SN	NAMES	13.mar	11.aug	04.nov	04.des	% ATTENDANCE
1	Kayode Fayemi (Chairman)	Present	Present	Present	Absent	75 %
2	Waziri Adio	Present	Present	Present	Present	100 %
3	Mahmoud Isa Dutse/Proxy	Present	Present	Present	Present	100 %
4	Ann Adaeze Onyekwena	Present	Present	Present	Present	100 %
5	Gbenga Okunlola	Present	Present	Present	Present	100 %
6	Sani Shehu	Present	Present	Present	Present	100 %
7	Lawan Gana Lantewa	Present	Present	Present	Present	100 %

<sup>516</sup> NEITI (2018), 'Annual work plans', accessed [here](#) in June 2018.

8	Gbenga Onayiga					100 %
9	Benard Verr					100 %
10	Emmanuel Chiejina					50 %
11	Kolawole Banwo					100 %
12	Achese Igwe					25 %
13	Hannatu Musawa					100 %
14	NNPC GMD / Proxy Mr. Godwin Okonkwo					75 %
15	Chairman of OPTS / Proxy Mr. Bunmi Toyobo					75 %
<b>AVERAGE</b>						87 %

**Colour Chart:**

	Present
	Absent

**NSWG MEETINGS ATTENDANCE FOR 2018**

SN	NAMES	24.feb	13.jun	16.jul	27.sep	13.dec	% ATTENDANCE
1	Kayode Fayemi (Chairman)						0 %
2	Waziri Adio						100 %
3	Mahmoud Isa Dutse/Proxy						33 %
4	Ann Adaeze Onyekwena						100 %
5	Gbenga Okunlola						100 %
6	Sani Shehu						100 %
7	Lawan Gana Lantewa						100 %
8	Gbenga Onayiga						100 %
9	Benard Verr						100 %
10	Emmanuel Chiejina						0 %
11	Kolawole Banwo						100 %
12	Achese Igwe						100 %
13	Hannatu Musawa						100 %
14	NNPC GMD / Proxy Mr. Godwin Okonkwo						100 %
15	Chairman of OPTS / Proxy Mr. Bunmi Toyobo						33 %
<b>AVERAGE</b>							78 %

**Colour Chart:**

	Present
	Absent