

Mineral rights to human rights: mobilising resources from the extractive industries for water, sanitation and hygiene



Oxford Policy Management

Case study: Nigeria
December 2017

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Cover image: Margaret Eze outside her toilet holding a broom she has made from palm leaves in Ingo Eze LGA, Enugu State, Nigeria. Credit: WaterAid/Neil Wissink.

List of Abbreviations

AOE	Additional Oil Entitlement
CIT	Corporate Income Tax
CSR	Corporate Social Responsibility
EFCC	Economic and Financial Crimes Commission (EFCC)
FCT	Federal Capital Territory
FDI	Foreign Direct Investment
FGN	Federal Government of Nigeria
FMoWR	Federal Ministry of Water Resources
GDP	Gross Domestic Product
GLAAS	Global Analysis and Assessment of Sanitation and Drinking-Water
NEITI	Nigeria Extractive Industries Transparency Initiative
NNPC	Nigeria National Petroleum Company
ICMM	International Council on Mining and Metals
IGF	Internally Generated Funds
IOC	International Oil Company
IFEJ	Institute of Financial and Economic Journalists
IMF	International Monetary Fund
MDG	Millennium Development Goal
NRGI	Natural Resource Governance Institute
NGO	Non-Governmental Organisation
PIAC	Public Interest and Accountability Committee
SDG	Sustainable Development Goal
SSA	Sub-Saharan Africa
SWA	State Water Agency
SWB	State Water Board
WASH	Water, Sanitation and Hygiene
WGC	World Gold Council
WHO	World Health Organisation
WSS	Water Supply and Sanitation

1 Summary of key conclusions and recommendations

Nigeria's federal, state and local governments face a very steep challenge in increasing the access of the country's citizens to safely-managed water and sanitation services so that everyone has access by 2030 and the Sustainable Development Goal targets 6.1 and 6.2 are met. The 2017 WHO/UNICEF JMP estimates that only 19% of the population has access to safely-managed water services, with access to safely-managed sanitation lower still.

The scale of this challenge is reflected in the capital investment cost of achieving SDG targets: 1.7 percent of GDP, or over US\$10 billion per year through to 2030. This compares with recent government budget allocations to WASH (recurrent and capital combined) of US\$717 million in 2015 and US\$602 million in 2016.

The challenge is exacerbated by the 2016-17 recession and growing levels of public debt. Nigeria's total debt stock increased to N20.4 trillion at the end of September 2017 from N17.4 trillion at the end of 2016.

There is nevertheless scope to meet a substantial part of this financing gap from domestic resource mobilisation linked to the Extractive Industries (EI). It will require concerted action and a serious change of priorities from Government, business and civil society across several fronts. Success also requires enhanced international support and cooperation from countries outside of Nigeria.

The Government should deepen and broaden the tax base from current levels. General government revenue as a percentage of GDP was only 4.8% in 2016. This is one of the lowest in the world. There is increasing evidence that countries with tax revenues below 15 per cent of GDP have difficulty funding basic state functions.

The most urgent action is to stem the theft of petroleum proceeds by private individuals and groups. Although it is not possible to get a precise estimate, evidence suggests that theft—be it physical theft in the Niger delta, or high-level financial crime in business and politics—has occurred on an industrial scale over a period of decades.

To address the pervasive public and private corruption that has plagued the EI sector, it is essential to build on the progress made in strengthening governance. The priority placed by the current federal administration to tackle corruption, the passage of the Petroleum Industry Governance Bill and the traction gained by the Nigeria Extractive Industries Transparency Initiative (NEITI) all offer promise in this regard.

It is vital that the momentum behind increased transparency and accountability is sustained. It is encouraging to see that Nigeria has made meaningful progress in the implementation of the 2016 EITI standard. Similarly, initiatives such as OPM and DFID's Facility for Oil Sector Transparency and Reform in Nigeria (FOSTER) are helping to reduce the many incentives for misuse of power and capture of oil revenues.

Increasing domestic resource mobilisation from the EI also requires steps to end the tax loopholes and unnecessary discretionary tax treatments associated with the sector. The report highlights how pioneer status (an incentive to encourage innovative industries) has undermined the optimal collection of revenue in the petroleum sector. The inappropriate use of transfer pricing is estimated to cost the Nigerian Exchequer hundreds of millions of dollars.

Several international initiatives support the achievement of SDG 17—strengthening domestic resource mobilisation—and they offer opportunities for Nigeria to strengthen capacity in this critical area. They include the Addis Tax Initiative, Tax Inspectors Without Borders, Base Erosion and Profit Shifting (BEPS) and the Platform for Collaboration on Tax.

An additional step to increase the incentives for the repatriation of illicit funds and the capture of increased funds from the EI would be to set up a ring-fenced fund, dedicated to resourcing the SDGs, including SDG 6. With oversight from the Federal Government and civil society, it could act as a powerful mechanism and incentive for capturing additional revenues0.

There is also scope for the IOCs to do more on WASH through their Corporate Social Responsibility programmes. The Italian IOC, Agip, has sought to improve access to water and sanitation facilities through the establishment of reticulation in 75 communities in four states in the Niger Delta, but generally IOC investments in the sector have been limited.

It is important that the government plans on the basis of a long-term horizon in terms of its management of the EI. Countries that have successfully managed their EI sector, such as Botswana or Norway, have shown the ability to put in place effective governance, transparency and long-term planning. Nigeria has significant opportunity in terms of hydro-electricity and solar power, and as the world seeks to effect a transition to a low-carbon economy, the country should think carefully about its energy mix, the diversification of the economy, and what this entails for the management of its EI.

2 Overview

Nigeria is Africa's largest economy; however, the economic powerhouse has had a troubled history and is often portrayed as the poster child for the resource curse, where oil wealth has led to conflict and poverty instead of prosperity. Since the discovery of oil in the mid-1950s, the scramble for its control has contributed to weak sector governance and profound political upheavals and conflicts. These natural resource control dynamics were played out in the Biafran civil war and have driven persistent conflict in the Niger Delta, undermining governance, development and public service delivery, especially in the oil-producing states. Non-oil based sectors of the economy including agriculture, mining and manufacturing have generally been neglected. The 2015 democratic elections where the opposition candidate Muhammadu Buhari won the presidency, largely due to his 'anti-corruption' campaign, have raised hopes for a more positive reform agenda and a stabilisation of the country. However, the resurgence in violent clashes in the Niger Delta resulting in a 25 per cent drop in oil production, lower world oil prices and a depreciation of the Naira have not brought much respite for an already strained population. Nigeria continues to represent a classic example of the so-called *resource-curse*, by failing to convert its natural resources into productive investment.

Over the past two decades, Nigeria's economy has undergone an extraordinary boom, which was heavily dependent upon oil. Exports increased six-fold between 2000 and 2012, while overall Gross Domestic Product (GDP) tripled and per capita income roughly doubled over the same 12-year period. The driver for this boom has been the oil price, which rose from its long-term equilibrium of around US\$20 per barrel before 2003 to a plateau of around US\$100 per barrel between late 2007 and late 2014. With a maximum crude oil production capacity of 2.5 million barrels per day, Nigeria ranks as Africa's largest producer of oil and the sixth largest oil-producing country in the world. The Government earned over US\$75 billion from oil and gas exports in 2014 alone, representing 93 per cent of total exports (IMF, 2016). However, the annual per capita value of oil production amounts to just US\$200 at current prices.¹ This is relatively low compared to other oil rich countries such as Angola (US\$1,050 per capita), Venezuela (US\$1,300 per capita), Gabon (US\$2,000 per capita) and Saudi Arabia (US\$5,500 per capita). Without oil, export values would total a meagre \$40 per person and would constitute the second lowest per capita export in the world after Burundi. Mining currently accounts for just 0.09 per cent of national export earnings, according to the Nigeria Extractive Industries Transparency Initiative (NEITI, 2015) making it very much a small player in the overall extractives sector. Overall, oil makes Nigeria appear richer than it actually is: beneath the veneer of oil-funded consumption, Nigeria is a very poor country, which has failed to achieve significant economic and human development progress for decades.

More recently, the lower oil price has singularly transformed 'boom' into 'bust' for Nigeria's economy, with very limited progress on economic diversification to reduce its dependency on oil. Growth slowed to 2.6 per cent in 2015 – negative in per capita terms – down from 6.3 per cent in 2014, while the fiscal deficit climbed to almost 4 per cent of GDP in 2015. The unadjusted currency has come under severe strain with the emergence of a wide parallel premium. While the Buhari administration shows welcome resolve on governance reform and redistribution in favour of the poor, external observers such as the IMF assess little political appetite for a competitive growth strategy and judge the most likely current outcome to be one of an extended period of low growth, stagnation and borrowing from various sources. In 2016, the adverse economic shocks contributed to the economy going into recession—a contraction of 1.54%—for the first time in two decades.

There has been no overall progress in improving sanitation for the population, with access to improved and shared sanitation and prevalence of open defecation worsening since 1990. Nominally, Nigeria has achieved the Millennium Development Goal (MDG) for drinking water, but there are significant differences between urban and rural areas. For example, 51 per cent of the rural population rely on

¹ Assuming production at 2.5 million bpd (2014, EIA), a population of 177.5 million (WDI, 2014) and an oil price of \$40 per barrel. The high population figure is often considered to be an overestimate, but it is difficult to triangulate.

unimproved sources and surface water for drinking and 31 per cent practise open defecation, compared to 21 per cent and 15 per cent respectively in urban areas (WHO/UNICEF, 2015).

Limited progress is partly explained by the lack of homogeneous plans and targets across federal, state and local governments, as well as poor coordination and overlapping responsibilities between sector agencies (USAID, 2010; WaterAid, 2006; WSP, 2011). Despite the absence of comprehensive data on water, sanitation and hygiene (WASH) financing, evidence suggests that funding is insufficient to meet targets by 2030, with federal resources amounting to just 1 per cent (US\$0.2 billion in 2013) of the total federal budget per year (around US\$24.6 billion in 2013) (JICA, 2014). The UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water records higher Government budget allocations to WASH over the last two years, however. In 2015, the total was US\$717 million and in 2016 US\$602 million.

Funding for the provision of adequate Water Supply and Sanitation (WSS) services in Nigeria is currently insufficient to achieve universal coverage by 2025 for water supply and 2030 for sanitation.

Macheve et al (2015) estimate that the country needs to invest around US\$6 billion overall (US\$600 million per year) within the next 10 years to achieve 100 per cent access to improved drinking water. In addition, to achieve universal sanitation coverage by 2025 (*Open-Defecation-Free Nigeria by 2025*), a total of US\$4.8 billion² (N 959 billion) will be required – this includes household investments in the construction of latrines (US\$3.6 billion or N 725 billion) and government investments in school facilities, health centres, other public areas, triggering and advocacy activities (US\$ 1.2 billion or N 234 billion) (FMoWR, n. d.). Thus, around US\$11 billion in total are needed within the next 10 years to achieve WSS targets. However, achieving Sustainable Development Goal (SDG) 6 requires substantially more in resources. Estimates by Hutton & Varughese (2016) suggest that the capital costs (excluding O&M) of meeting SDG 6.1 and 6.2 targets amount to 1.7 percent of GDP or over US\$10 billion each year until 2030.

Table 1: Nigeria – Key Indicators

	2010	2011	2012	2013	2014	2015
Demographics and Living Standards						
Population, total	159m	164m	168m	173m	177m	182m
Poverty headcount (%)	53.5 (2009)	...	...	...	...	...
Life expectancy at birth (years)	51.3	51.7	52.1	52.4	52.8	...
Mortality rate, under-5 (per 1,000)	130.3	125.5	120.9	116.6	112.5	108.8
Primary completion rate (%)	76	...	...	...	...	...
Access to improved water (%)	63.4	64.5	65.5	66.6	67.6	68.5
Access to improved sanitation (%)	30.5	30.2	29.9	29.6	29.3	29.0
Key Macroeconomic Indicators						
Real GDP per capita growth (% annual)	7.0	2.1	1.5	2.6	3.5	-0.1
Real non-oil GDP growth (% annual)	...	5.3	5.9	8.3	7.3	3.6
Fiscal balance, excluding grants (% GDP)	- 4.2	0.4	0.2	-2.3	-2.1	-4.0
Government debt (% GDP)	9.6	10.2	10.4	10.5	10.6	11.5

Source: World Development Indicators (2016), IMF (2016)

² Across the chapter, exchange rate of US\$1 = N200 as an estimate based on 2015 exchange rate has been used to achieve consistency.

3 Contribution of the Extractives Industry Sector to Nigeria's Economy

3.1 Overview of the Extractives Industry sector in Nigeria

The Extractives Industry (EI) sector continues to play a critical role in Nigeria's economy. The hydrocarbon sector, which includes production of crude oil, natural gas and refined petroleum products accounted for over 90 per cent of Nigeria's total export earnings in 2015 (Trading Economics, 2016) and over 60 per cent of total government revenue (equivalent to US\$ 37 billion) in 2014 (IMF, 2015). Nigeria has a large non-petroleum sector but very little revenue is derived from it; hence, while oil dominates revenue generation it accounts for a relatively small percentage of GDP (see Figure 1 below). Compared to hydrocarbons, mining is still a small contributor to the economy making up only 0.12 per cent of GDP and 0.09 per cent of Nigeria's export earnings in 2015 (National Bureau of Statistics, 2016). In 2013, the government derived US\$119m from the mining sector, up 8 per cent from the previous year. Nigeria produces a small suite of minerals, which include aluminium, barite, coal, gemstones, gold, iron ore, niobium, salt, sand, stone, tantalum and tin, as well as some mineral-based commodities, such as cement, nitrogenous fertilizers, and steel.

Figure 1: Nigeria's GDP by composition (2015, by %)

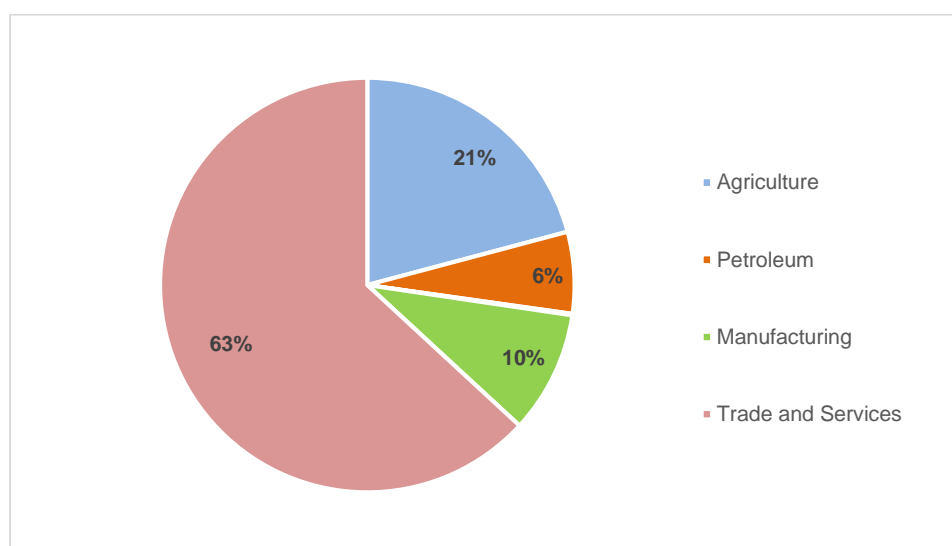
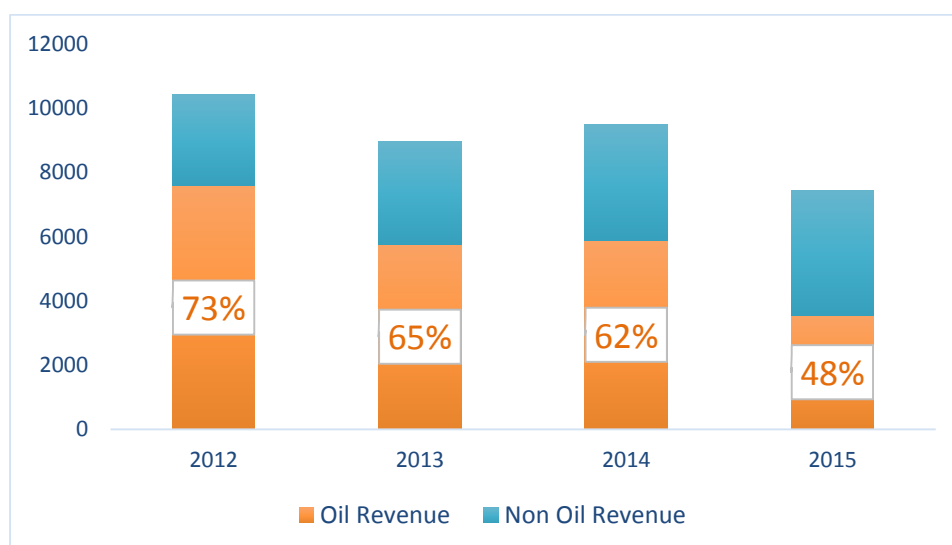


Figure 2: Sources of Nigerian Government Revenue (Naira billions and as % of total revenue)

Sources: IMF (2015; 2016)

Mining

Prior to the emergence of the petroleum industry, solid minerals were a key sector of Nigeria's economy. Organised mining activity records date back to colonial times and until the 1960s, the sector was well-organised and served as a major source of foreign exchange. However, foreign investors abandoned the country during the civil war in the 1970s. With the return to democracy in 1999, the need to diversify the revenue base of the country became paramount. A new national focus and strategy on mining evolved in 2007 with the Nigerian Minerals and Mining Act, which was enacted to revitalise the industry. As part of the strategy to reform the sector, the Ministry of Mines and Steel Development (MMSD) identified a number of strategic minerals for priority development, namely: coal, bitumen, limestone, iron ore, barites, gold, lead and zinc. President Buhari has committed to continue this diversification strategy and attract foreign investment into the mining sector. He appointed a political heavyweight and former Governor of Ekiti State, Dr. Kayode Fayemi, as Minister of Solid Mineral Development. Fayemi believes the right regulatory landscape is the primary step for rejuvenating the sector and attracting international investors, whose hard cash and industry expertise are reported to be desperately needed (New African Magazine, 2016).

The mineral sector in Nigeria is currently dominated by artisanal and small-scale mining operations, mainly informal, working with rudimentary methods and limited technical training, social provision or environmental consideration. It is only in quarrying that large-scale operations exist with the construction companies (stone aggregates and laterite) and cement manufacturers (limestone, coal, etc.) dominating. Dangote Cement is the predominant operator making up more than 50 per cent of all mining revenues. Currently, only 0.3 per cent of workers in Nigeria are employed in the mineral sector, a total of approximately 17,000 people, of which 96 per cent are Nigerian citizens (EITI 2014). However, the sector's potential for job creation and economic growth through multipliers and linkages could be significantly larger.

Numerous domestic and foreign companies engaged in exploration of mineral deposits have become interested in the government's ongoing diversification of the sector. In particular, coal mining has recently garnered attention and has been rapidly developing in Anambra, Enugu, Kogi, Gombe and Delta states. However, solid mineral processing is still being affected by the intermittent availability of electrical power and many extractive companies use their own generators to provide power for their operations, making the business quite costly. Coal is seen as especially important for its role as a source for electricity generation. A few companies have recently been awarded contracts to build coal power plants of various capacities. The

implication is that coal mining is becoming increasingly significant and with the appropriate policy framework and regulation, could become a revenue earner for government.

Petroleum

Since oil was discovered in the Niger Delta in 1956 it has dominated Nigeria's economy. Oil and gas production is concentrated in 9 out of 36 states in Nigeria – Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers. Drilling activities are ongoing or planned in seven primary sedimentary basins, but most of Nigeria's current oil production is concentrated in the Niger Delta. The Niger Delta basin is the largest along the West African coast; it has 246 production fields and 3,446 active wells. Annual production is close to 800 million barrels and production capacity is 2.8 million barrels/day (OPEC 2016 and NNPC 2016). Oil refineries have approximately only a 30% utilisation rate and refine about 450,000 barrels per day. This has been reduced in recent times with a drop of 25% of output due to the recent flare up in violence in the Niger Delta. Fuel subsidies, corruption and mechanical failures have also contributed to the low percentage of refinery utilisation by providing incentives for stakeholders to export crude oil.

Nigeria exports the vast majority of its natural gas in the form of Liquefied Natural Gas (LNG) through the partly government-owned Nigeria Liquefied Natural Gas (NLNG) company. It produced 1 trillion cubic feet of natural gas in 2011, ranking 25th place globally on gas production. According to the estimates by BP (2016), Nigeria has proven reserves of over 37 billion of petroleum barrels (11th highest globally) and had more than 5 trillion of cubic metres of natural gas (9th highest globally) in 2008. NEITI reported cumulative revenue of US\$11.6 billion due to Nigerian government from NLNG as unaccounted for (NEITI 2015). The production and development of the huge natural gas reserve has been constrained largely due to the lack of infrastructure, with significant quantities of natural gas currently flared. In addition, the natural gas industry is affected by the same security and regulatory challenges that affect the oil industry.

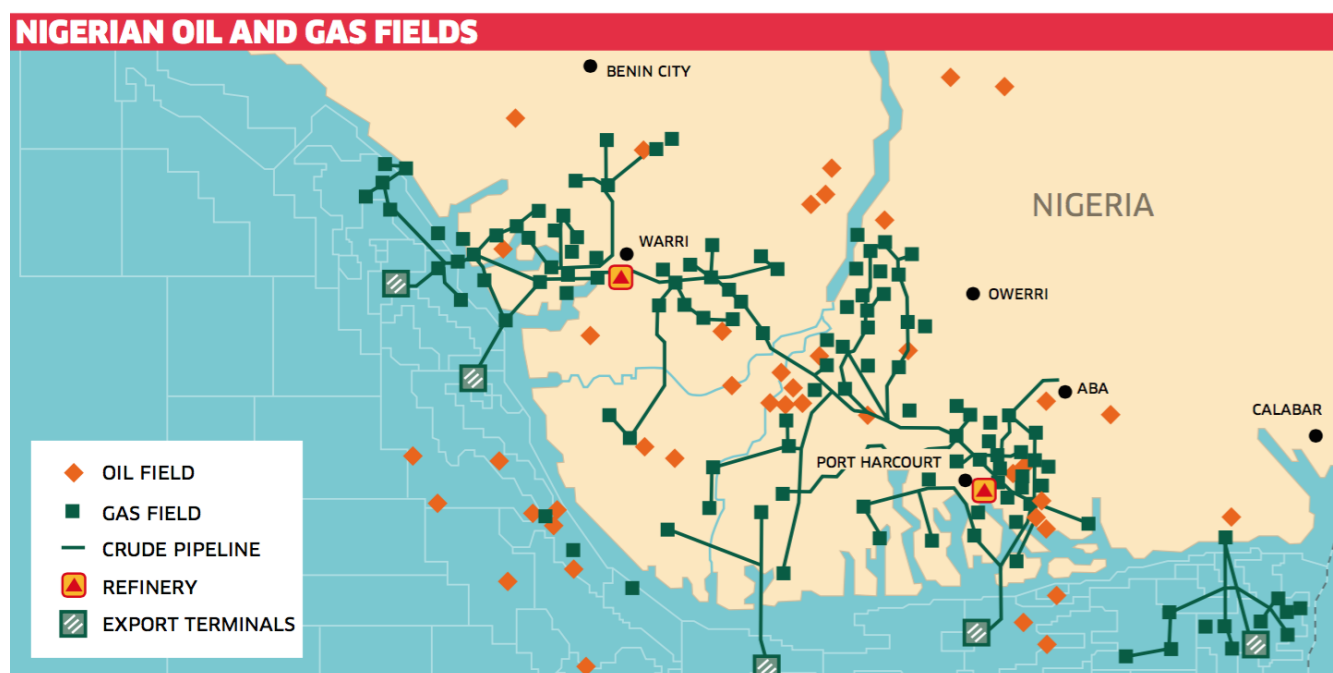
The petroleum industry is governed through a myriad of principal and subsidiary pieces of inter-related legislation dealing with specific aspects of the operations of the industry. The Federal Ministry of Petroleum Resources has overall regulatory oversight of the Nigerian oil and gas industry. The Ministry acts primarily through the Department of Petroleum Resources (DPR). Other regulatory bodies include the Petroleum Products Pricing Regulatory Agency (PPPRA), which regulates the rates for the transportation and distribution of petroleum products; the Federal Ministry of Environment which is responsible for approving environmental impact assessment reports in respect of oil and gas projects; and the Nigerian Content Development and Monitoring Board (NCDMB), which is responsible for ensuring compliance with the Nigerian Content Development Act (NCDA).³ The Nigerian National Petroleum Corporation (NNPC) also has regulatory roles that it performs through the DPR (Otio, 2011). The complexity of the organisational set-up leads to numerous cases of apparent conflicts of interest. For example, the mandate of the Ministry of Petroleum Resources, which oversees both the DPR and NNPC, is to maximise production and encourage investment into the industry: its willingness to lower production through enforcement of tighter regulatory standards is potentially questionable.

The government, through the state oil company (NNPC) plays a critical role in Nigeria's petroleum sector and fulfils both regulatory and business functions. The NNPC represents government interests in the various production arrangements and contracts in the industry. It is a statutory corporation engaged in activities that span through the whole spectrum of the oil and gas value chain, from exploration to production, refining, transportation, distribution and supply of petroleum products. The NNPC sometimes operates directly in petroleum operations (for example, its participation in upstream petroleum arrangements with international oil companies) and sometimes indirectly through subsidiaries. One of the more prominent subsidiaries is the Nigerian Petroleum Development Company (NPDC) which is engaged in petroleum exploration and production. Another important arm of the NNPC is the National Petroleum Investment Management Services

³ Local content refers to the labour, materials and services provided to the sector by local business, professionals and employees.

(NAPIMS). NAPIMS is responsible for overseeing the investments of the Federal Government of Nigeria in upstream petroleum operations conducted under joint ventures, production-sharing contracts and other petroleum arrangements with the international oil companies (NEITI 2015).

Figure 3: Nigerian Oil and Gas Fields



Approximately 70 percent of Nigeria's oil production is accomplished through joint ventures (JVs) and another 25 percent through production-sharing contracts (PSCs). Five major international oil companies (IOCs) – Shell, Exxon-Mobil, Chevron-Texaco, Total, and Agip – are currently engaged in JV operations with the Nigerian government. In these JVs, the Nigerian government (via NNPC) typically holds 60 percent of the equity. The government has made many efforts to bring indigenous companies into oil production via the so-called 'marginal fields' and other schemes, but so far they are not major players in the industry.

The main issues currently debated in the industry revolve around local content and increasing the benefits of the petroleum industry for ordinary Nigerians. The Petroleum Industry Bill (PIB) is currently the most contested bill in Nigeria and has been tabled and debated in parliament for several years. It is designed as an 'omnibus' piece of legislation, which seeks to regulate all activities in the Nigerian oil and gas industry. When passed into law, it will repeal the existing laws, which govern the industry. The intended benefits from the implementation of the PIB include a potential increase in the country's share of the revenue accruable to the government from crude oil production, an increase in the participation of Nigerians in the industry through the enforcement of the local content provisions and the realignment and integration of the various functions and departments in the NNPC, DPR and Ministry of Petroleum Resources.⁴ The PIB also hopes to achieve the enforcement of international best practices in the Nigerian oil and gas industry. The Petroleum Industry Governance Bill, the first part of the PIB, was passed by the Senate in May 2017.

Box 1: Overview of the key challenges in Nigeria's oil industry

- A ineffective regulatory framework (delays in passing the PIB have led to delays of contract awards of up to 36 months)
- Corruption and theft—in both public and private sectors

⁴ The 2010 Local Content Law provides the legal underpinning for increasing the participation of Nigerians in the industry. <http://www.vanguardngr.com/2016/12/nigerias-oil-gas-engineering-services-champions-local-content/>

- Government underfunding (Inability of the NNPC to meet its funding obligations to JV operations)
- Violence in the Niger Delta
- Environmental Damage (especially in the Niger Delta)
- Loss of revenue due to lack of supervision and control
- Inefficient government policies
- Inadequate gas to power supply (NNPC and IOCs do not meet domestic gas demand because prices are less lucrative compared to exports)
- Declining oil reserves

The Nigerian government is planning to restructure the NNPC as part of the sweeping reforms under the PIB. A major aim of the restructuring will be the separation of policy from regulation and commercial activities. Under the reforms, NNPC is to be restructured to be a fully commercial organisation with its own asset base, against which it can raise money from the money and/or capital markets. The changing role of NNPC and its relation to IOC's is summarised in Box 2.

Box 2: Changing role of oil companies in relation to sector governance⁵

In Nigeria's oil sector, the federal state looms large, with the NNPC a major and multifaceted organisation: part national oil company, part regulator, part price-setter and part cash cow. Concentration of financial power at the centre, federal patronage pressures and the sheer size of oil revenues have all contributed to the creation of an extended and complex state apparatus, with hundreds of parastatal agencies at federal level (often with duplicate mandates), a culture of multiple special assistants and advisers and an associated budgetary focus on recurrent expenditure rather than capital development projects.

As several audits and probes have shown, the NNPC has suffered from significant corruption and inefficiency, unable at times to fund its cash call share of the joint venture contracts it has with the International Oil Companies (IOCs). The regulatory framework of the NNPC is statist in character, with more than 50% of production taking place through the joint ventures and petroleum product prices set by the NNPC subsidiary, the Pipelines and Product Marketing Company (PPMC). There is relatively weak formal engagement with the private sector, with the IOCs representing themselves to government through the Oil Producers Trade Section (OPTS) under the Lagos Chamber of Commerce and local companies through the Lagos Oil Club. However, while formal engagement with private oil companies has been weak, lobbying and influence behind the scenes has at times been pervasive. Former Shell Nigeria chief Ann Pickard admitted in private to an American Ambassador that, "Shell had seconded people to all the relevant ministries and that Shell consequently had access to everything that was being done in those ministries." (WikiLeaks cable, quoted in Aljazeera 2010). Despite Shell's longstanding history in Nigeria and at times close relationship with federal government officials, the company has been divesting its onshore assets in the past few years as part of a strategic review process, which began in 2010 in the face of mounting security risks and losses. The company has suffered more than all others operating in Nigeria from pipeline vandalism, attacks and oil theft, losing \$1bn in 2013 alone due to sabotage. Shell sold eight blocks for a total of \$2.7bn in 2012. Shell's divestment was part of a trend in relinquishing blocks. In the same year, Conoco Phillips sold its stake in the Brass LNG project as well as other upstream assets and a power plant to local company Oando for \$1.79bn.

In the past five years, the IOCs switched their focus to more secure and operationally straightforward deep offshore operations. These divestments presented an opportunity for Nigerian oil firms to step in and continue to develop the onshore fields in the name of local content. Several local companies such as Oando, Sahara and Seplat (as well as old players such as Conoil) are now well-established up and downstream and poised for growth. However, and as the next section shows, the emergence of local companies has not been without controversy, especially in terms of licence allocation and the monitoring of operations. Strategic Alliance Agreements signed between another subsidiary of the NNPC, the Nigerian Petroleum Development Corporation (NPDC) and Atlantic Energy and a

⁵ McCulloch 2015.

subsidiary of Seven Energy have been queried both in terms of their constitutional legitimacy and their contributions to the treasury. Meanwhile, other companies appear to have been granted tax waivers provided by the Nigerian Investment Promotion Commission.

3.2 Overview of Corporate Social Responsibility activities and impact on the WASH sector

The corporate social and environmental responsibility statements of Nigerian oil companies provide insight into the respective companies' commitments towards improving water, sanitation and hygiene practices in local communities. Table 2 reports the water, sanitation and hygiene related commitments of the five major international oil companies - Shell, Exxon-Mobil, Chevron-Texaco, Total, and Agip - currently engaged in JV operations in Nigeria. The table indicates that there are only relatively limited projects focused on improving WASH practices in local communities. Within WASH, improving access to safe water takes precedence over other WASH initiatives such as improving sanitation. Shell and Agip are the main major players to have shown concrete commitment towards improving the supply of water in Nigerian communities through project work. Chevron-Texaco has indicated its work in providing improved drinking water; however, limited information is available on the design and implementation of this initiative.

Despite the progress made, the absence of development projects, the high content of foreign workers and the alleged refusal by oil companies to honour agreements with communities is still a major cause of conflict. IOC's point towards the precarious security situation as a major hindrance to implement sound Corporate Social Responsibility (CSR) projects. The long-running conflicts led to the creation of a comprehensive tripartite agreement between the oil company, host communities and the state government in 2006. This had the objective of streamlining the obligations and responsibilities of all parties, in order to ensure a more transparent and accountable development process, provide regular and open communication channels, establish an accessible dispute resolution mechanism and prevent conflicts.

The General Memorandum of Understanding (GMOU) represented a major shift in oil company/ community relationship in the history of the Nigerian oil industry. The GMOU provides funds for development projects, employment of indigenes, pollution response, conflict resolution and a management structure made up of representatives of each community, the oil company, state and local governments and other non-governmental organisations (NGOs). Shell (Shell Development Petroleum Company, SDPC), first tested the GMOU model, in Bayelsa State in its \$1 billion Gbaran Ubie integrated oil and gas project in 2006. Otio (2011) states that the GMOU model created a sense of belonging and pride amongst communities and provided an avenue for donor agencies and the various tiers of government to fund development projects through Cluster Development Boards (CDBs). CDBs are community based with activities designed to be rooted in transparency and accountability.

Table 2 CSR WASH Activities of International Oil Companies

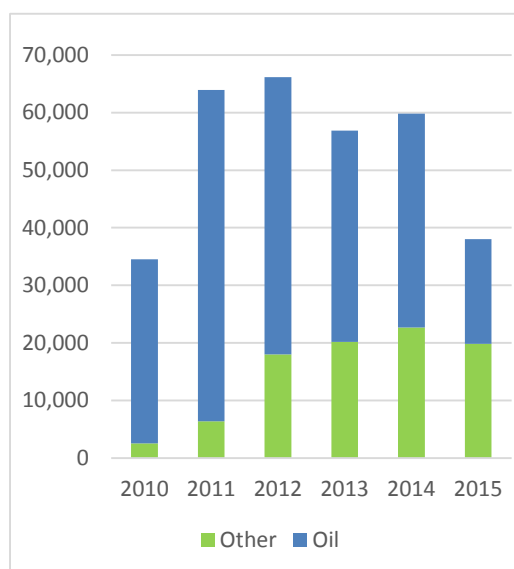
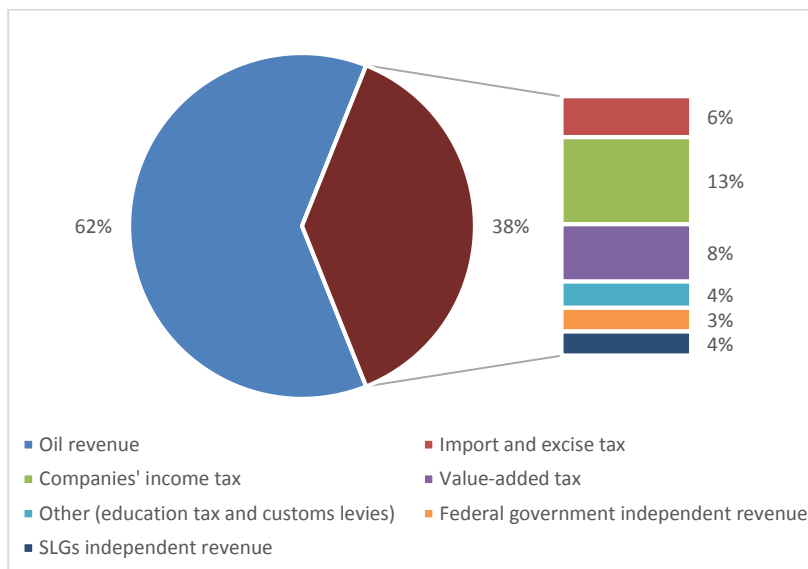
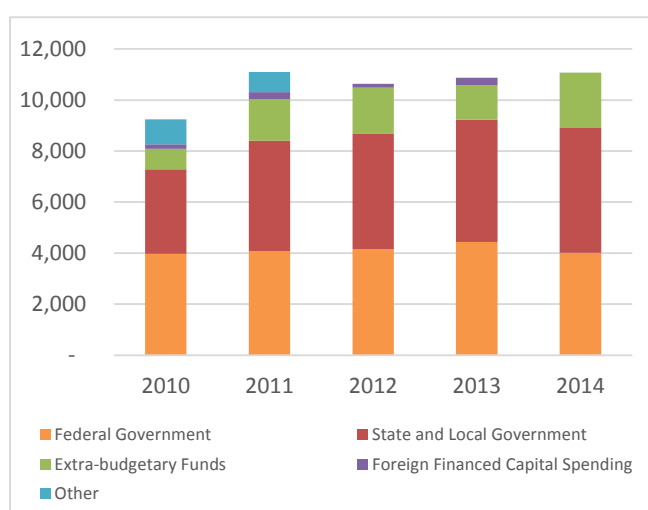
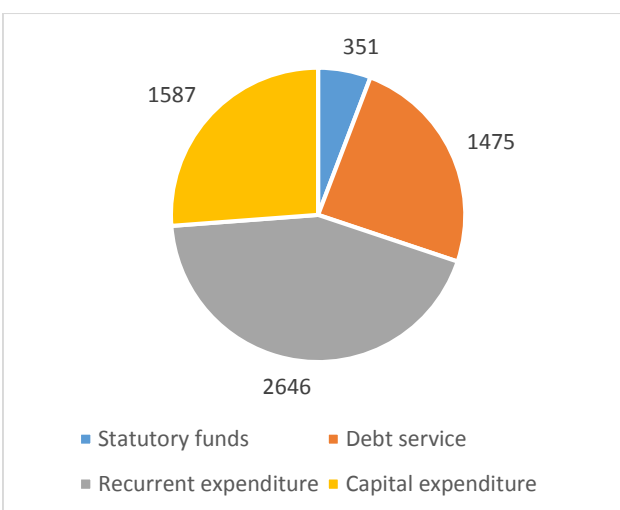
Organisation	CSR WASH Activities
Shell	Shell provided funding for the construction of an integrated regional water scheme for the provision of safe drinking water in the Eleme Local Government Area in Rivers State. Until August 2013, Shell supported the Rivers State Government in the transportation of 148 million litres of water to communities.

	Shell supported the Rivers State Government in implementing an awareness campaign on the dangers of using contaminated water. The company designed and produced contaminated-area warning materials with the Eleme Local Government.
	Guided by the UNEP Environmental Assessment of Ogoniland (2011), Shell has initiated activities towards implementation of the recommendations of the report and has particularly focused on remediation of JV sites in the Ogoniland region, building capacity of contractors on clean up and remediation techniques, and improving the monitoring of activities that have the potential to result in environmental damage.
	Globally, Shell is working on finding innovative ways of reducing water use in its regular operations.
Exxon Mobil	Globally, Exxon Mobil is also working to reduce water usage in operations, reducing its global net freshwater consumption by 5% between 2007 and 2015. Exxon Mobil has developed Water Management Standards which outline environmental impact and mitigation measures.
Chevron-Texaco	The NNPC/Chevron JV has worked on various development issues, including provision of improved drinking water through community engagement.
	Chevron has shown a global commitment to effective water management through monitoring and conservation efforts alongside reuse of water resources.
Total	Total Nigeria Plc has shown commitment to reducing its environmental impact, particularly by reducing water consumption through adoption of more efficient practices.
Agip	Agip has sought to improve access to water and sanitation facilities through the establishment of reticulation systems in 75 communities in four states in the Niger Delta.

3.3 Contribution of the EI sector to the public finances

The EI sector is an important source of revenue for the Nigerian Government, with clear potential to ‘transform’ the country. As illustrated in Figure 4 below, revenues from oil ⁶ reached a peak of 78 per cent of total government revenue in 2011 and 72 per cent in 2012, bringing in approximately 8.8 and 7.5 trillion Naira (approx. US\$ 45 billion) to the exchequer. The non-oil sector accounts for over 90 per cent of GDP, however, it provides only a small percentage of total government revenue. As illustrated in Figure 4, since 2010 the revenue from the non-oil sector has been growing at a steady rate, however, according to IMF (2016), non-oil sector growth is projected to slow down in the coming years, and is forecast to fall from 3.5 per cent in 2015 to 3.1 per cent in 2016. It is nevertheless expected that a steady proportion of the growth in GDP will continue to come from the expansion of the non-oil sector in Nigeria. Figure 5 indicates that revenues from the non-oil sector are derived from various sources. In 2014, approximately 13 per cent was raised through Company Income Tax, 8 per cent from Value Added Tax, 7 per cent independently raised at federal, state and local level, with the rest derived from sources such as education tax and custom levies. However, to a large extent changes in annual GDP and changes in revenue from the EI sector go hand in hand, indicating that the country’s GDP is still largely influenced by the oil sector.

⁶ This includes royalties, profit oil share and profit tax as well as signature bonuses etc.

Figure 4: Sources of revenue (US\$ millions)**Figure 5: Sources of revenue in 2014 (% revenue)****Figure 6: Consolidated expenditure (Naira billions)****Figure 7: Composition of federal budget 2016 (Naira billions)**

In the decade prior to 2014, through the growth of the oil and non-oil sectors, Nigeria experienced strong economic growth and a relatively healthy fiscal position. Figure 6 illustrates the steady annual expenditure prior to 2014 and its near equal allocation between the federal, and state and local government authorities. The President passed the 2016 budget of the Federal Government of Nigeria following controversial delays in agreement. Figure 7 represents the proposed composition of the 2016 budget—the shift in the country's economic outlook is evident from the stark changes in debt service payments and capital expenditure. Debt service has been on a steady rise in recent years, growing by 32 per cent in 2015 and 56 per cent in 2016. Conversely, the 2015 budget saw a decline in capital expenditure as the country moved towards greater austerity measures. This was subsequently reversed in 2016 with a doubling of capital expenditure, reflecting an approach to reviving the economy through fiscal stimulus.

Despite the growth of the non-oil sector, Nigeria's economic well-being and fiscal position is driven by the country's oil sector. Nigeria's economic strength prior to the oil price decline is evident from an average GDP growth of 6 per cent and positive fiscal balance reaching a peak of 0.3% per cent of GDP in 2011. Dependence on oil as the primary source of revenue meant that the oil price decline led to a doubling of the fiscal deficit in 2015. With the steady increase in public debt, the Nigerian economy is beginning to experience

a closing in the gap between the federal government debt interest and the value of oil revenues (See Figure 10).

Figure 8: Fiscal deficit

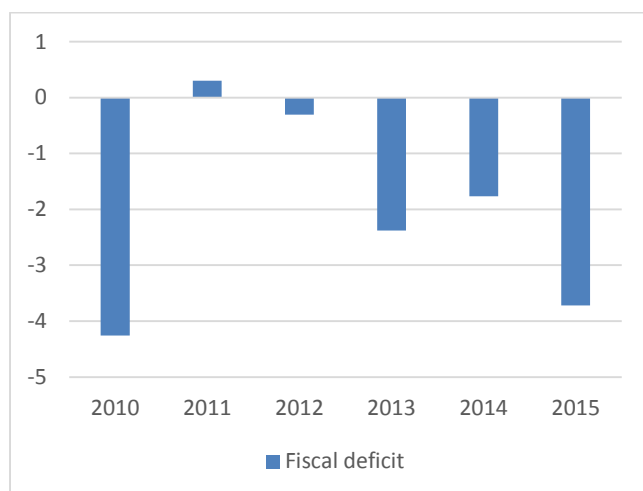


Figure 9: Public Debt (Naira billions, % of GDP)

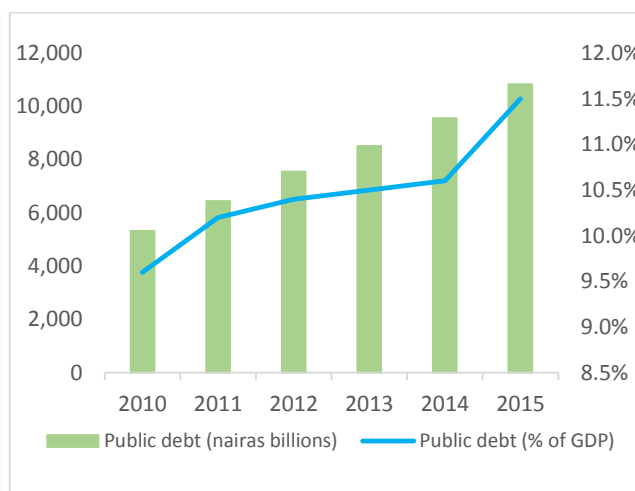


Figure 10: Federal oil revenue and debt interest (Naira billion)

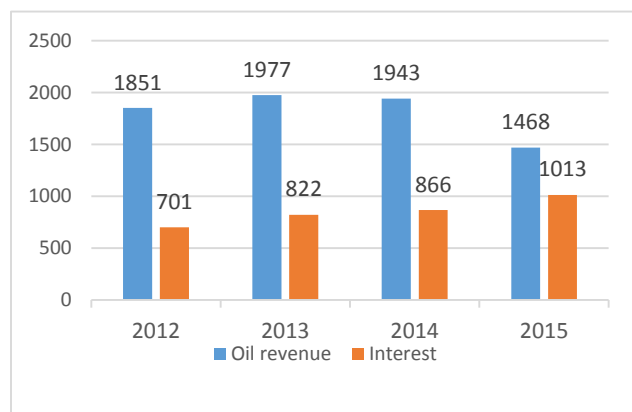
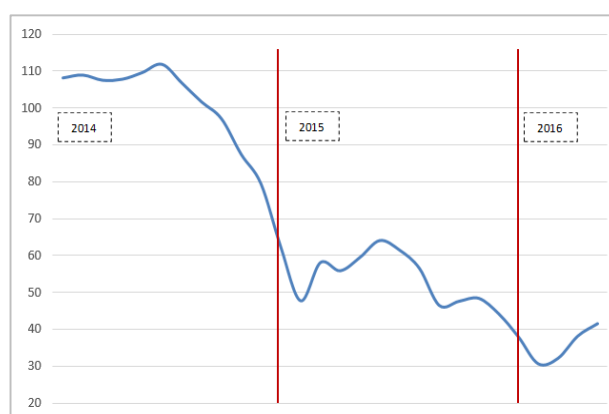


Figure 11: Brent spot prices 2014-16 (US\$ per barrel)



3.4 Impact of commodity price declines on the public finances

The Nigerian economy faced a series of severe challenges in 2015. The effect of lower commodity prices in tandem with fuel shortages, policy and security uncertainty, tightening financial conditions and lower investor confidence caused a sharp decline in real GDP growth from 6.3 per cent in 2014 to 2.7 per cent in 2015 and propelled the Nigerian economy into recession in early 2016. Following several years of fiscal strength, the rapid decline in oil prices starting in mid-2014 (see Figure 11) led to a substantial deterioration in Nigeria's public finances. The sharp reduction in oil prices resulted in a widening of the fiscal gap and weakened external accounts, leading to a doubling of the fiscal deficit between 2014 and 2015—from 1.8 per cent of GDP to 3.7 percent of GDP.⁷ Total revenues and grants dropped from 10.5 per cent of GDP in 2014 to 7.8 per cent of GDP in 2015, of which oil and gas revenue dropped from 6.5 per cent of GDP in 2014 to 3.7 per cent of GDP in 2015.

The IMF expects the Nigerian economy to exhibit slow economic growth in the medium term due to the commodity price decline. The Central Bank of Nigeria (CBN) is closely managing the foreign exchange rate in the aftermath of the commodity price decline. The CBN also made monetary adjustments to relieve the downward pressure on the exchange rate and drew down foreign exchange reserves. The Government also reduced planned expenditures as part of the approach to restoring confidence and relieving pressure on the Naira. Moreover, the deterioration of economic conditions from the decline in commodity prices is also expected to reverse some of the advances made in poverty reduction and development in recent years.

While the contracting economy certainly exacerbates the fiscal deficit and has the potential to contribute to the deteriorating security situation, political volatility and a reduction in Government spending for social services including WASH, there are several factors that limit the impact of falling oil prices on Nigeria's economy. First, the oil sector's importance in the economy has been falling over time. In 2000, the oil sector contributed to 48 per cent of Nigerian GDP, in comparison to 11 per cent in 2013 due to growing services and agricultural sectors. Second, by and large, the oil sector is not highly integrated with other sectors in the economy. Oil sector workers account for less than 1 per cent of total employment, with a high proportion of expatriates and much of the oil supply chain based abroad. Expenditures financed by oil revenue have a limited impact on the real economy, since federal government spending in productive areas (i.e. capital expenditure, infrastructure, social welfare and public services) is far less than current expenditure (80 per cent of which is paid as wages to public sector workers). Third, several studies have shown that there is little relationship between current expenditure by the government and economic growth (PWC 2015a).⁸ Nigeria's water and sanitation situation has worsened since the 1990s, showing that the Government has not managed to channel the benefits of its oil and gas wealth sufficiently to make the progress required in water, sanitation and other development areas, including when oil prices were high. The impact of falling oil and gas prices on government revenue will nevertheless constrain the capacity of the government to make progress against the SDG 6 and Agenda 2030 more generally (see chapter 4).

⁷ The country's fiscal and external accounts are both closely dependent on oil revenues.

⁸ This is also likely to be a reflection of the low government spending on basic services.

4 EI Revenues, transparency and impact

4.1 Revenue collection

Despite the long history and tradition of local government in Nigeria, political, administrative, and fiscal decentralisation has been relatively slow. The Office of the President has retained strong federal powers, with limited oversight by the judiciary and national legislature. Arguably, the legislature has become more effective in the last few years in exercising oversight over budget approval and implementation as well as political appointments. The revenue system is characterised by high centralisation and state and local government areas are dependent on intergovernmental transfers—statutory allocations in the Nigerian system (World Bank 2011). Despite the clear demarcation of responsibilities and rights established by the Constitution, powerful state governments regularly clash with the federal government about the inconsistency between resource allocation and expenditure assignment. The oil-rich states, particularly along the Niger River Delta, have increased their demand for a greater share of oil revenue. Local governments lack well-trained staff and have little technical capacity to collect their own revenue. The problems related to the mobilisation of resources have negatively impacted the quality of public service provision and increased regional inequalities (World Bank, 2011).

Petroleum and mining are the main source of federal government revenue. States and LGAs are reliant on the federal government for funding, since most sources of revenue are collected by the federal tax agency and deposited in the Federation Account. Over 90 per cent of Nigeria's total revenue is collected and retained by the federal government. This is not unexpected as the federal government is solely responsible for the collection of mining rights and royalties, petroleum profit tax (Nigeria's major revenue source) and share VAT collection with state government (Salami, 2011).⁹ In general, the national government distributes federal allocations between states as follows: 40 percent divided equally among states, 30 percent proportionally to the state's population, 10 percent on the basis of land mass and terrain, 10 percent on social development factors, and 10 percent for internal revenue efforts.

Mining Sector

The general status of neglect of the mining sector is evident in the status of revenue collection.

Primarily, revenue to the government from the sector is collected from two departments within the Ministry of Mines and Steel Development (MMSD) namely Mining Inspectorate Division (MID) and the Mining Cadastral Office (MCO). Taxes collected from companies involved in mining activities also form part of revenue to government and this is collected by the Federal Inland Revenue Service. However, the systems are characterised by outdated collection and assessment mechanisms. An overview of the revenue flow in Nigeria's Mining sector is shown in Figure 12.

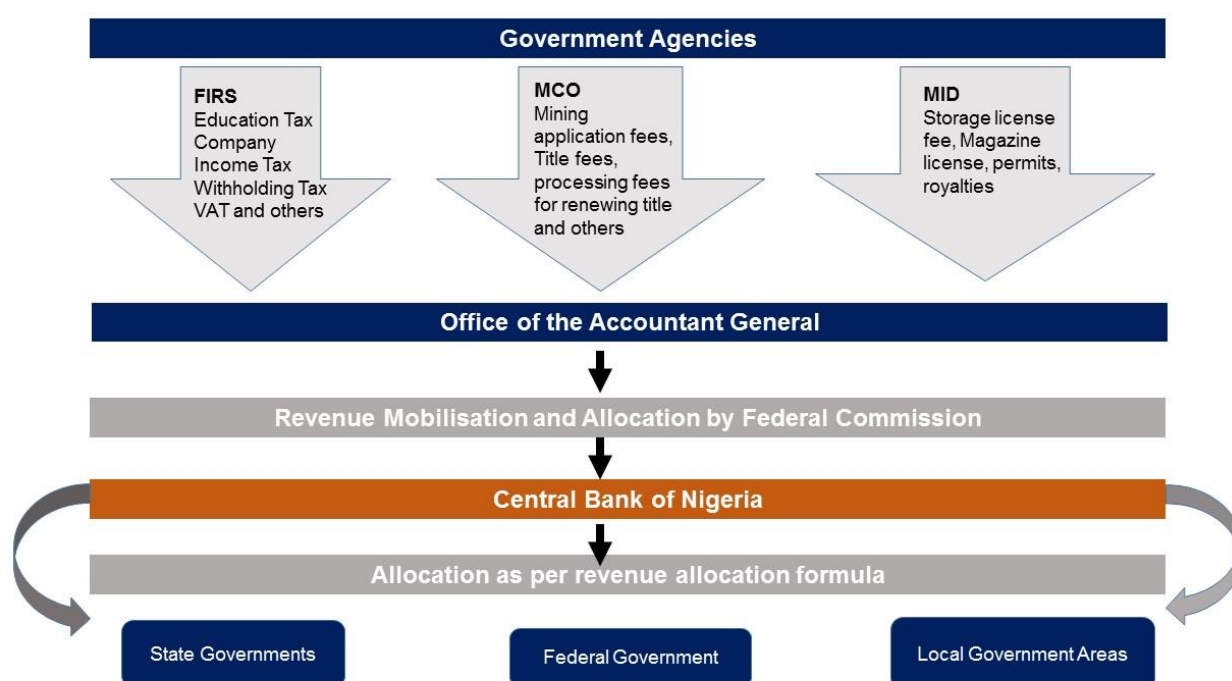
Nigeria loses revenues in the mining sector due to outdated laws and weak monitoring capacity of the responsible agencies. It is estimated that the Government misses out on N400 Million tax revenue from artisanal miners alone. This is due to the fact that more than half a million artisanal miners, who have less than 1 million Naira revenue completely fall through the collection system. Other sources of revenue losses are the weak monitoring of royalty collections from larger players in the industry (Dema & Longe, 2015). While mining operations are spread across all states, the regulation and supervision of the sector remains with the Ministry of Mines and Steel Development (MMSD), a federal agency supervising mining operations in the entire country with just around 50 staff. Furthermore as typical of mining activities, they occur in hard-to-reach local areas. Devolving powers to state governments may be better suited to monitoring mining activities. Additionally the use of assessments based on outdated prices leads to distortions in actual royalty figures. The government also foregoes potential revenue as a result of the various tax exemptions to attract

⁹ It does mean however that issues such as the percentage of federal funds allocated to States, the percentage of allocations actually disbursed and the autonomy of spending by State governments are critical to spending and delivery of WASH and other basic services. For further discussion, see section 4.3.

investors (See Annex 1 **Error! Reference source not found.**). For example minerals, precious metals, and gem stones are exempt from taxes by the Customs & Excise Management Act (CEMA).

Insufficient data and under collection from poor record-keeping also represent substantive leakages in the system. Losses occur in the absence of effective synergy/collaboration among major government agencies, which include the Ministry of Mines and Steel Development (MMSD), the Central Bank of Nigeria, Nigeria Customs Service, Nigeria Export Promotion Council and the Mining Cadastral Offices. This makes it difficult for the regulators to monitor operators effectively. A NEITI report published in 2011 disclosed that the Cadastral Office and its appointed officials had no appropriate way of assessing what quantity of solid minerals was produced, sold, or consumed by companies. As a result, royalty payments made by the companies were based on what the operators disclosed to the regulators. This is similar to the oil industry where the Federal Government finds it difficult to determine the daily production rates of crude (due to a lack of verification systems) and therefore relies on figures submitted by the oil-procuring companies.

Figure 12: Allocation of mining revenues¹⁰



Petroleum Sector

Three key institutions are involved in oil revenue collection, specifically the NNPC, Federal Inland Revenue Service (FIRS), and the DPR. The NNPC receives and markets the government's share of crude production from IOCs, which amounts to nearly 60 percent of the crude produced in the country. The NNPC awards contracts to companies to extract petroleum, the process for which, as NEITI audit reports have shown, do not always involve advertised criteria or guarantee competitive pricing. The NNPC's handling of crude sales and remittances of proceeds have pitched it against the Revenue Mobilisation, Allocation, and Fiscal Commission (RMAFC)¹¹, which alleges that NNPC does not remit all revenues, an accusation supported by relevant national legislative committees. FIRS is responsible for collecting petroleum profits tax

¹⁰ Source: OPM (2015)

¹¹ The RMAFC is mandated through the constitution to monitor revenue inflows (including from petroleum) and disbursements to the states according to a set formula. It also advises the Federal, State and Local authorities on fiscal efficiency and revenue mobilisation.

from oil companies; DPR is responsible for royalties, gas flare penalties, rents, and other levies; and NNPC is responsible for revenue from crude oil sales.

These institutions, however, demonstrate a persistent lack of coordination (World Bank 2011).

The Federal Government receives the majority of revenue payments from the Oil and Gas Industry.

The Revenue Allocation Act provides for the distribution of the federation funds (See Table 3 for an overview of all petroleum revenues). In 2013, total revenue amounted to \$58bn, of which petroleum revenues from 800,488 barrels of oil lifted yielded approximately \$37bn. The nine oil-producing states get a 13% allocation of funds as a first line charge based on the derivation principle. The remainder is shared in the following way: 56% is allocated to Federal Government, 24% to State Governments and 20% to Local Government Councils. The share across each tier of Government (36 states and 774 Local Governments) is derived through a formula that takes into account factors such as Population, Land Mass and Social Indicators (Health, Education and Water). Finally, 10% of internally-generated-revenue in each State is distributed to Local Government Councils. See Figure 13 for an overview of the revenue sharing distribution.

Table 3: Nigeria's Fiscal Regime and revenue accrued (2013)¹²

Taxes	Revenue in 2013, US\$	Comment
Proceeds from sale of Government Crude Oil and Gas	27.09bn	This refers to the Federal share of Crude Oil from the various production arrangements. It could be in the form of equity share from Joint Ventures (JVs) or Profit Oil from Production Sharing Contracts (PSCs). The proceeds are paid into the revenue account in both local (domestic crude oil) and foreign currency (export crude oil).
Petroleum Profits Tax (PPT) and Royalty	26.5bn	The Petroleum Profits Tax (PPT) is a tax imposed on the profits from petroleum operations in an accounting period. Oil-producing companies subject to the "Joint Venture" and "Service Contract" business agreement are levied on the profits of a tax of 85 per cent while for Production Sharing Contract arrangements, a tax of 50 per cent is applied to profits. The Royalty rate is 20% of the value of the crude oil, which in turn is determined by the price. There is disagreement regarding the correct pricing mechanism to use to calculate these taxes, due to ambiguities in the legal framework. The NNPC favours the use of the Official Selling Price while companies prefer to use the Realisable Price. See PwC (2015b) for further details.
Signature Bonuses	12.5m	The practices for handling signature bonuses (a lump sum payment by the contractor to the government upon signature of the contract) from the 2005 bid round are seen as non-transparent. Receipt of all signature bonuses could not be confirmed by NEITI. The practices for record-keeping by the DPR are deemed largely ineffective.
Licences and Concession Rental	24m	
Gas-flared Penalties	24m	It is estimated that \$195m were lost due to unpaid gas-flaring penalties in 2013. A report by the Petroleum Revenue Special Task Force in 2012 found that oil companies often do not comply in paying fines. The Task Force also found out that DPR is unable independently to track and measure gas volumes flared and depends largely on information provided by the operators. See PRSTF (2012) for further details.
Taxes: Companies Income Tax (CIT) Value Added Tax (VAT) Withholding Tax (WHT)	17.8bn	The Withholding Tax deductions from individuals and Registered Business Names are payable to the States in accordance with the Personal Income Tax Act.

¹² Figures from NEITI (2015). Figures do not sum up to \$58.07bn overall as VAT and other taxes might have been double counted.

Pay-As-You-Earn (PAYE) of Federal Capital Territory residents.		
Education Tax (EDT)		
Other revenue flows to Sub-national entities are: Niger Delta Development Commission (NDDC) Levy Nigerian Content Development and Monitoring Board (NCDMB) payments Nigerian Export Supervision Scheme (NESS) fees Nigerian Maritime Administration and Safety Agency (NIMASA) payments National Inland Waterway Authority (NIWA) payments.		

While the law provides for a high tax rate, this rate is combined with a series of concessions and incentives depending on the nature of contract and the stage of production. For example, according to NEITI, 22 companies have benefited through the award of pioneer status. Pioneer Status is used as an incentive to companies engaged in pioneer business as a means of encouraging development of innovative industries. However, granting Pioneer Status to Oil and Gas companies is contested and has greatly undermined the optimal collection of revenue. NEITI argues that this has resulted in a loss of USD 2.1 billion in taxes for the Federal Government of Nigeria (FGN) (NEITI, 2016). Furthermore, most oil companies have entered into stabilisation agreements lasting 15 to 30 years, thus making them immune from any subsequent changes in the tax law (NEITI 2013). Research by international NGO ActionAid shows that pioneer status was combined with additional tax holidays and allowances in an agreement reached between the FGN and IOCs Shell, ENI and Total that stretched from 1999 to 2012. The agreement exempted the companies from an estimated US\$3.3 billion in tax payments.¹³

In total NEITI has estimated that the FGN lost \$12.7bn in revenue due to incentives, allowances and mismanagement in 2013. Approximately US\$6bn is estimated to be lost due to offshore processing arrangements, crude swaps and theft; another US\$6.1bn due to excessive cost recovery, unpaid debt and unremitted dividends; and US\$ 600m lost through under payment of royalties and petroleum taxes (NEITI 2015). PPT payments by oil companies are based on unregulated self-assessment that is largely accepted by FIRS without validation. To be more effective, FIRS requires significant capacity building. Furthermore, NNPC has been accused by civil society and NEITI for being opaque and unable or unwilling to share information with FIRS. Efforts to force it to follow a disclosure regime have not succeeded. FIRS suffers greatly because of this. The quantity of oil that is the basis of all royalty and profits tax assessment is uncertain due to the lack of measurement capacity by FGN to verify company records. Department of Petroleum Regulation (DPR) production data often differ from the data provided by the companies. The DPR does not have a comprehensive database of those who hold oil mining leases and oil prospecting licenses (World Bank 2011).

Proceeds from petroleum sales account for the largest amount of revenue accrued by Government. The Government of Nigeria has a stake in most oil-producing companies through JV's through its National Oil Company NNPC. Each year, NNPC's Crude Oil Marketing Department (COMD) awards one-year term contracts to lift the government's share of oil production. These contracts go to a variety of customers, mostly private oil-trading firms. Fifty such contracts were awarded in 2012. NNPC also allocates around 400,000 barrels per day (bpd) of the government's oil to its four refineries. Because the refineries generally run at only around 20 per cent capacity, much of this oil is sold for export. Some of it is stolen from the pipelines that run from onshore export terminals *en route* to the refineries. There is a flourishing trade in siphoning off oil and selling it on the black market.

Leakages in the revenue collection system due to corruption and oil theft present major challenges before proceeds from oil even get to the Federation Account. Weak governance, low capacity and low transparency in Nigeria combine to present the opportunity for the large-scale theft of crude oil. Corruption and fraud are rampant in the country's oil sector. Poor governance has encouraged violent opportunism

¹³ Leaking revenue: How a big tax break to European gas companies has cost Nigeria billions, ActionAid, 2016.

around oil and opened doors for organised crime. Estimates of how much oil Nigeria loses to thieves vary widely. A 2013 Chatham house report estimates that an average of 100,000 barrels per day¹⁴ is stolen from facilities on land, in swamps and in shallow water.¹⁵ The basic story of how Nigeria's crude goes missing is well-known: to steal oil, thieves tap into pipelines and other infrastructure in the Niger Delta and pump the oil onto waiting barges and boats. Some of it is refined locally while larger vessels carry the rest abroad. There are also allegations that oil is stolen from at least some of the country's roughly two dozen export terminals. This simple narrative hides a complex web of participants and beneficiaries – often alleged – to penetrate the top echelons of Government and in the security forces. Powerful patronage networks and vested interests provide a strong resistance to reform (Chatham House, 2013).

The Economic and Financial Crimes Commission (EFCC) is delivering results in terms of both the physical theft of oil and high-level financial theft. Recent cases of the latter reveal the international dimension of corruption in Nigeria: London, Los Angeles and New York property markets and the British Virgin Islands (through facilitating the setting up of shell companies) have all underpinned illicit financial flows from the EI sector in Nigeria.¹⁶

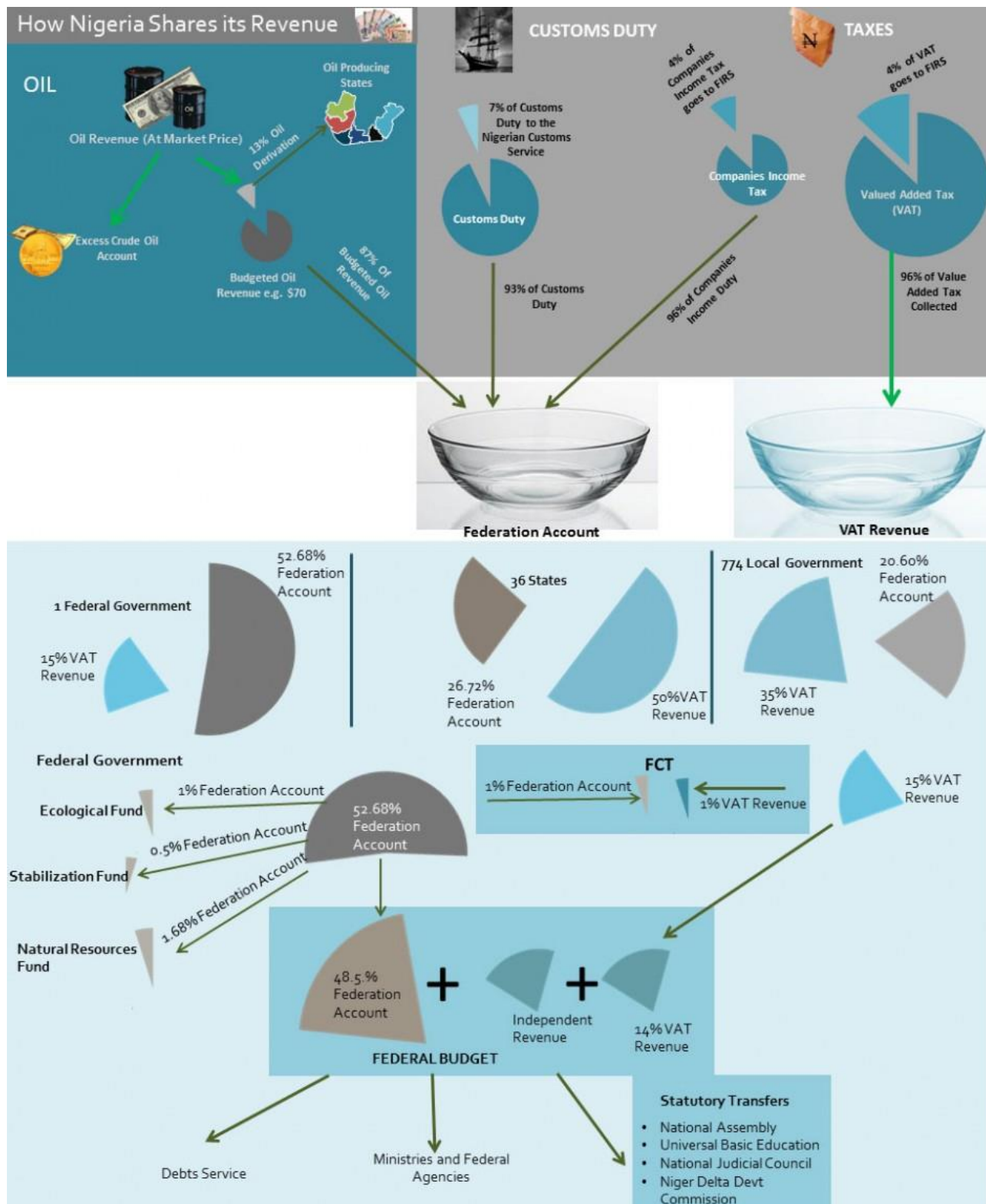
There is also evidence that the inappropriate use of transfer pricing is also a cause of under-payment from IOCs operating in the Nigerian petroleum sector. As noted by Obasi (2015) oil companies such as Shell, Halliburton and Chevron are estimated to have avoided several hundreds of millions of dollars of taxes by using a novel design of accounting and tax transactions with domestic and foreign governments. Weak capacity in key government institutions makes it difficult to regulate effectively transfer pricing malpractice as well as other sophisticated methods used to avoid tax payments. The report of the High Level Panel on Illicit Financial Flows from Africa also identified the crude oil sector in Nigeria as one of the most significant for trade mispricing and the under-reporting of exports, the intention of such practices to reduce the amount of money to be remitted to the exporting country from such sales.¹⁷

¹⁴ This number does not include what may happen at export points. It also assumes the integrity of some industry data. Factors that confuse the issue include poor measurement practices; confusion over how much oil is stolen as opposed to being spilled, and exported as opposed to being refined locally; conflicting claims about the export terminals; and mixed evidence that theft is spiking.

¹⁵ This is separate from the figures estimated by NEITI above. It is theft of the physical oil rather than theft of the proceeds of physical oil.

¹⁶ See for example, <https://www.ft.com/content/d2acb4b0-7774-11e7-90c0-90a9d1bc9691>

¹⁷ https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

Figure 13: Nigeria's petroleum revenue sharing¹⁸¹⁸ Source: BudgiT, available [here](#).

4.2 Revenue management

Many of the development challenges in Nigeria are the result of past policy choices in the evolution of petroleum governance. Despite monitoring and evaluation mechanisms, there is very little effective monitoring of public expenditure in Nigeria. The Ministry of Finance (MOF) requests the ministries, departments, and agencies (MDAs) to prepare and submit their estimates for the forthcoming fiscal year. The budget estimates agreed by the Executive go to the National Assembly, where they are scrutinised by the various committees of the Senate and House of Representatives responsible for MDA oversight. The Committees then make recommendations to the Appropriations Committee of their respective chambers. Once passed, the MOF through the Office of the Accountant-General of the Federation ensures the release of appropriations to the MDAs for budget implementation. The Procurement Commission monitors expenditures to ensure competitive pricing and value for money in the expenditure of funds. The MOF monitors implementation on behalf of the Executive, while the Oversight Committees of the two chambers of the National Assembly also carry out periodic monitoring and evaluation. Civil society organisations also participate in the monitoring of budget execution through their initiatives or through participation in public hearings.

Inconsistency between resource allocation and expenditure assignment, the low capacity of state and local governments, problems of coordination among different levels and elite capture remain strong barriers to efficient revenue management. Despite a clear demarcation of responsibilities and rights established by the constitution, states and local governments still clash over sources of internal revenue. The oil-rich states, particularly along the Niger River Delta, have increased their demand for a greater share of oil revenue. Local governments lack well-trained staff and have little technical capacity to collect their own revenue. The problems related to the mobilisation of resources and the low political prioritisation of spending on basic services have negatively impacted the quality of public service provision and increased regional inequalities. Horizontal checks and balances in oil politics have been hindered by executive control of petroleum resources, formally constrained by the constitution and informally constrained by political control over oil revenues.

Nigeria established a Sovereign Wealth fund in 2011 designed to act as a safeguard against external shocks and as a stimulus for long-term investment. Replacing the former Excess Crude Account, the fund initially drew strong opposition, in particular from State Governors, many of whom argued the case for current consumption over future investment. The Fund invests in private equity, international capital markets and domestic markets, using allocating 40 per cent of resources to an Infrastructure Fund, 40 per cent to a Future Generations Fund and 20 per cent to a Stabilisation Fund. The Infrastructure Fund is designed to invest in Nigeria in sectors including healthcare, transport and agriculture (FT 2013). In reality, however, at current levels the Fund is too small to weather the recent storms of price decline given the extent to which Nigeria depends on oil to fund its budget (The Economist, 2017).

One of the most significant current policy issues in the EI sector is the PIB. After 900 days in the National Assembly it is estimated that the country had lost US\$109bn in investment as investors continue to delay market entry or further investments (Osiwa 2016). The contents of the Bill have been in draft stage since 2008. The Petroleum Industry Governance Bill, the first part of the PIB, was passed by the Senate in May 2017. This Bill, together with future complementary legislation, is designed to energise the gas sector to meet domestic and industrial market demands, increase crude oil production capacity and improve fiscal terms for government through increases in revenue. The intention is that operators will have to pay higher rates of Corporate Income Tax and increased royalties which should enhance benefits to the broader economy by creating jobs and providing funding for community development projects.

The Petroleum Industry Governance Bill covers up to 25% of the substance that has been long-debated in the PIB. It establishes seven relevant institutions for the industry: the Minister, the Ministry of Petroleum Incorporated, the Nigeria Petroleum Regulatory Commission, the Nigeria Petroleum Assets Management Company, the National Petroleum Company, the Petroleum Equalisation Fund and the Nigeria Petroleum Liability Management Company. The Commission is the most powerful entity created under the

Act. It will be the responsible body for regulating the industry and will take on the assets, liabilities and obligations of the Department of Petroleum Resources, the Petroleum Inspectorate and the Petroleum Products Pricing Regulatory Agency. Its board will have representatives from the Ministry of Finance, Ministry of Petroleum, and the Ministry of Environment. The Nigeria Petroleum Assets Management Company will be responsible for management of Production Sharing Contracts and the National Petroleum Company for all other assets, including Joint Ventures.¹⁹

In July 2017 the Senate also passed the Petroleum Industry Administration Bill, the Petroleum Industry Fiscal Bill and the Petroleum Host Community Bill. Significant further steps are required before the bills become law however, and although the passage of these Bills through the Senate represents a milestone in petroleum industry reform, it is not clear that long-running criticisms from both civil society and industry will be successfully addressed in new legislation (see Box 3).²⁰

¹⁹ See “Analysis of the Petroleum Industry Governance Bill”, OSIWA, Budget, 2016.

²⁰ Potential future complementary legislation include the Petroleum Fiscal Framework Bill, the Petroleum Industry Downstream Administration Bill, the Petroleum Industry Revenue Management Framework Bill and the Petroleum Host Community Bill. <https://www.vanguardngr.com/2017/05/senate-passes-petroleum-industry-bill-pib/>. Three of these bills were passed by the Senate in July 2017 (see above).

Box 3: Civil Society criticism around the Petroleum Industry Bill²¹

The following points draw on recent criticism of the Petroleum Industry Governance Bill (PIGB) by the Social Development Integrated Centre as well as more long-standing analysis by the Natural Resource Governance Institute (NRGI) and the Open Society Initiative for West Africa (OSIWA) on the PIB.

1. The separation of the comprehensive PIB into separate constituent parts prevents a more holistic and effective effort to revamp the energy sector in Nigeria for the benefit of its citizens.
2. The Petroleum Industry Governance Bill (PIGB) does not sufficiently provide for the health, safety and environmental concerns of local communities in oil-producing states.
3. Although the PIGB has reduced some of the disproportionately large power and authority of the Minister of Petroleum Resources over policy, regulatory and operational matters, there is limited coherence in the definition of roles and responsibilities of the various key institutions.
4. The PIGB does not have any part or section dealing with environmental protection. It cedes virtually all powers on environmental regulation from the Ministry of Environment to the Nigeria Petroleum Regulatory Commission.
5. The provision for a Petroleum Equalisation Fund—designed to facilitate uniform pricing of petroleum products across the country—does not provide a mechanism for tackling the corruption that has plagued such funds in the past.
6. The PIGB should enhance the opportunity for people to use the legal process to hold companies, government institutions and agencies accountable for environmental pollution. Instead it places restrictions on the exercise of civil rights.
7. There is a neglect of host communities in the proposed legislation. The PIGB gives power to the Commission to issue petroleum licences with little or no regard for the communities living in oil-bearing areas.
8. There is no provision or timeline for the elimination of gas flaring.
9. The Bill allows the new regulatory agencies to receive gifts of money or property, provided such gifts are consistent with the objectives and functions of the agencies. This could compromise the integrity and objectivity of the agencies.
10. To sanitise the Nigerian oil and gas sector properly, a definitive guide has to be released, documenting the ownership of oil blocks and mining leases within the upstream structure, as well as all beneficiaries of oil blocks. A categorical, detailed guide into the bidding process, tendering and payment of signature bonuses should also be provided, to bring down the steel curtain enshrouding the industry.

As a whole, the PIB needs a better definition of roles within entities, especially regarding audit agencies such as the Nigerian Extractive Industry Transparency Initiative (NEITI), the Nigerian Environmental Standards and Regulations Enforcement Agency (NESREA), and the Office of the Auditor-General of the Federation. The roles of these agencies need to be clearly stated to check abuse of processes, specifically those concerning oil acreages, the subsidy system, and also the evaluation of contractual obligations.

4.3 Transparency across the EI sector²²

Nigeria's oil sector is one of the world's least transparent when it comes to sales, associated revenues and physical oil flows. It ranks number 40 out of 58 countries on the Natural Resource

²¹ OSIWA 2015: Our 14 Issues with the Petroleum Industry Bill

²² This section will focus on the petroleum sector due to the small size of the mining sector.

Governance Institute's index, highlighting the poor enabling environment of a relatively sound legal framework (NRGI, 2013). From inception, oil production in Nigeria has been associated with a widening of the income gap as well as the increasing poverty and corruption of state institutions. Weak control on petroleum governance has made corruption possible. Rent-seeking in regulation and at political levels could continue for decades. Political power and access to petroleum revenues have been bolstered through control over appointments to positions in petroleum management. In line with the patronage-based political power, appointments into the petroleum ministry and NNPC are highly coveted (World Bank, 2011).

The case of Nigeria's petroleum sector provides clear evidence of the failure to establish accountable institutions that would ensure governance in the public interest. At the time of the significant discovery of oil and its export in the 1960s and 70s, Nigeria had military dictatorships for most of the period, and institutions were either weak or not put in place to manage the resources effectively. This translated into a non-transparent oil sector and revenue management, and developed an environment in which politicians could benefit from non-democratic power-building. As a result, a culture of political and bureaucratic accountability did not develop. Opportunities for rent-seeking have distorted incentives throughout the EI value chain—including, for example, oil block awards and licensing, in regulatory institutions, in tax administration, for Governors at the state level, among oil producers, and in Niger Delta communities. Perceived improvements are the result of strenuous efforts by the Economic and Financial Crimes Commission (EFCC) to arrest and prosecute those guilty of advance fee fraud, money-laundering, bribery, and other financial crimes. The EFCC has strategically targeted high-profile political office holders, especially state governors, who frequently were accused of money laundering by the President and Minister of Finance. The former Governors of Bayelsa and Plateau States were impeached following the EFCC's charges of money laundering, although the methods by which these impeachments were accomplished fell short of strict constitutional and legal stipulations.

The process of licensing and contract awarding is an important factor in the governance of the sector and has historically been marred in controversy. Former President Olusegun Obasanjo introduced a competitive bidding system in 2000. To boost local content each block awarded to an international operator has to be operated through a joint venture with a local oil company and NNPC. The governments' objectives to diversify the IOCs and promote competition of local companies have often been difficult to reconcile. The discretionary award to Nigerian companies aimed to promote local entrepreneurship in the oil and gas industry, yet some of those independent companies that received blocks have been unable to fund exploration or find foreign technical partners to explore on a sole-risk basis. Information relating to Oil and Gas exploitation contracts²³ is not freely available in the public domain. Thus, attempts at reforming the licensing process have had mixed results in terms of instituting openness and transparency and promoting Nigerian participation. There is currently no law in Nigeria that compels companies to disclose their beneficial owners. Information on beneficial owners of Oil and Gas Entities is available to the public, however, on application to the Corporate Affairs Commission by a registered legal practitioner or chartered accountant.

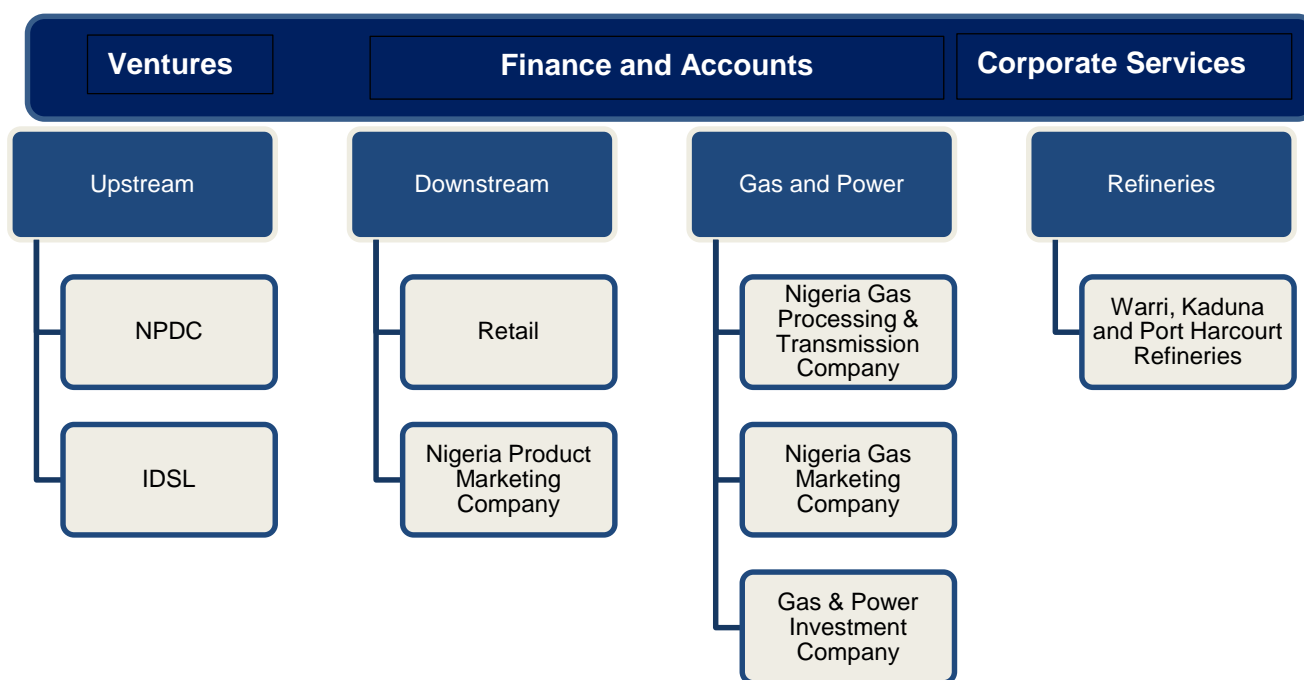
The revelation in 2015 by Nigeria's auditor general that \$16bn (£11bn) of oil revenue went missing in 2014 has emphasised the scale of the task facing President Buhari in his efforts to clean up the oil sector. In May 2015, President Buhari chose Emmanuel Kachikwu as the head of NNPC to implement reforms. As former Executive Vice-Chairman at ExxonMobil Africa, he is well aware of the oil industry's shortcomings. Now as NNPC Group Managing Director and junior oil minister he has replaced the heads of all eight of the firm's divisions. In March 2016, the government announced that it would break the NNPC up into different companies to be run on commercial lines whilst remaining state-owned (See Figure 14). However, the country's powerful trade union movement opposed the plans and about 7000 members of the Petroleum and Natural Gas Senior Staff Association of Nigeria walked out in reaction to the reforms, causing major and immediate disruption. Another worrying sign is the lack of clarity between the financial relationship between NNPC and Government, which has been a key source of corruption (Africa Report, 2016). **The**

²³ The operating contracts in the Nigeria Oil and Gas industry are classified into Joint Venture Agreements (JVs), Production Sharing Contracts (PSCs), the service contracts, Farm-out agreements and the Modified Carry Agreements (MCAs).

PIGB, passed by the Senate in July 2017, is expected to lead to more fundamental reform. As discussed above, the Bill proposes the break-up of the NNPC, with its former functions incorporated into the new proposed entities of the National Petroleum Company (NPC), the National Petroleum Assets Management Commission (NPAMC) and the Nigeria Petroleum Regulatory Commission (NPRC).

Other recently-conducted reforms include a change in the fuel subsidy regime: in 2015 Nigeria abolished the subsidy regime on petroleum products. This had been a contentious political and economic issue for years. According to Energy Global magazine, fuel subsidies cost the Nigerian Government about US\$8 billion in 2011, accounting for 30% of the government's expenditure, approximately 4% of GDP and 118% of the capital budget. According to NEITI this cost rose to US\$8.6 Billion in 2012 (NEITI, 2012). In 2016 the Government let the price of petrol approach market rates and lifted import restrictions. Critics argued that the subsidy, where importers are paid the difference between the market rate and the Nigerian one, has served as a cash machine and a potential source of corruption. The Economist magazine has highlighted how misuse of the regime led to collusion between fuel importers, employees of the state-owned oil company and government officials to pocket cash paid to subsidise fictitious imports and employ a successful petrol-smuggling ring. This contributed to leaving Nigerian pumps dry (The Economist, 2016).

Figure 14: NNPC's structure (2016 reforms)²⁴



4.4 The impact of the EI sector on the environment²⁵

The UN Environment Programme conducted a detailed assessment of the impact of the Petroleum Sector in the Niger Delta. The two-year assessment was carried out at the request of the FGN and examined the environmental impact of oil industry operations in the area since the late 1950s. A report was published in August 2011—Environmental Assessment of Ogoniland—which detailed the extensive oil contamination in Ogoniland and its grave impact on the environment. In a number of locations public health was severely threatened by contaminated drinking water and carcinogens. The report showed that pollution had penetrated further and deeper than previously thought.

²⁴ Integrated Data Services Limited (IDSL) was established in 1988 as a subsidiary company of the NNPC, to provide hydrocarbon exploration services in the local and international oil and gas industry.

²⁵ This section also focuses on the impact of the petroleum sector.

Delta ecosystems such as mangroves had been devastated. The report also found that institutional control measures in place both in the oil industry and the Government were not implemented adequately. The report proposed the establishment of a Restoration Authority with an explicit mandate to clean up Ogoniland and restore the ecosystems. The report also recommended the establishment of an Ogoniland Environmental Restoration Fund to cover the clean-up costs.

In June 2016, the FGN set in motion a \$1 billion clean-up and restoration programme of the Ogoniland region in the Niger Delta, announcing that financial and legislative frameworks had been put in place to begin implementing recommendations made by the United Nations Environment Programme (UNEP). Experts have estimated however that the clean-up and remediation could take up to 25 years before ecosystems are re-established.²⁶

Research published in November 2017 confirmed the damaging impact of oil pollution in the region. The study by the Swiss University of Saint Gallen linked environmental pollution with newborn and child mortality rates. It showed that oil spills occurring within 10 km of a mother's place of residence doubled neonatal mortality rates and impaired the health of her surviving children.²⁷

²⁶ <http://www.unep.org/disastersandconflicts/news/nigeria-launches-1-billion-ogoniland-clean-and-restoration-programme>

²⁷ <https://www.theguardian.com/global-development/2017/nov/06/niger-delta-oil-spills-linked-infant-deaths>

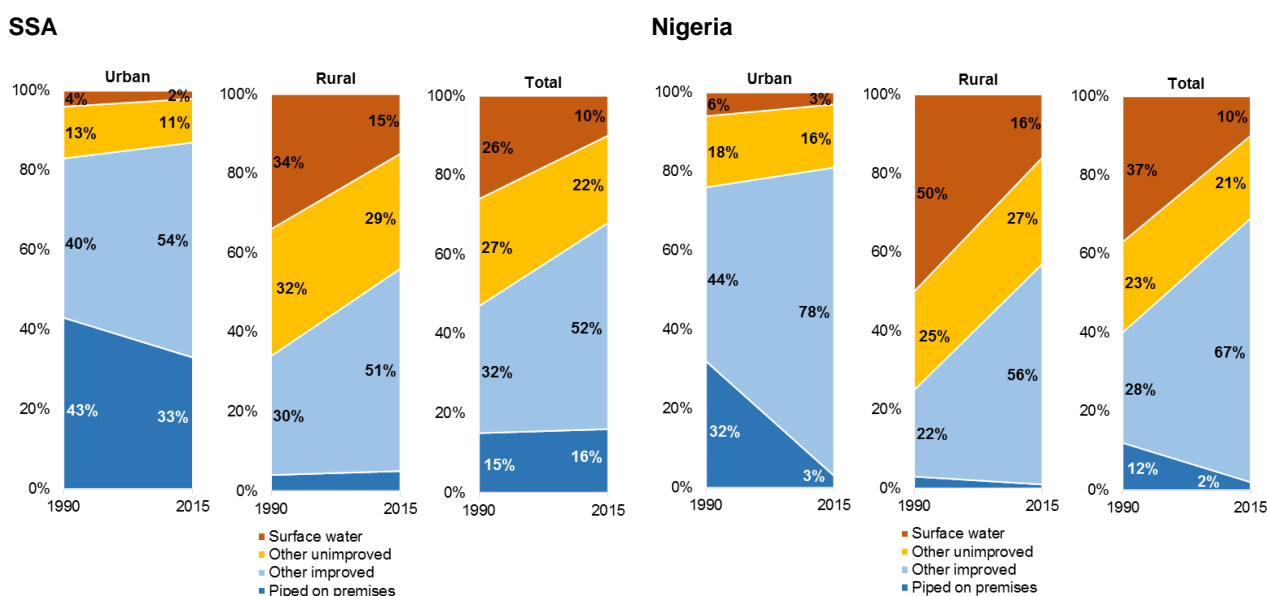
5 Financing of Water Supply and Sanitation in Nigeria

5.1 Sector Overview: Trends in WSS Coverage

Commitments relevant to the WSS sector include the Government's recognition of the human rights to water and sanitation in legislation, the Agenda 2030 SDG targets on safely-managed water and sanitation services, a national roadmap to end Open Defecation by 2025, and a Partnership for Expanded WASH programme, prioritising achievement of 100% access to basic water and sanitation in the rural areas by 2030.²⁸ Although Nigeria achieved the MDG for water, with overall access to an improved drinking water source increasing from 40 per cent²⁹ in 1990 to 69 per cent in 2015, the coverage of piped water on premises decreased substantially. The latter was driven by the large fall in piped water coverage in urban areas from 32% in 1990 to 3% in 2015, which is mainly explained by high urbanisation rates, a lagging supply growth, and potentially, lower demand due to poor quality service, such as intermittent supply (Macheve et al, 2015). Disparities between urban and rural areas persist, with 43% of the rural population still relying on either unimproved sources or surface water for drinking, as compared to 19% of the urban population. Excluding coverage of piped water into premises, the trends observed in Nigeria in access to drinking water are similar to those observed for sub-Saharan Africa (SSA).

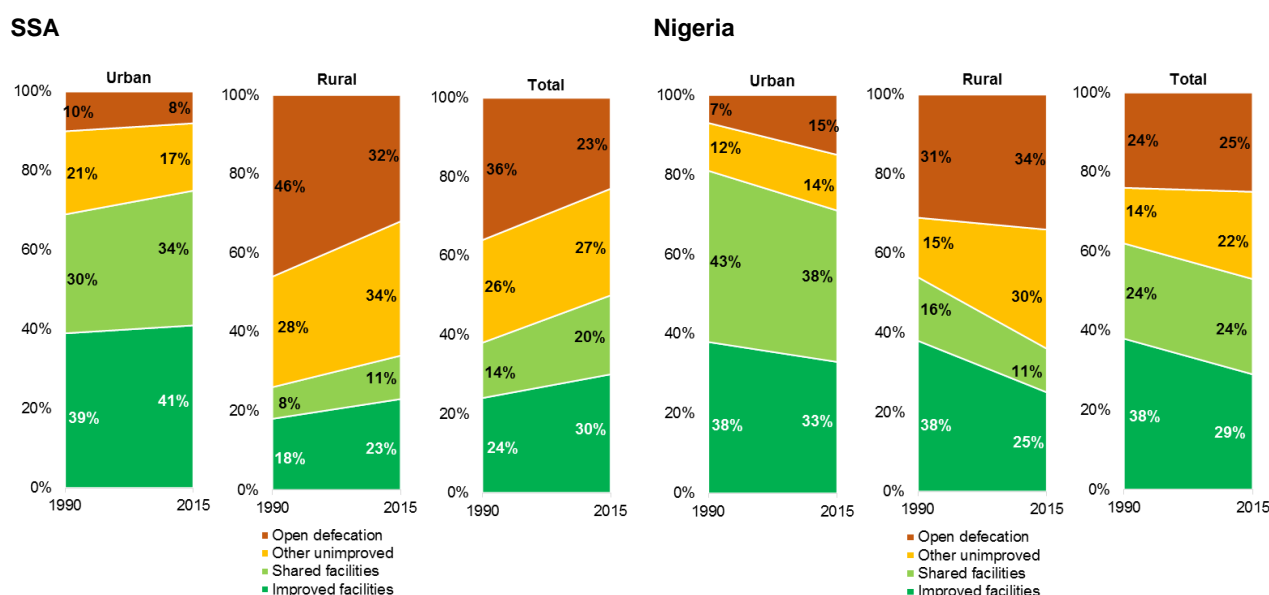
Nigeria has made no overall progress in sanitation coverage since 1990. As shown in Figure 16 below, coverage of adequate sanitation facilities has decreased in the past 15 years, with 53 per cent of the population in 2015 having access to improved or shared sanitation facilities as compared to 62 per cent in 1990. Nigeria failed to achieve its MDG target and a quarter of the population still practise open defecation, a practice more concentrated in rural areas (34 per cent of the rural population). Although coverage by 2015 is similar to that observed in SSA as a whole, the worsening of improved and shared sanitation coverage indicates a need for sector prioritisation, adequate planning and significant financial commitments.

Figure 15: Trends in drinking water coverage, SSA and Nigeria



²⁸ See for example, https://www.unicef.org/nigeria/UNICEF_support_to_WASH_in_Nigeria_since_2014_Jan_2017.pdf and http://www.who.int/water_sanitation_health/monitoring/investments/nigeria-10-nov.pdf?ua=1

²⁹ Figures referenced here are sourced from WHO/UNICEF (2015)

Figure 16: Trends in sanitation coverage, SSA and Nigeria

The 2017 WHO/UNICEF Joint Monitoring Programme confirmed these trends, viewed through the new lens of the SDG targets and indicators. In 2015, nationally 67% of the population had access to at least basic water services, compared with 46% in 2000. In rural areas, access increased from 31% to 54% over the same period and in urban areas from 74% to 82%. In 2015, nationally 33% of the population had access to at least basic sanitation services, compared with 36% in 2000. In rural areas, access fell over the same period from 35% to 27% and in urban areas it remained constant at 39%. Safely-managed water services reached 19% of the population in 2015, compared with 17% in 2000. The JMP has not yet been able to estimate access levels to safely-managed sanitation services.³⁰

5.2 Delivery of WSS services in Nigeria

The WSS sector has experienced several changes since 2000, with improvements observed at the federal level, but significant constraints remaining at state and local levels to guarantee adequate service provision. One of the main sector reforms in recent years was the division of the Federal Ministry of Agriculture and Water Resources in 2010 and the creation of the Federal Ministry of Water Resources (FMWR) as a separate entity. This enabled a clearer definition of roles across key agencies and the development and update of sectoral frameworks to guarantee the sustainability of water resources and improve WSS services. The sector is currently guided by several plans and policies, including the Nigeria Vision 20:2020, the Nigeria Water Sector Roadmap, the National Water Resources Master Plan (revised in 2013), the Partnership for Expanded WASH (PEWASH) programme and the National Roadmap for Making Nigeria Open-Defecation-Free by 2025. In addition, the National Water Supply and Sanitation Policy (NWSSP) defines standards for basic service provision, responsibilities for federal, state and local level agencies, financing arrangements for the poor, and encourages community, NGO and private sector participation.

Key features and challenges of the WSS sector are:

- **Service delivery is the responsibility of the federal government, 37 State Water Agencies³¹ or Boards (SWAs or SWBs) and 774 Local Government Area (LGA) Councils.** For water supply, the FMoWR is responsible for formulating policies, managing water resources, monitoring,

³⁰ Progress on drinking water, sanitation and hygiene: 2017 update and SDG baselines, WHO/UNICEF.

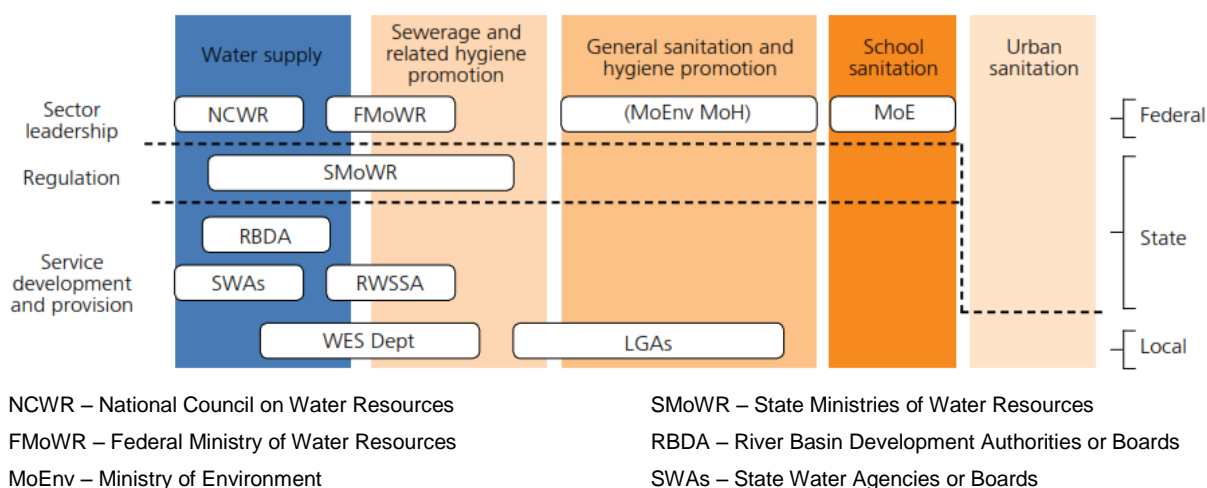
³¹ Including Federal Capital Territory (FCT) and Lagos

coordinating SWAs, providing funding and technical support, and enabling private sector participation. State governments, through the SWAs, are responsible for the construction and operation and maintenance (O&M) of urban and semi-urban water supplies, and for the licensing of private service providers, while LGAs are responsible for the construction and O&M of rural WS services. For sanitation, federal responsibilities are shared with state agencies and LGAs and also across sectors, mainly health and environment. Due to a lack of adequate financial and human resources in some LGAs, responsibilities for rural WSS services have been transferred to SWAs or other state level authorities. Overall, SWAs are responsible for 3,405 cities and towns, but are only effectively serving 69 per cent of them (Macheve et al, 2015).

- Following from the above, while the responsibility for water supply within the FMoWR is relatively clear at the national level, responsibilities for sanitation are shared with different federal ministries (e.g. Ministry of Health, MoH) with limited coordination. At the state level, SWAs and Small Towns Water and Sanitation Agencies usually bear the responsibility for urban and semi-urban water supply, with rural water supply remaining under the authority of State Governments (SGs) or rural WSS agencies. Finally, while LGAs have the responsibility for establishing, operating and maintaining rural WSS facilities, only a few of them have the resources and skills to carry out their activities – thus, there is significant SG intervention. **Overall, at the federal level, there are overlapping functions and responsibilities across different ministries for both water supply and sanitation, while at the state and local levels, WSS plans and targets remain uneven, reflected in poor financial commitments and achievement of sector objectives.**
- There are generally no clear standards nor lines of accountability in the WSS sector. For example, for urban water supply, while most SWAs are accountable to the SGs, some report to the SWA boards and the state legislature. Furthermore, SWAs have the responsibility of reviewing tariffs independently in their specific service areas, making tariff structures uneven across the country – this is reinforced by the fact that SWAs do not always operate in areas where there are alternative service providers (Macheve et al., 2015). Ineffective regulation, means that tariffs often do not allow for cost recovery and there is little concern for service quality and customer satisfaction. Indeed, cost recovery is threatened by the high level of non-revenue water (NRW), at 36% of total water consumption, while quality has deteriorated in recent years, with 63 per cent of customers having a discontinuous or intermittent water supply (IB-NET, data from 2014). **An overarching national regulatory framework or authority for the WSS sector is thus lacking, leading to difficulties in achieving cost recovery and threatening the sustainability of WSS services in the long-term.**

The diagram below shows the general institutional roles and responsibilities for WSS across federal, state and local levels.

Figure 17: Institutional roles and relationships in the WSS sector



MoH – Ministry of Health
MoE – Ministry of Education

RWSSA – Rural Water Supply and Sanitation Agencies
WES Dept – Water and Environmental Sanitation Department

Source: WSP (2011), AMCOW CSO2 Nigeria.

5.3 Financing of the WSS sector

There is very limited information on the total amount spent on WSS services in Nigeria, with weak reporting of sector spending at all levels and across sectors. The most comprehensive estimate of federal, state and LGA budget allocations and expenditures dates from 2009, and only considers 12 states and a selected number of LGAs. Based on this data, WSP (2011) estimates that the average annual state spend on water supply is US\$15 million while on sanitation it is equivalent to US\$3.7 million, with great variation across states. This suggests that the average annual spending on water supply by state governments is around US\$555 million, while the average annual spending on sanitation is close to US\$137 million. In addition, the federal government (through the FMWR) also allocates resources to WSS, but there is no reliable data documenting the amount of resources transferred. Nonetheless, based on data from the Nigeria Budget Office, it is observed that federal government allocations to the FMWR have decreased between 2010 and 2013, accounting for 3% of the total Federal Government Budget in 2010 to just 1% of the Budget in 2013 (JICA, 2014). This is consistent with the observed decline in the resources transferred from the federal government to states (ibid, 2011).

More recently, the UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water records Government budget allocations to WASH of US\$717 million in 2015 and US\$602 million in 2016. Donors and service users (households, industry) also spend significant resources on WSS services. On the one hand, based on OECD-CRS data, ODA disbursements for WSS increased from US\$115 million in 2010 to US\$176 million in 2015, with most of these resources allocated to water supply rather than sanitation (WASH Watch & WSP, 2011). On the other hand, water users spend around US\$650 – 700 million on water sold by alternative service providers, which is estimated to be four-times the combined revenue of all SWAs. Less than 40 per cent of urban households get their water from SWAs, probably related to intermittent supply and general service quality issues (Macheve et al, 2015).

5.4 The main financing sources

The main financing sources for expenditures on WSS are service users and state governments (through SWAs and other state agencies). This assessment is based on data extracts from different sources and dates and does not consider spending by communities and households for sanitation, investments made by private service providers (mainly for water supply), LGA resources, and allocations from the federal government. However, given the trends on WSS coverage (decrease in piped water coverage and improved and shared sanitation) as well as evidence of limited financial and human capacity in LGAs, it is very likely that service users (via payments and self-supply) and state governments are indeed accounting for the majority of sector spending.

As mentioned in more detail below, estimates for the achievement of universal sanitation coverage suggest that households will cover 76% of the costs, with the remaining 24% coming from government sources (FMWR, n. d.). Macheve et al.'s (2015) assessment of SWAs also indicates that there are three major 'subsidy schemes' from SGs: investment subsidies, direct O&M subsidies and implicit subsidies (corresponding to free water, water sold below production price and non-collected revenues). Estimates suggest that 51% of SWAs received some form of *investment subsidy*, ranging between US\$100,000 (or less) and US\$15 million. *Direct subsidies* for O&M increased from US\$52 million in 2011 to US\$69 million in 2013, and are expected to rise given expected investments in infrastructure to meet SDG targets. Finally, *implicit subsidies* have been estimated at US\$100-110 million per year, with a potential to decrease as

adequate coverage of WSS increases – however, this reduction will not compensate the anticipated increase in direct subsidies for O&M.

5.5 Adequacy of current funding for WSS

Funding for the provision of adequate WSS services in Nigeria is currently insufficient to achieve universal coverage by 2025 for water supply and 2030 for sanitation. Macheve et al (2015) estimate that the country needs to invest around US\$6 billion overall (US\$600 million per year) within the next 10 years to achieve 100 per cent access to improved drinking water. In addition, to end open defecation by 2025 (*Open-Defecation-Free Nigeria by 2025*), a total of US\$4.8 billion³² (N 959 billion) will be required – this includes household investments in the construction of latrines (US\$3.6 billion or N 725 billion) and government investments in school facilities, health centres, other public areas, triggering and advocacy activities (US\$ 1.2 billion or N 234 billion) (FMoWR, n. d.). Thus, around US\$11 billion in total are needed within the next 10 years to achieve Nigeria's basic WSS targets. Estimates by Hutton & Varughese (2016) for safely-managed water and sanitation services further suggest that the capital costs (excluding O&M) of meeting SDG 6.1 and 6.2 targets amount to 1.7 percent of GDP, or over US\$10 billion per year through to 2030.

Although government investments in the sector have improved in recent years, especially in donor-funded projects (as counterpart contributions are required in WSS hardware investments), budgetary allocations and actual spending remain low. Within the sector, water supply investments have been prioritised over funding for sanitation, with the latter showing the greatest deficiencies and thus failing to make meaningful progress since 1990.

³² Across the chapter, exchange rate of US\$1 = N200 as an estimate based on 2015 exchange rate has been used to achieve consistency.

6 Conclusions and recommendations

Nigeria's federal, state and local governments face a very steep challenge in increasing the access of the country's citizens to safely-managed water and sanitation services so that everyone has access by 2030 and the SDG targets 6.1 and 6.2 are met. The 2017 WHO/UNICEF JMP estimates that only 19% of the population has access to safely-managed water services. Of the country's 182 million people, there are therefore 148 million people whose right to water is not fulfilled. Although there is not yet a JMP estimate, the number of people whose right to safely managed sanitation is unmet will be higher still. The population is also projected to increase by a further 90 million people by 2030.

The scale of this challenge is reflected in the capital investment cost of achieving SDG targets: 1.7 percent of GDP, or over US\$10 billion per year through to 2030. This compares with recent government budget allocations to WASH (recurrent and capital combined) of US\$717 million in 2015 and US\$602 million in 2016. Although service users are estimated to spend similar sums to government on accessing services, these figures nevertheless point to a major annual financing gap. The GLAAS 2017 report confirmed that Nigeria has less than 50% of the necessary financing required to meet its national targets in all four subsectors of rural and urban water supply, and rural and urban sanitation.

The challenge is exacerbated by the 2016-17 recession and growing levels of public debt. Nigeria's total debt stock increased to N20.4 trillion at the end of September 2017 from N17.4 trillion at the end of 2016. The government allocated 24.73% of the 2017 aggregate budget of N7.441 trillion to debt service payments, placing increased constraints on the availability of resources for non-debt areas of spending. In a recent Article IV consultation of the Nigerian economy, the IMF said that with oil prices unlikely to rise in the near future, a substantial fiscal adjustment is inevitable. This will likely affect all levels of government and their associated delivery of social services, including water and sanitation.

There is nevertheless scope to meet a substantial part of this financing gap from domestic resource mobilisation linked to the EI. It will require concerted action and a serious change of priorities from Government, business and civil society across several fronts, much of this building on current initiatives already underway to strengthen transparency and revenue mobilisation in the public finances and the EI. Success in these areas also requires continuing and enhanced international support and cooperation from countries and institutions outside of Nigeria.

The Government should deepen and broaden the tax base from current levels. General government revenue as a percentage of GDP was only 4.8% in 2016. This is one of the lowest in the world and compares with a Sub-Saharan average of 17.4% of GDP and a level of 29% of GDP in South Africa, the continent's next largest economy. There is increasing evidence that countries with tax revenues below 15 per cent of GDP have difficulty funding even basic state functions.³³ With general government revenue at less than a third of this minimalist threshold, it is unsurprising that Nigeria has made slow progress in improving key social indicators.

The most urgent action is to stem the theft of petroleum proceeds by private individuals and groups. Although it is not possible to get a precise estimate, evidence suggests that theft—be it physical theft in the Niger delta, or high-level financial crime in business and politics—has occurred on an industrial scale over a period of decades.³⁴ Action to address the physical theft requires a combined security, social and environmental response. Elements of this are in place—including the Government's US\$10 billion Delta investment strategy, the Host Communities Bill, and the UN-supported US\$ 1 billion environmental clean-up of the Delta—and success will require a balance of resolve, sensitivity and external support.

³³ Gaspar, Vitor, Laura Jaramillo and Philippe Wingender, (2016). *Political Institutions, State Building, and Tax Capacity: Crossing the Tipping Point*, IMF Working Paper WP/16/233.

³⁴ Independent policy institute Chatham House estimated physical theft of 100,000 barrels of oil per day; Nigeria's Auditor General stated that US\$ 16 billion of oil revenue went unaccounted for in 2014; and in 2017 US prosecutors moved to freeze assets of a former petroleum minister and her oil-trading associates, linked to US\$1.5 billion in oil-production contracts.

To address the pervasive public and private corruption that has plagued the EI sector, it is essential to build on the progress made in strengthening governance. The priority placed by the current federal administration to tackle corruption, the passage of the PIGB and the traction gained by the NEITI all offer promise in this regard. Similarly, the tenaciousness of the EFFC is delivering results in terms of both the physical theft of oil and financial theft. All of these initiatives contribute to SDG 16 target 5: substantially reduce corruption and bribery in all their forms. Recent cases reveal the international dimension of corruption in Nigeria.³⁵ It is encouraging to see the USA and UK—Nigeria's two largest bilateral donors—active in the pursuit of the latest high-level corruption cases. Questions remain however over whether they and other jurisdictions are doing enough to prevent the flow of illicit funds out of the country in the first place. Action is rarely, if ever, taken against the facilitators outside of Nigeria—be they lawyers, bankers, real estate agents or IOC employees.³⁶

It is vital that the momentum behind increased transparency and accountability is sustained. It is encouraging to see that Nigeria has made meaningful progress in the implementation of the 2016 EITI standard. Similarly, initiatives such as OPM and DFID's Facility for Oil Sector Transparency and Reform in Nigeria (FOSTER) are helping to reduce the many incentives for misuse of power and capture of oil revenues.³⁷ Transparency and accountability standards are still not sufficiently embedded and effective to prevent all high-level corruption, however. The latest NEITI Board raised serious concerns over civil society engagement, licence allocations, contract disclosure, state participation as well as the quality, quantity and timeliness of production and export data. There is also growing international recognition—reinforced by revelations in the Paradise Papers in November 2017—that anonymous companies constitute potential and real dangers to the economy and security of the countries in which they operate. Nigeria needs to take steps to enforce transparency of the beneficial owners of all companies operating in the EI sector.³⁸

Increasing domestic resource mobilisation from the EI also requires steps to end the tax loopholes and unnecessary discretionary tax treatments associated with the sector.³⁹ The report highlights how pioneer status (an incentive to encourage innovative industries) has undermined the optimal collection of revenue in the petroleum sector, costing the Federal Government US\$ 2.1 billion.⁴⁰ For three companies, Shell, ENI and Total, pioneer status was combined with other tax holidays and allowances, providing exemption for up to US\$3.3 billion in tax payments. The inappropriate use of transfer pricing is also estimated to cost the Nigerian Exchequer hundreds of millions of dollars. Shell, Haliburton and Chevron are amongst those IOCs reported to have used a novel design of accounting and tax transactions with domestic and foreign governments to reduce their tax liabilities. Action on closing tax loopholes will also require the FGN to address stabilisation agreements, lasting up to 30 years and which currently make IOCs immune from subsequent changes in the tax law.

These steps can make a major contribution to strengthening Nigeria's domestic resource mobilisation, raising much-needed funds for WASH and sustainable development, consistent with SDG 17 to strengthen domestic resource mobilisation.⁴¹ Several international initiatives support the achievement of SDG 17, and they offer opportunities for Nigeria to strengthen capacity in this critical area. They include the

³⁵ London, Los Angeles and New York property markets and the British Virgin Islands (through facilitating the setting up of shell companies) have all underpinned illicit financial flows from the EI sector in Nigeria.

³⁶ <https://www.ft.com/content/d2acb4b0-7774-11e7-90c0-90a9d1bc9691>. There may also be an important role for the International Criminal Court (ICC) in evaluating crimes committed in the context of the Nigerian EI sector over past decades. Nigeria joined the ICC in 2001, and in 2016, the ICC agreed to include in its interpretation of Rome statute crimes, illegal exploitation of natural resources and crimes that result in destruction of the environment.

³⁷ <http://www.opml.co.uk/projects/facility-oil-sector-transparency-and-reform-nigeria-foster>

³⁸ Information released from the Panamanian-based legal firm, Mossack Fonseca in 2016, highlighted how anonymous, shell companies have facilitated the flow of illicit funds from Nigeria.

³⁹ The IMF has also emphasised the need to improving tax administration and collection systems, improving compliance and reducing tax loopholes (IMF, 2016).

⁴⁰ NEITI, 2016.

⁴¹ SDG target 17.1 includes a commitment to strengthen domestic resource mobilisation, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

Addis Tax Initiative, Tax Inspectors Without Borders, Base Erosion and Profit Shifting (BEPS) and the Platform for Collaboration on Tax.⁴²

An additional step to increase the incentives for the repatriation of illicit funds and the capture of increased funds from the EI would be to set up a ring-fenced fund, dedicated to resourcing the SDGs, including SDG 6. With oversight from the Federal Government and civil society, it could act as a powerful mechanism and incentive for capturing additional revenues, improving public financial management and spurring sustainable development in Nigeria through to 2030.

There is also scope for the IOCs to do more on WASH through their CSR programmes. The Italian IOC, Agip, has sought to improve access to water and sanitation facilities through the establishment of reticulation in 75 communities in four states in the Niger Delta, but generally IOC investments in the sector have been limited, and the General Memorandum of Understanding (GMoU) has not delivered the major shift originally hoped for. The IOC's point towards the precarious security situation as a major hindrance to implement sound CSR projects, but there is clearly scope for more to be done in this area.

Finally, it is important that the government plans on the basis of a long-term horizon in terms of its management of the EI. Countries that have successfully managed their EI sector, such as Botswana or Norway, have shown the ability to put in place effective governance, transparency and long-term planning. A failure to regulate the EI effectively will cause the country long-term environmental problems and ultimately undermine development. The Ogoniland is a tragic example of this. Countries in Africa are also amongst the most vulnerable to the effects of climate change, due to uneven access to safe water and sanitation, dependence on rain-fed agriculture, and high levels of poverty which all make it harder to withstand climate stress. Nigeria has significant opportunity in terms of hydro-electricity and solar power, and as the world seeks to effect a transition to a low-carbon economy, the country should think carefully about its energy mix, and what this entails for the management of its EI.

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Annex 1: Key Incentives for Investors in the Mining Sector

- Tax holiday for an initial period of 3 years from commencement of operations, which is renewable for an additional 2 years;
- exemption from customs and import duties in respect of plant, machinery equipment and accessories imported exclusively for mining operations;
- accelerated capital allowances on mining expenditure (95% initial allowance and retention of 5%) until asset is disposed of;
- annual indexation of unutilised capital allowances carried forward by 5% for mines that commenced production within five years from the date of enactment of the Mining Act;
- all infrastructure costs provided by the mining company and approved by MCO to be capitalised and capital allowance claimed at 95% in the first year of operation;
- free transferability of foreign exchange currency through CBN for payments made to services certified foreign loans or to remit foreign capital in the event of sale or liquidation of the business;
- grant of personal remittance quotas for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Nigeria; and
- exporters of mineral products may be permitted to retain part of their foreign exchange earnings in a domiciliary account for the purpose of acquiring spare parts and other mining inputs.
- a new company engaged in mining activities shall be exempted from tax for the first three years of its operation with possible extension under certain circumstances;
- reduced company income tax rate of 20% for companies with less than one million Naira turnover; potential exemption of interest on foreign loan from income tax, subject to the conditions stipulated under CITA.

Annex 2: Revenue Streams and Usage in the Mining Sector

Tax	Description	Usage	Compliance / Issues
Ground Rent	Holders of a small-scale mining lease, mining lease, quarry lease, or water use permit shall pay annual surface rent to the owner or occupier of the land, subject to the approval of the Minister. It is also subject to review by the Minister at intervals of five (5) years.		
Royalty	Royalty is calculated on <i>ad valorem</i> basis ranging from 3% to 5% depending on the type of mineral. The Minister may grant concession to a mineral title holder to defer payment of royalty on any mineral for a specific period, subject to the approval of the Federal Executive Council.	Royalty is assessed and collected by the Mining Inspectorate Division (MID) under the Ministry of Mines and Steel Development.	Royalty calculation is based on an outdated price list of 2002, poor record keeping and weak monitoring leads to under-collection of revenue. A significant loss of royalty stems from activities of Artisanal Small-Scale Miners who use labour intensive methods that do not require permits and are therefore not captured by the system.
Corporate Income Tax	The profit of a company engaged in mining activity is liable to CIT at the rate of 30%. The tax is applicable on the total profits of the company, after adjusting for non-tax-deductible items, unutilised losses from prior years and capital allowances (tax depreciation), if any. If a mining company's turnover is below N1million within the first five years of commencement of business, it will be liable to tax at the rate of 20%.	The CIT is payable to the Federal Inland Revenue Service (FIRS).	Corporate income tax includes taxes on non-mining sector related activities as well. Moreover, Artisanal small scale miners are completely omitted from the CIT revenue stream due to the lower bound of the company turnover being set at N1million.
Capital Gains Tax	The Capital Gains Tax Act (CGTA), LFN 2007 (as amended) regulates payment of CGT in Nigeria. The rate of tax is currently 10% and is levied on capital gains accruing on disposal of chargeable assets, irrespective of whether the asset is situated in Nigeria or not.	Paid to federal budget	
Withholding Tax	Dividends, interest, rent, royalty and other qualifying payments to shareholders, vendors and lenders are liable to WHT deduction at the appropriate rate. The rates vary between 5% and 10%, depending on the nature of the transaction and whether the beneficiary of the payment is a natural person, partnership or a limited liability company.	Withholding tax is also payable to the FIRS.	
Education Tax	2% of their assessable profit.	The EDT is also payable to the FIRS.	
Personal Income Tax	An individual or partnership carrying on mining activities is liable to PIT on any profit or gain from such activity in line with the provisions of PITA. The effective applicable tax rate is about 19% on the total income or profits.	PIT is payable to the States' Boards of Internal Revenue (SBIRs) where the individual or the partners is resident.	
Value Added Tax	A mineral title holder is expected to charge VAT at the rate of 5% on all minerals sold locally. Minerals exported from Nigeria are, however, zero-rated based on the provision of the VAT Act.	VAT is also payable to the FIRS.	
Annual Service Fee	Holders of a mineral title, other than the holder of an RP, shall pay an annual service fee to the MCO equal to the number of Cadastral Units that comprise the title area multiplied by the fee per Cadastral Unit for that type of title. This fee is payable on the anniversary of the issuance of the mining title.		