

Reforming corruption out of Nigerian oil? Part two: Progress and prospects

In Nigeria, as elsewhere, corrupt practices impair oil sector performance. This U4 Brief looks at five approaches to advance anti-corruption reform in Nigeria's oil sector: the legal and regulatory framework; open and competitive award procedures; process and revenue transparency; investigation and prosecution of corruption; and oversight and accountability measures. The state of reform in each area is addressed, as are ways forward of potential interest to donors in the country. The Brief is the second in a two-part series: the first describes the most likely sites of corruption in the governance of Nigeria's oil sector.¹ The series aims not only to provide insights into anti-corruption related reform in Nigeria but also in other oil-rich countries that receive development assistance.

The legal and regulatory framework

The existing legal framework grants discretionary authority to top officials and does not clearly delineate roles and responsibilities among the sector's actors. Sector operations, including the activities of the national oil company, the Nigerian National Petroleum Company (NNPC), are subject to insufficient oversight. The industry regulator, the Department of Petroleum Resources (DPR), suffers from low capacity and the confusing assumption of regulatory functions by NNPC itself.

Legal and regulatory framework: Status of reform

Past reform efforts have sought to increase the independence of regulatory institutions and encourage greater NNPC productivity. The NNPC reforms of 1988 created 11 subsidiary units meant to function as semi-autonomous businesses. This exercise also saw the DPR become a separate institution, rather than a unit within NNPC. This restructuring produced little change in practice. NNPC retained influence over DPR affairs, albeit not formally, and subsidiary operations remain subject to highly centralised NNPC control.

In 2000, President Obasanjo constituted the Oil and Gas Implementation Committee (OGIC) to devise a strategy for streamlining sector operations. OGIC issued its report in 2003, but no implementation ensued. President Yar'Adua revisited this agenda in 2007. He appointed a second OGIC to review the existing recommendations and create a plan for their implementation. The resulting report and draft petroleum sector legislation were approved by the President and Federal Executive Council in September 2008. The proposed legislation is currently before the National Assembly. Two members of the second OGIC recently received promotions to the top industry positions – Rilwanu Lukman now serves as Minister of Petroleum and Mohammed Barkindo as Group Managing Director of NNPC – which may increase the prominence afforded the committee's agenda.

In the proposed legislation, three new regulatory institutions would assume functions currently held by DPR and NNPC. The restructuring also intends to streamline NNPC operations, remove functions which create conflicts of interest, and create

a more productivity-driven incentive environment. Oversight and coordination may improve with the replacement of the Ministry of Petroleum with a better-funded and more powerful Petroleum Directorate. The impact of these changes, however, will depend on effective implementation as well as the passage of this legislation.

Legal and regulatory framework: Moving reform forward

The current system has beneficiaries who will resist or seek to capture the restructuring process – obstacles which prevented meaningful change during the 1988 and 2003 reform efforts. A number of interviewees expressed concern that legislators were insufficiently “carried along” in the OGIC process and will delay passing the new legislation.² The proposed reforms would also require highly complex contract renegotiations

Areas of Nigeria's oil sector vulnerable to corruption:

- Award of oil exploration and production licenses
- Award of contracts
- Bottlenecks and inefficiencies in government-company relations
- Bunkering (theft) of oil
- Allocation of licenses for exporting crude and importing refined products.

For explanations of these areas and why they pose high corruption risks, see the first U4 Brief in this series: *Reforming corruption out of Nigerian oil? Mapping corruption risks in oil sector governance* (U4 Brief 2009:2).

(such as the creation of independently incorporated joint venture arrangements between government and companies). These proposed changes, along with adjustments to contract fiscal terms, have prompted protest from the oil industry. Only with a consistent push from top level officials will the reforms take hold.

Donors have limited entry points into areas of regulatory reform and sector restructuring. The provision of technical assistance could help improve regulatory capacities, or educate legislators regarding the importance of sector regulation. Donors have provided some oil sector technical assistance in the past, such as the World Bank's work on taxation and Norway's assistance to the DPR. Demand for such services from the Nigerian government does not appear high.

Open and competitive award procedures

Licenses to explore and produce oil, contracts for oil-related services and, more generally, government contracts funded by oil revenues all represent highly valuable assets. Bribery, favouritism, and contract non-performance frequently mar these license and contract transactions in Nigeria.

Exploration and production licenses: Status of reform

The oil block bid rounds of 2005, 2006, and 2007 saw some efforts at replacing discretionary award procedures with a more open and competitive process. The available blocks and bidding criteria were advertised and the round took place in public, with each bid announced before the attending audience. DPR also made efforts to enforce signature bonus payments. In 2005, this resulted in a number of companies losing their blocks after they bid large amounts with the expectation that they could be later negotiated downward.

Despite these improvements, transparency and due process appear to have fallen short before and after the rounds themselves. Guidelines for bidders and information regarding local partner requirements were released late. Preferential rights were awarded to some companies through non-transparent procedures and without regard for their actual technical capacity. The Ministry created a number of "forced marriages" between companies on unknown grounds. Signature bonus payment deadlines were unevenly enforced and companies without adequate capacity secured acreage. Information regarding which companies won which blocks is difficult to access. Two inquiries, one by the executive and one by the House of Representatives, are now investigating these irregularities, and several blocks have been revoked.

Exploration and production licenses: Moving reform forward

The next bid round, expected in late 2009, will test the extent to which the current government aims to reduce discretion and improve transparency in these allocation processes. The passage of the new oil sector legislation mentioned above could help: the draft Petroleum Industry Bill includes language which requires transparency and removes the discretion over block allocations permitted by the current Petroleum Act.

There are opportunities for international engagement around these issues. In 2005, Nigeria invited four countries (USA, UK, Norway, Brazil) to observe its licensing round, indicating its interest in engaging with international actors. Much of the motivation surrounding licensing reform derives from the perceived success of rounds being conducted in Brazil, Angola, and Libya. Elements of the Nigerian establishment seek to emulate these examples, and could be amenable to receiving technical advice along these lines. Facilitation of further

interaction among these countries could produce results, as could more compelling explanations of how poorly run bid rounds damage the sector's productivity. The establishment and promotion of international good practice for bid rounds could also help concretise the reform agenda, as the Extractive Industries Transparency Initiative (EITI) has done for revenue transparency.

Oil sector service contracts: Status of reform

Upstream oil companies generally contract out a large portion of their work to oil service companies. NNPC retains a high degree of involvement in these processes as it approves all contracts made over a relatively low threshold. Recent international legal proceedings, particularly under the US Foreign Corrupt Practices Act, reveal the large-scale bribery which can infiltrate these processes.

Oil sector service contracts: Moving reform forward

The electronic portal and database NIPEX was created by NNPC to streamline oil sector procurement. Its development has proceeded slowly, and accounts from sector actors indicate that it has not significantly improved the system. To be effective, NIPEX will need to provide at least enough transparency for competing companies to self-monitor the process and report unfair proceedings. Raising the approval thresholds might also help. At the moment NNPC processes huge numbers of approvals, creating a bottleneck and reducing its ability to thoroughly review each prospective contract.

Public procurement: Status of reform

A significant portion of government revenues (over 80 percent of which come from oil) are spent through procurement. Before 1999, the government lost over US\$ 300 million per year to procurement fraud and inefficiency. This occurred through the "inflation of contract costs, award of contracts for nonexistent projects, over-invoicing, diversion of public funds to foreign banks, and low project quality because of inexperienced contractors."³

From 2002, the newly created Due Process Office made strides in reducing the over-invoicing and under-performance chronic in state contracting procedures. These reforms culminated in the passage of the Public Procurement Act in 2007 which calls for the creation of a more complex procurement system, including establishing procurement boards in all government agencies under the coordination of the Bureau for Public Procurement (BPP). President Yar'Adua has yet to constitute the Procurement Council required by the law or appoint a substantive BPP director.

Public procurement: Moving reform forward

The World Bank and other donors have provided technical support for procurement reform for some years. Strategies to build greater political will behind the reforms should be considered in light of current delays. As with fiscal transparency, improving procurement procedures at the sub-federal level represents another priority. Several states have begun to implement procurement reform since 2007. Donors are supporting these efforts which represent a promising arena for improving the quality of sub-federal expenditures.

Process and revenue transparency

The international movement which promotes extractive industry transparency has increasingly moved towards emphasising transparency throughout the "resource value chain". Here, I focus on two stages of the value chain: revenue inflows and expenditures.

Revenue inflow transparency: Status of reform

The EITI was designed internationally to advance revenue inflow transparency (i.e. the transfers of money from companies to host governments). Nigeria was an early and enthusiastic implementer of EITI. Under the leadership of Obi Ezekwesili, the Nigerian EITI (NEITI) recorded several accomplishments: the establishment of a high-powered multi-stakeholder working group with civil society, corporate and government members, the conduct and disclosure of a wide-ranging audit, and the drafting and passage of the 2007 NEITI Act. The audit, in particular, exceeded the international EITI standards: it required fully disaggregated payment data from companies, investigated physical, process and financial issues, covered a five year period of 1999-2004, and included criticism of how the Nigerian government manages its oil assets and revenues.⁴

Since the release in 2006 of the first audit covering the period 1999-2004, progress at NEITI has slowed. Possible causes include the departure of Ezekwesili, transition delays around the appointment of a new NEITI Board and Executive Secretary, less visible backing of the initiative by President Yar'Adua, and the recent slow pace of activity in Abuja. Whatever the reason, NEITI has yet to release a second audit report (though the audit for 2005 will reportedly emerge soon) and has assumed a lower profile in sector activities.

Revenue inflow transparency: Moving reform forward

Looking forward, two scenarios seem possible: a resurgent NEITI that steadily increases sector transparency by regularly conducting thorough and credible audits, or a NEITI that continues to exist but becomes further marginalised from core sector operations. High-level political support, pro-active NEITI leadership, and reliable funding streams would help the former scenario to prevail.

Donors, led by the UK Department for International Development (DFID) and the World Bank, have strongly supported NEITI and fund a significant portion of its operating and audit costs. NEITI supporters face a dilemma common among donors in oil producing states: does external funding supplant government ownership (given that government could certainly foot the bill if they wanted to), or does it protect valuable initiatives which would otherwise be eliminated or sidelined? The slowdown in NEITI activity suggests a lack of political will, rendering this dilemma more acute.

Revenue expenditure transparency: Status of reform

Budget transparency has made some inroads in recent years with a more accessible federal budget and disclosure of the allocations made each month from the centralised Federation Account to state and local governments (see <http://www.fmf.gov.ng/>). The 2007 Fiscal Responsibility Act requires these disclosures and more, but its full implementation appears to be dragging. Several of Nigeria's 36 states have noted their intention to improve budget and expenditure transparency, though progress remains in the preliminary stages.

Revenue expenditure transparency: Moving reform forward

Beyond basic *ex ante* budget transparency, information regarding *ex post* budget execution represents an urgent priority for future action. Its current scarcity makes the monitoring of government spending extremely difficult for legislatures and civil society. Another priority is the passage of a Freedom of Information Act. Such a bill was passed by the previous legislature but failed to gain the president's signature. It has currently stalled again before the House of Representatives.

Donors can help to extend both the discourse and practice of transparency in Nigeria. Engagement with federal fiscal institutions, for instance, could focus on promoting further budget and expenditure transparency, particularly the release of information in forms usable by demand-side accountability actors. External support also helps boost legislative and civil society capacity to use information, and creates spaces in which government can receive their feedback. Greater transparency in the donors' own in-country activities can set a good example.

Investigation and prosecution of corruption

The three areas of reform outlined above seek to reduce opportunities for corruption. Investigation and prosecution aim to uncover corruption and ensure that appropriate repercussions ensue.

Investigation and prosecution: Status of reform

Domestically, these tasks fall principally to the Economic and Financial Crimes Commission (EFCC) and the International Corrupt Practices Commission (ICPC). From 2005, these organisations began to pursue cases against high-level officials including 31 of 36 governors. While these officials were not directly employed by the oil sector, oil wealth constituted much of the misappropriated funds.

The media and opposition figures widely criticised Obasanjo for using anti-corruption proceedings against his political opponents, particularly targeting former Vice-President Abubakar Atiku. The Yar'Adua government is also accused of orchestrating the downfall of EFCC chair Nuhu Ribadu. This has damaged the credibility of the country's anti-corruption institutions. As a result, current prosecutorial efforts are accompanied by accusations of political manipulation, such as those surrounding the October 2008 arrest of the Rivers State chief of staff for theft of public funds.⁵

Investigation and prosecution: Moving reform forward

International legal authorities can contribute more to stemming corruption in Nigeria. Prosecutions under the US Foreign Corrupt Practices Act (FCPA) are a promising development, and represent a serious deterrent for companies listed on US exchanges. Similarly assertive enforcement of anti-corruption laws and codes by other OECD countries could reinforce this trend.

Cooperation between international and Nigerian law enforcement agencies is vital, though undoubtedly complicated by the political problems facing the EFCC. Foreign governments could still identify strategies for bolstering capacity to identify and prosecute corrupt activities. These might focus on supporting Nigerian authorities to follow up on the FCPA investigations, as those officials identified as receiving bribes have yet to face repercussions.

Oversight and accountability

Effective oversight by accountability institutions (legislature, judiciary, anti-corruption institutions, civil society, media and citizens) is crucial for stemming oil sector corruption in Nigeria. The effectiveness of these actors depends on both their capacity and their level of meaningful access to the sector's governance processes.

Oversight and accountability: Status of reform

Accountability institutions struggle to consistently safeguard the public interest in Nigeria. The institutions listed above each demonstrated their capacity to exercise accountability

functions on occasion: NEITI produced a pioneering audit, EFCC pursued corruption at the highest level, the House of Representatives conducted a substantive probe into oil block licensing rounds, civil society lobbied for the passage of Procurement and Fiscal Responsibility legislation, and several newspapers are pushing for investigation of bribe-recipients associated with FCPA cases. Yet the efficacy of these institutions remains uneven at best, and capacity constraints, a lack of clout, infighting and political capture have plagued efforts to move reform forward.

Another problem is these actors' access to the oil sector's governance process. Legislators note that NNPC escapes the budgetary scrutiny applied to most government agencies. Even the executive branch lacks access: in February 2009, the President created a high-level commission which would fashion the country's response to the global economic crisis. The Commission, which includes several Ministers, announced that an audit of the downstream sector would be one of its first activities. This is a positive step, but it also illustrates the cloak under which sector activities generally take place.

Oversight and accountability: Moving reform forward

Opportunities for improving accountability exist in each of the anti-corruption strategies outlined in this Brief. Much could be achieved by mainstreaming an accountability agenda into oil sector reforms. If a donor agency provides technical assistance to, for example, DPR around the issue of gas flaring, they could also create a website to publicise the regulatory regime, company performance and punitive measures. Donors might also enhance the impact of the next NEITI audit through supporting strategic dissemination programs, aimed at the public but also groups with an interest in improving the sector's operations (e.g. companies, governors who depend on oil revenues, the legislature). In addition to training, accountability institutions benefit from the creation of platforms for dialogue and influence. Donors can help create the space in which civil society, the legislature and others can constructively interact with the sector's private and public sector participants.

Choosing engagement wisely: What donors can do

Corruption remains rife in many facets of Nigeria's public and private sectors. Former governors prosecuted by the EFCC remain free to enjoy their wealth, and several still exert political influence. Representatives of oil service company Kellogg, Brown and Root paid over US\$ 180 million in bribes to Nigerian government officials. In return, they received US\$ 6 billion worth of contracts.⁶ Current and former high-level public officials are charged with channelling lucrative deals to companies which they partially own or to their political allies. Reversing systemic graft of this nature is an uphill endeavour.

For donors facing this protracted scenario, practicality must rule the day. With oil wealth dwarfing aid, donors have limited leverage to influence behaviour of government officials or the functioning of state institutions. Donor involvement in the oil

sector is, moreover, extremely low, reducing entry points for engagement.

The previous section outlines five approaches to reducing corruption, making reference to opportunities for engagement on the part of Nigeria's donors. Within these approaches, three specific types of activities particularly match the capabilities and mandate of international donors:

- First, they can focus on the international. Home country laws, international codes, asset repatriation, the prosecution of money laundering, and rooting out corporate corruption can make a difference if pursued thoroughly and assertively. These practices lie within the area of influence of donor governments.
- Second, they can support the design and dissemination of international good practices for many of the processes mentioned above. EITI represents such a well-publicised standard for transparency of revenue collection. Further good practice could be promoted around issues including oil block licensing rounds, oil marketing, procurement and contracting, legislative oversight of sector regulation, and transparency of contract terms. Some efforts have begun in these areas. Their capacity to influence policy will, however, remain weak unless they are pushed in a coordinated, highly-visible and committed way.
- Lastly, donor funding can have a meaningful impact when it is directed towards mainstreaming accountability into oil sector reforms. If opportunities for transparency and oversight increase in the sector, the opportunities for corruption will decrease. Strengthening accountability within sector operations will encourage a governance setting in which oil wealth may create welfare benefits. ■

Further reading

- Gillies, A (2007) "Obasanjo, Donors and Reform Implementation in Nigeria" *Round Table: the Commonwealth Journal of International Affairs* 96(392)
- Humphreys, M et al (2007) *Escaping the Resource Curse* New York: Columbia University Press
- Nigerian Extractive Industries Transparency Initiative (2006) "Nigeria Extractive Industries Transparency Initiative Audit of the Period 1999-2004 Final Report" <http://www.neiti.org/ng/>

Footnotes

- ¹ Private sector actors contribute to the high levels of oil sector corruption in Nigeria, practices more fully explored elsewhere.
- ² Interviews conducted by the author with OGIC members and Nigerian legislators, September to December 2008, Abuja
- ³ Okonjo-Iweala, N (2008) *Managing Natural Resources Revenue: Lessons from Nigeria's Experience* <http://go.worldbank.org/92MH1847B0>
- ⁴ Revenue Watch Institute (2007) *Leaving a Legacy of Transparency in Nigeria* New York: Revenue Watch Institute
- ⁵ Rivers State of Nigeria Government "Amaechi Berates Efcc On Fight Against Corruption" press release 10 December 2008
- ⁶ Reuters "Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay..." Washington, 11 February 2009