

# From Opacity to Transparency: the Challenging Journey of the Nigerian Extractive Industry

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The Open Government Partnership Openness in Natural Resources Working Group is co-chaired by the Natural Resource Governance Institute and the World Resources Institute. It commissioned three case studies to identify opportunities and challenges in the implementation of natural resource commitments and to document how civil society participates in the development of these commitments in different contexts. This case study focuses on Nigeria and its OGP commitment on oil transparency.

## INTRODUCTION

As Africa's largest producer of crude oil, Nigeria churns out over 1.78 million barrels per day. However, several factors obscure the true state of full production capacity—these include illegal refineries, pipeline leakages, and a lack of transparency in the award of exploration licenses, crude oil exports, and sales contracts between oil companies and the Nigerian National Petroleum Corporation (NNPC).

Playing the dual role of regulator and operator (as a joint venture partner with some oil companies), the NNPC can be considered both victim and perpetrator of institutional opacity. It has a backlog of unremitted oil revenue to the government, as outlined by the Nigeria Extractive Industries Transparency Initiative (NEITI) in a recent policy brief.<sup>1</sup> Although the NNPC began publishing monthly reports in October 2015 to provide a detailed overview of its finances, the reports do not break down line items, for example by delineating the operational and financial performance of NNPC subsidiaries, including sales-level data.

Opaque contracts entered into by NNPC cost Nigeria several billions of dollars. One such case involves Dan Etete, Nigeria's former oil minister. Etete awarded one of the country's most valuable oil block (OPL 245) to his own firm, Malabu Oil & Gas. The block was later transferred to international oil companies Shell and Eni under controversial circumstances. Only about 18 percent of the cost was paid to NNPC, while the rest was shared among government officials. The infamous "Malabu scandal" led to investigations in Nigeria, the United Kingdom, the Netherlands and Italy. These incidences of secrecy surrounding contract awards are rampant in Nigeria's extractive sector and make a case for the country's full commitment to the tenets of the Open Government Partnership (OGP).

1 Nigeria Extractive Industries Transparency Initiative, Unremitted Funds, Economic Recovery, and Oil Sector Reform (2017)

## NIGERIA'S COMMITMENT IN THE EXTRACTIVE SECTOR

Figure 1 summarizes Nigeria's third OGP commitment in its first National Action Plan (2017–2019).

Figure 1. Nigeria's OGP National Action Plan, Commitment 3



A major purpose of Nigeria joining OGP is to bring transparency, participation and accountability to the entire value chain of the corruption-prone oil and gas sector. Though disclosures alone are insufficient, if this OGP commitment had been adhered to before, it would

have contributed to the creation of an environment where oil swap transactions, which siphoned USD 1.7 billion from NNPC (and by extension the government and citizens), would have been harder to achieve.<sup>2</sup> The reality is that this amount laundered by just three individuals is equivalent to one-seventh of Nigeria's USD 7.7 billion budget deficit.

2 "Court Papers: How Aluko, Omokore laundered \$1.7b stolen from NNPC," *News Agency of Nigeria*, July 2017.

## STATUS QUO OF NIGERIA'S EXTRACTIVE COMMITMENT

Nigeria's National Action Plan (NAP) comprises 14 commitments in the categories of fiscal transparency, accountability, citizen engagement and use of technology.<sup>3</sup> Prior to Nigeria's formal membership of the partnership, civil society organizations (CSOs) played an advocacy and monitoring role. Under the umbrella of Open Alliance Nigeria, CSOs campaigned for Nigeria's membership of OGP and are now working on the implementation of the NAP. As part of the campaign, Open Alliance Nigeria developed a CSO-drafted National Action Plan.

Both the government and civil society were fully involved in the process of crafting the commitments and targets.

"The Nigerian NAP was co-created by senior officials led by the minister of justice and a coalition of CSOs led by the Open Alliance," said Oluseun Onigbinde, co-founder of the fiscal transparency nonprofit BudGIT.

"The vice president sent a representative, as well as the chairman of the Economic and Financial Crimes Commission, the director-general of the Bureau for Public Sector Reform and the executive secretary of NEITI, with directors from various ministries, departments and agencies (MDAs)," Onigbinde said.

The draft NAP initially had three commitments under extractive transparency, which covered mandatory reporting and public disclosure by the NNPC, a public registry of licenses, a beneficial ownership register and extractive contracts transparency.

Following a process of serial engagement with several senior government officials from the Justice Ministry and national anticorruption agencies, the beneficial ownership register was expanded to cover not just extractive-based firms, but every Nigerian business—meaning the government moved this under the fiscal transparency commitment. In the agreed plan, mandatory reporting and contract transparency were combined into Commitment 3. This formed the basis for the final plan submitted by the Nigerian government.

"Senior bureaucrats were brought in...[and] were involved at every stage of consultation and design, with the same person retained mostly throughout the process," Kolawole Banwo, policy and legislative advocacy officer at the Civil Society Legislative Advocacy Center, said.

A bottleneck to the process was that in negotiating the specific activities, milestones and timelines, government officials consistently stated their agreement was subject to the approval of the head of their agencies. Requisite approval was obtained during government focus group meetings and the public consultation phase of NAP development.

3 Open Government Partnership, *Nigeria National Action Plan 2017–2019* (2017).

## CHALLENGES IN THE IMPLEMENTATION OF NIGERIA'S EXTRACTIVE COMMITMENT

Achieving full-scale compliance with the OGP recommendations remains in sight. However, a few main obstacles stand in the way. (See Figure 2.)

Figure 2. Challenges facing Nigeria's OGP extractive commitment



### Legislative backing

While the CSO version of the draft NAP sought a law to support the beneficial ownership register, the adopted version does not provide for this. Respondents argue this has begun to affect the NAP's implementation. The evaluation of NEITI's pilot beneficial ownership implementation phase identified an outright refusal of companies to provide this information, many citing the lack of statutory obligations to force them to do so.<sup>4</sup>

Consequently, a team of senior government officials undertook a study of the U.K. Beneficial Ownership Register to learn about its processes, understand its challenges, build partnerships and carry out empirical analyses for a Nigerian version.

This has led to new efforts to amend the 1990 Companies and Allied Matters Act, a development that would grant legal backing to the Corporate Affairs Commission and NEITI to establish this register in Nigeria. While it is laudable attempts are being made in

4 Nigeria Extractive Industries Transparency Initiative, *Pilot Assessment of Beneficial Ownership (BO) Disclosure: Nigeria's Experience* (2015).

this regard, it is nevertheless a rather late effort that will significantly impact the commitment's implementation. It remains unknown when the draft amendment will be presented to the president or go to parliament.

In the past, reforms requiring legislative backing have routinely suffered—for instance, the Petroleum Industry Bill has not been passed almost a decade after its introduction in parliament, highlighting an entrenched resistance to oil industry reforms in Nigeria. Anecdotal evidence suggests that a law proposing a beneficial ownership register could suffer a similar fate.

### Finance

In its 2017 budget, the government has not clearly delineated funds for OGP, even though the federal government and development partners are responsible for funding its implementation. This vagueness may have resulted in varying responses in terms of finance, a situation that leaves observers somewhat skeptical of Nigeria's success at implementation.

While Juliet Ibekaku, special assistant to the president on justice reform and OGP Nigeria national coordinator, said that “a budget has been assigned to the implementation of this commitment and... is in the process of being secured through the national budget process,” Banwo remained skeptical. Banwo argued advocacy visits and engagement to involve more oil, gas and mining stakeholders should have been ongoing if implementation was proceeding apace.

“My sense is that [the] government expected donor funding and made no efforts to devote specific, strategic and clearly defined funding, other than routine allocations to respective MDAs, at least as reflected in the 2017 budget and demonstrated at the session to approve the work plan for 2017–2019,” Banwo said.

As of the time of the submission of this report, no update on budgetary allocations for OGP funding in Nigeria was available.

### Technical capacity

The government's technical capacity does not seem to be an issue. NNPC has the capacity to collate and report the required full sales-level data and other financial and operational data, as seen from its monthly and quarterly reports. Also, NEITI's audit of the extractive sector is frequently highlighted as an example of best practice by the EITI International Secretariat, and NEITI continues to pilot a slew of initiatives, including a Fiscal Allocation and Statutory Disbursement Audit 2007–2011, which audited “utilization of revenue from the Federation Account to federal, state and local governments.”<sup>5</sup>

It remains unclear why, despite the availability of technical skills and data, little progress has been made in this commitment's implementation. The publication of the NNPC's financial and operational data seems to have been implemented outside of the OGP process, but little has been done since to fully implement the OGP commitment.

The same cannot be said for CSOs, which seem unable to grasp the terms and trends of extractive sector technicalities. Perhaps in direct response, NEITI has maintained a training series for CSOs to enable fuller comprehension of the implications (technical and otherwise) of its work, and to increase their know-how on effectively engaging with the government. Very few CSOs focus on the extractive sector, and those working in the sector are spread too thin to be able to adequately confront the scope of work that needs to be done around the implementation of these activities. This clearly deprives the process of the required advocacy from CSOs to ensure full implementation of OGP.

### Shared goal

CSOs believe that while NEITI is keen to have all contracts published, NNPC has little enthusiasm for making this happen as soon as possible. The lack of a shared goal among government institutions might also explain the slow implementation.

## RECOMMENDATIONS

- The beneficial ownership register must develop the requisite legal guarantee, which is only achievable through legislation, as this will boost implementation. The president and parliament should amend the Companies and Allied Matters Act and ensure its passage.
- In terms of finance, as Banwo explained, the government should devote financial resources to drive implementation as a demonstration of commitment. Donor support should go to civil society interventions to ensure independence and effective engagement.
- Donors should also focus their efforts on building CSO capacity on highly technical issues related to the extractive sector.
- Government agencies, multi-stakeholder initiatives such as NEITI and civil society should pressure the NNPC to disclose all oil contracts.
- Enhanced transparency in the extractive industry will place more funds at the disposal of the government and citizens. Already, the pervading feeling that government spending is secretive has contributed to militancy in the south and an uptake of Islamist terrorism in the north. As illustrated by the activities of militants, not providing indigent communities with their fair share can have lasting consequences that could impact the success of OGP efforts. The fact that the first NAP does not wholly address the issue of equitable sharing of oil and gas revenue is a trend that should not continue.