

Inside NNPC Oil Sales: A Case for Reform in Nigeria

Annex A. The Case for Eliminating the Domestic Crude Allocation

INTRODUCTION

The Nigerian government should end the domestic crude allocation (DCA). NNPC exercises alarming levels of discretion in deciding how to sell the crude, whether to remit the resulting revenues to the treasury, and how to spend the funds that it keeps. Lately, the amounts it holds back for itself have ballooned to around \$7 billion per year—or close to half the value of each barrel sold. (See p.X for estimated losses.) This revenue retention has prompted controversy and confusion, including around whether such retention is even legal. Much of this money is spent in flawed ways, generating unacceptably low returns for the country’s citizens. Especially now, as Nigeria faces tough fiscal challenges, leaving open such a large drainpipe is a threat to the nation’s economic health.

The current DCA system dates back to the military period of the 1990s. Under the DCA, NNPC’s Crude Oil Marketing Division (COMD) sells 445,000 barrels per day (b/d)—roughly one-fifth of what Nigeria produces—on an intercompany basis to the Pipelines and Product Marketing Company Ltd. (PPMC), NNPC’s main downstream subsidiary. The domestic crude is a portion of the government’s share of production from its joint venture and production sharing contracts which totals an average of 1 million barrels per day. PPMC sends some of the crude to domestic refineries, and COMD either sells the rest for export or trades it for petroleum products. PPMC then pays NNPC for the crude, either from the proceeds it gets from selling the crude for export or from selling the refined products derived from crude. NNPC then has 90 days from the day the crude was loaded on a tanker or pumped to a refinery to forward payments to a joint NNPC-Central Bank of Nigeria (CBN) naira-denominated Crude Oil Revenue Account domiciled with the CBN. Finally, once a month, CBN transfers an amount from this account to the Federation Account, which serves as the main treasury account for the country’s three levels of government.

In this section, we explain why the government should eliminate this system and replace it with purpose-fit and soundly constructed mechanisms for financing NNPC, providing crude to the refineries, and financing NNPC’s subsidy costs. The recommendations for what should replace the DCA appear in more detail in the main report. (See p.32.) Nigerian authorities could also use the information provided here to guide future audit efforts, as there exists no full and credible accounting of how NNPC has spent DCA revenues from recent years.

The reasons for the DCA's elimination are:

- 1 The DCA's design has little bearing on its current use.
- 2 NNPC is retaining more DCA revenues over time; the Federation is receiving less.
- 3 NNPC administers the DCA with few rules and weak oversight, causing confusion.
- 4 NNPC spending out of the DCA delivers poor value for money, shows signs of mismanagement.
- 5 The DCA sets up a conflict of interest in which NNPC sells oil to itself.

Our analysis relies on data about the volume and value of DCA oil, the transfers of domestic crude revenues to the Federation Account, and the spending of DCA revenues by NNPC. Some of the figures—particularly for 2012 and 2013—come from unpublished NNPC, CBN and FAAC documents obtained for this report. However, much of the earlier data is online—in NEITI audit reports, for example. Other figures come from the many probes and reports that this controversial topic has prompted. Across these sources, most data originated from NNPC's own internal oil sales and financial data. While we are confident that this data accurately identifies the important trends, we do offer a few caveats at the appropriate points in the analysis. This is a very opaque area, and the information available is full of inconsistencies, gaps and unanswered questions. Only a full performance audit conducted with NNPC's cooperation could provide a definitive account of the crude and money flows in recent years.

As part of our research for this report, we wrote to NNPC and PPMC seeking information about the DCA. Neither entity responded. NNPC has provided explanations for its management of the DCA in response to other inquiries, from bodies like the National Assembly and NEITI, and we cite these explanations at several points in the report. Generally, NNPC mostly identifies high oil prices and large downstream expenses—from the domestic fuel subsidy above all—as explanations for the billions of dollars it retains each year, and statements by corporation officials argue that NNPC has the legal authority to unilaterally do so. But as we suggest in this report, NNPC's public narratives about where the money goes have been incomplete, and fail to justify the vast sums of public money that could otherwise go towards other national priorities.

The government should remove the DCA, regardless whether it eliminates Nigeria's subsidy on fuel. As we will show, the cost of the subsidy and the dysfunctional manner of its administration contributes to the problems around the DCA. But they are far from its only cause, nor does the continuation of the subsidy require a continuation of the DCA. In fact, eliminating the DCA would plug gaps, streamline processes, and save money in either subsidy scenario.

1. THE DCA'S DESIGN HAS LITTLE BEARING ON ITS CURRENT USE.

NNPC started the DCA either in the late 1980s or early 1990s based on a directive from the Ministry of Petroleum Resources.¹ It was not mandated by any Nigerian legislation. The original intention was to allocate a portion of Nigeria's crude oil production to the country's four state-owned refineries. The volume of domestic crude is set at 445,000 barrels per day (b/d) to reflect the volume of oil the refineries were built to process. PPMC is supposed to pay NNPC for the crude allocation from the proceeds of the sales of refined products.

DCA system was designed to function as illustrated below:

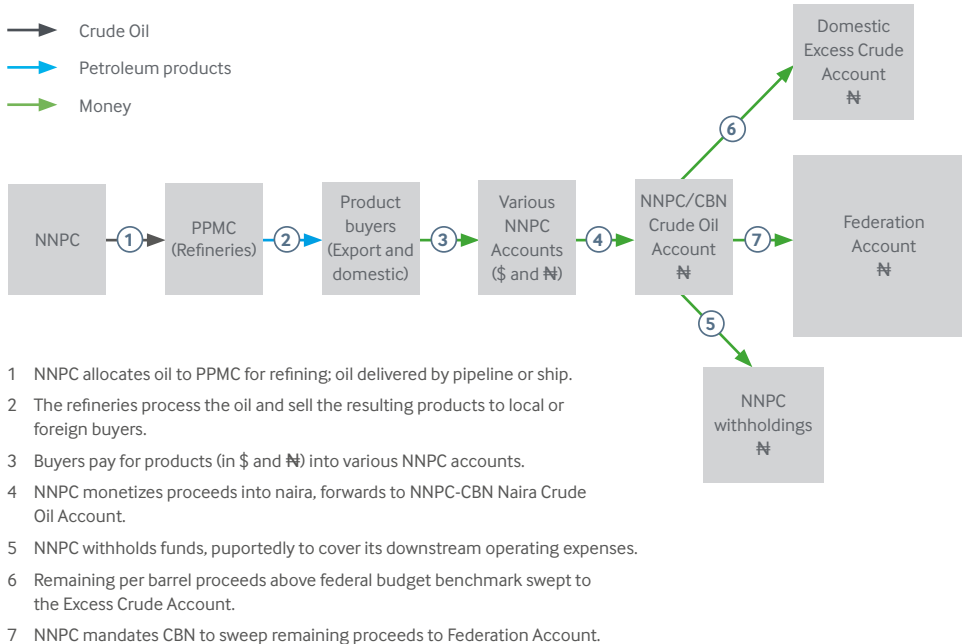


Figure A1. Original intended flows of oil, products and cash under the DCA

Today's practice looks quite different, for several reasons:

Most DCA oil is sold for export through complex transactions, rather than refined domestically. "Domestic crude" has become a misnomer. Chronic dysfunction has turned the refineries into basket cases—lately they have run at around 20 percent capacity. In this context, the 445,000 b/d in DCA crude is a random number that NNPC uses regardless of refinery performance. In fact, the corporation ignores its own quarterly projections for performance when it keeps the figure the same from year to year.²

1 Author interview, retired NNPC official, 2014.

2 For more on how NNPC forecasts how much oil its refineries will process, see NEITI, Process Audit 1999-2004: Refineries and Product Importation, 2006, p.42f.

In reality, oil from the DCA currently goes in three directions:

- *Refinery sales.* These are the barrels the refineries can realistically process. In 2014, for instance, the four refineries together received an average of 70,792 b/d for processing—or, 14 percent of their total installed capacity.³
- *Oil-for-product swap deals.* These complex barter transactions between PPMC or NNPC and a number of private traders have consumed around 210,000 b/d since 2011. We discuss them in annex B of this report.
- *Export sales.* NNPC COMD sells the remaining domestic crude—usually between 100,000 and 150,000 b/d—for export to some of its term customers, under terms that are similar to regular NNPC export sales.

The DCA is used as a makeshift and poorly suited mechanism for funding NNPC’s expenses. NNPC deducts funds from the amounts due to the Federation Account, or delays in repaying the funds it owes. It uses these funds to cover various expenses. In its review of the DCA, discussed further below, PriceWaterhouseCoopers (PwC) found that NNPC discretionarily retained 46 percent of domestic crude revenues received during a 19-month period in 2012-2013 for spending on operations and subsidies.⁴ As discussed in section three below, the revenue retention is not governed by any rules, nor is it subject to oversight.

NNPC keeps these funds in part because there is no other established method for financing its operations. Most countries establish an explicit rule for national oil company financing. For instance, Malaysia’s Petronas retains profits on earnings, but transfers royalties, dividends and export duties to the treasury, as well as paying a set tax rate on its own profits. Ghana’s GNPC can retain “equity financing costs” and additional amounts approved by parliament, but this cannot exceed 55 percent of net cash flow from government assets.

NNPC’s retention of domestic crude revenues is part of a larger *ad hoc* system for revenue collection within the corporation. This system consists of a mish-mash of methods including deductions from the joint venture cash call account, the retention of subsidiary earnings, and borrowing from third parties. Paradoxically, this *ad hoc* way of operating at once impoverishes NNPC, leaving it chronically indebted and short of operating funds, and gives it far too much discretion to retain ever-growing sums from oil sale proceeds.

NNPC uses revenues from the DCA to pay part of Nigeria’s fuel subsidy bills.

NNPC receives subsidy payments for its refined product sales in a unique manner. Usually, the government pays companies the difference between the market price and the subsidized price for gasoline and kerosene. Most companies receive payments from the Petroleum Support Fund (PSF), the country’s official fuel subsidy mechanism. NNPC, on the other hand, calculates its own claims and then pays itself out of domestic crude earnings. This effectively exempts NNPC from the PSF’s inter-agency oversight process, in which around a dozen government bodies and agents play roles. NNPC does send its subsidy claims to the Petroleum Products Pricing and Regulatory Authority

3 NNPC 2014 Annual Statistical Bulletin p.iv.

4 PwC, Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC (“the PwC Report”), February 2015, p.12.

(PPPRA) for verification and approval, but the integrity of this process is questionable (see p.A17-A18). The corporation’s legal basis for side-stepping the PSF is not clear, either.⁵ Multiple past investigations have found significant evidence that NNPC subsidy claims, and NNPC fuel imports more broadly, are systematically mismanaged.⁶

As a result, the actual DCA system does a poor job of fulfilling its objectives. The following diagram illustrates how it works in practice, a significant departure from the intended model shown in figure A2:

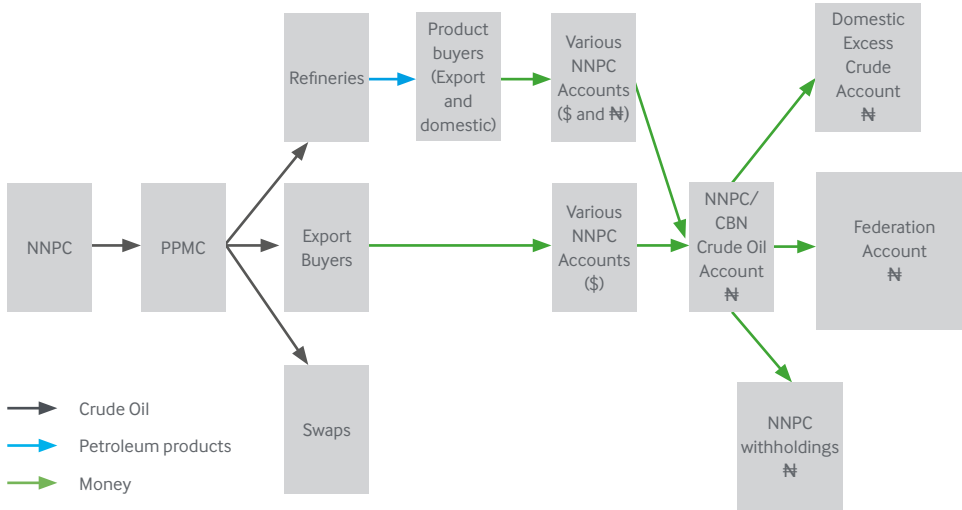


Figure A2. Actual flows of oil, products and cash under the DCA

Note: Flow diagrams for the swaps, which are more complex, appear in annex B.

2. NNPC IS RETAINING MORE DCA REVENUES OVER TIME; THE FEDERATION IS RECEIVING LESS.

For some years, there were anecdotes which indicated that NNPC’s withholdings from domestic crude returns were growing, leaving the Federation Account with less value per barrel.⁷ This was clear cause for concern: every naira retained by NNPC is money that cannot be spent on other national priorities, like power, roads, education and health. Particularly during high-price periods (e.g., 2010-2014, when the oil price regularly topped \$100 per barrel), one would expect the opposite trend—that the flow of each oil sector revenue stream would increase. As discussed in section four, there are also good reasons to question whether NNPC’s use of the retained revenues brings a good return for Nigerian citizens, or whether the funds would be better spent elsewhere.

To better understand the scale of funds not reaching the treasury, we collected and analyzed ten years of DCA-related data. For all but the year 2013, we used DCA sales figures that the Nigeria Extractive Industries Transparency Initiative (NEITI) collected from NNPC and published in its annual audit reports.⁸ Our 2013 figures come from documents that NNPC sent to the Federal Account Allocation Committee (FAAC),

5 A 2012 review of fuel subsidy payments by the Presidency could not find any justification, whether in law, the PSF Guidelines, or any presidential or agency directive, for NNPC unilaterally computing subsidy or withholding it from crude sales earnings. “There is no legitimate backing for the process,” the panel concluded. Nigerian Presidency, Report of the Technical Committee on Payment of Fuel Subsidies (Aigboje Aig-Imoukhuede, chair) (“the Aig Technical Committee Report”), June 2012, p.25.
 6 For more detail, see p.A17-A18 of this annex and Section 5 of annex B about the swaps.
 7 Author interviews with NNPC staff, other government officials, trading company personnel, 2010-2015.
 8 NEITI, Annual Physical, Financial and Process Audits, 1999-2012.

which we were able to authenticate. With this provenance, all of the raw data on DCA volumes and transfer amounts used here are based on information provided to third parties by NNPC itself.

These figures come with some caveats. Some of the conversions from Nigerian naira to US dollars use average annual exchange rates rather than the actual rates used in individual transactions.⁹ NNPC has three months to pay the Federation for domestic crude, so there is an average 90-day time lag between sales and transfers to the treasury. From the available documentation, we could not always discern whether the totals accounted for payments made by NNPC during the subsequent year due to this time lag. Some numbers in the individual columns may not neatly total due to rounding. More importantly, we stress that the figures are not the outcome of any independent audit work. We have not had access to supporting documentation for most of them, and cannot independently verify their accuracy. Given the apparent problems with how NNPC accounts for and reports on domestic crude sales (see p.A11-A16, below), this data and the resulting conclusions should not be read as definitive.

The data is robust enough to indicate trends, and illustrates a dramatically widening gap over time between the sales value of domestic crude, as calculated by NNPC, and transfers of DCA revenues to the Federation Account. In 2004, for example, \$1.6 billion of the total DCA's value failed to reach the Federation Account, or 27 percent of the full value. By 2012, the figure had jumped to a remarkable \$7.9 billion, or 43 percent of the full value. Total withholdings spiked in 2011, the first year of the Goodluck Jonathan administration, and have and remained at this high level since (figure A3).

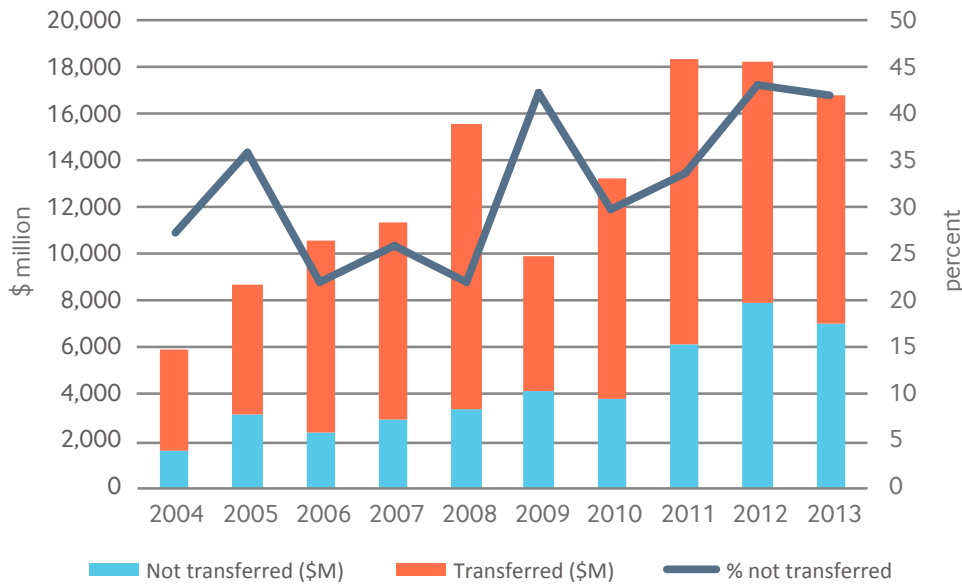
Figure A3. Domestic crude sales earnings versus treasury receipts, 2004-2013

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
(a) Total DCA liftings										
('000 barrels)	151,893	159,899	155,068	157,312	164,724	161,914	166,523	164,454	162,343	156,192
(b) Annual sales value of all DCA liftings, calculated by NNPC										
(₦ million)	759,653	1,145,361	1,258,539	1,431,175	1,809,451	1,451,586	1,954,124	2,776,893	2,812,051	2,657,240
(\$ million)	5,935	8,743	10,599	11,531	15,562	9,903	13,229	18,363	18,260	16,818
(c) Annual transfers to the Federation Account										
(₦ million)	573,483	772,227	1,037,564	1,037,751	1,419,351	850,833	1,391,378	1,835,249	1,594,915	1,551,935
(\$ million)	4,312	5,578	8,235	8,359	12,213	5,788	9,401	12,154	10,357	9,822
(d) Estimated value of DCA oil that did not reach the Federation Account [(b) - (c)]										
(\$ million)	1,623	3,165	2,364	2,992	3,349	4,115	3,828	6,209	7,903	6,996#
percentage of total	27	36	22	26	22	42	30	34	43	42

Sources: For 2004-2012, the data for (a) Total DCA liftings and (c) Annual transfers are taken from NEITI financial audit reports, or are conversions based on average exchange rates. For 2013, the (a) Total DCA liftings and is drawn from the *2013 NNPC Annual Statistical Bulletin*, and (b) Annual sales value and (c) Annual transfers from NNPC Report: *Reconciled Receipts of Domestic Crude Cost*, January 2013-date, and NNPC Report: *Computation of Revenue from Domestic Crude Oil Receipts*, January 2013 to Date. Some columns may not total due to rounding.

9 Average annual exchange rates used were 126:1 (2004), 131:1 (2005), 126:1 (2006), 124:1 (2007), 117:1 (2008), 147:1 (2009), 148:1 (2010), 151:1 (2011), 154:1 (2012), 158:1 (2013).

Or seen graphically:



NNPC’s habit of unilaterally withholding DCA revenues has reached runaway, unsustainable levels. This is especially true now that Nigeria faces an oil price slump, severe budgetary shortages, weakened demand for its crude and rising upstream sector costs.¹⁰ In calling for the DCA to be eliminated, we endorse the concerns PwC auditors expressed in their final report: “If the NNPC overhead costs and subsidies are maintained (assuming crude oil production volumes are maintained), the corporation may have to exhaust all the proceeds of domestic crude oil sales, and may still require third party liabilities to meet costs of operations and subsidies, and may not be able to make any remittances to [the treasury]. . . . We therefore recommend that the NNPC model of operation must be urgently reviewed and restructured, as the current model which has been in operation since the creation of the corporation cannot be sustained.”¹¹

3. NNPC ADMINISTERS THE DCA WITH FEW RULES AND WEAK OVERSIGHT, CAUSING CHRONIC CONFUSION.

NNPC has near-exclusive authority over the use of DCA oil and revenues. Over time, as NNPC increasingly used the DCA for purposes other than those for which it was designed, no one developed adequate rules or oversight processes to govern the added complexity that ensued. NNPC manages the allocation with excessive discretion, especially when it decides how to sell the oil and use the revenues. For its 2010 audit of the corporation’s finances, KPMG concluded that the practice amounted to an “unauthorized extension of credit;”¹² the PwC report likened it to a “‘blank’ cheque” for NNPC.¹³

10 See main report p.16-18 for more on these points.

11 PwC Report p.12.

12 KPMG-S.S. Afemikhe, Review of Claims of the Federal Government of Nigeria’s Indebtedness to the Nigerian National Petroleum Corporation (Project Anchor II) (“the KPMG Review of NNPC Claims Report”), October 2011, sec.3.4.2.

13 PwC Report p.16.

The absence of explicit and agreed rules on the DCA’s operations has led to chronic confusion, evident in decades of controversy and competing claims. The debate over unremitted DCA funds is at least three decades old. More than half—\$12 billion—of the alleged \$20 billion in “missing” revenues queried by then CBN governor Lamido Sanusi in 2012 were from domestic crude. (See box 1 for a fuller account of the Sanusi allegations.) With each round of controversy, the reported losses grow (figure A4). But despite the great toll on the nation’s finances, the Nigerian government has never introduced viable solutions.

Year	Accusation	Action taken
1993	A government committee claimed NNPC had kept back ₦95 million (approx. \$5.5 million) worth of domestic crude earnings in the first six months of the year for unclear reasons. ¹⁴	None apparent
2006	NEITI’s first audit found “remarkable differences” between the value of domestic crude and actual payments to the Federation Account for 1999 to 2004, worth ₦281.7 billion (approx. \$2.7 billion). ¹⁵	None apparent; nearly a decade later, the government set up an Inter-Ministerial Task Team (IMTT) to review NEITI reports and explore options for recouping lost revenues. Progress on this portion of the IMTT agenda has failed to advance.
2006	RMAFC accused NNPC of failing to remit ₦290 billion (approx. \$2.2 billion) in domestic crude revenues between November 2004 and December 2005. ¹⁶	The president set up an interagency review committee; no further action apparent.
2012-2013	Ex-CBN governor Sanusi alleged a 19-month, \$12 billion DCA revenue gap. ¹⁷ See details in Box 1, p.15.	CBN governor sacked; audit by PwC ordered; no change in policy or practice.

Figure A4. Examples of past allegations that NNPC under-remitted DCA revenues, 1993-2013

Unclear rules and processes give NNPC too much discretion

The confusion and weak reporting around the DCA leave unanswered questions, including those listed below. Given the billions of dollars at stake each year, the preponderance of *ad hoc* or weakly established procedures is startling.

Is there a contract between NNPC and PPMC for domestic crude sales?

Setting out the terms of intercompany sales in a written agreement is basic good corporate governance, especially for transactions as large as those in the DCA. Yet NEITI’s latest audit found that “there is no contract in place” between NNPC and PPMC for domestic crude sales.¹⁸ If correct, this begs the question of what legal instrument, if any, dictates how the parties handle DCA sales. The common claim that NNPC underprices oil sold to the refineries (see p.X, below) shows one risk of allowing the corporation to manage the DCA without having basic terms codified in an enforceable agreement.

14 For accounts of the Clement Isong Budget Monitoring Committee, see A.A. Nwankwo, *Nigeria: The Stolen Billions*. Enugu: Fourth Dimension Publishers, 2002, p.112.

15 NEITI, 1999-04 Financial Audit Report, Appendix 5, p.7.

16 *Nigeria Focus*, April 2006 issue.

17 Sanusi Lamido Sanusi, Memorandum Submitted to the Senate Committee on Finance on the Non-Remittance of Oil Revenue to the Federation Account (“the Sanusi Senate Presentation”), February 2014, p.5.

18 NEITI, 2012 Oil and Gas Audit Report p.202.

Is it legal for NNPC to retain DCA revenues?

One cause of confusion is debate around whether NNPC has a legal basis for retaining domestic crude revenue. Some argue that its withholdings violate Section 162 of the 1999 federal constitution, which requires that all centrally collected oil revenues go to the Federation Account. NNPC has not explained the general legal basis for its withholding of DCA revenues, apart from pointing to Section 7 of the NNPC Act, which allows it to keep “a fund” of monies “received by the Corporation in the course of its operations or in relation to the exercise by the Corporation of any of its functions.”¹⁹ Even if the NNPC Act does offer some legal cover – a point subject to perennial debate – it contains no adequate rules to govern the retention and use of such large revenues. Indeed, the act does not give a clear picture of NNPC’s anticipated commercial activities, or how the revenues it generates are supposed to support them.

Are all types of withholdings allowed?

Particular questions have been raised about whether NNPC had been given authorization to withhold revenue in certain circumstances. NNPC did not produce for KPMG auditors any official paper ordering or allowing it to keep a strategic fuel reserve or pay for pipeline protection, for instance.²⁰ More broadly, NNPC officials told NEITI that “the Attorney General of the Federation has advised that cost of operation and other related expense are chargeable to the cost of crude before remittance of the residual to the Federation account.”²¹ In the most glaring example, top officials, including former petroleum minister Diezani Alison-Madueke, admitted to parliament in early 2014 that the corporation had no legal support for its decision to continue selling kerosene at below-market rates after a June 2009 directive from late President Yar’adua called for an end to the kerosene subsidy.²² Since NNPC has a monopoly on the import of kerosene in Nigeria, and withholds all of its purported subsidy costs from DCA revenues—it held back \$3.38 billion in nineteen months, PwC found²³—this leaves the legality of its kerosene subsidy withholdings in doubt.

Why does NNPC have sole authority over disbursements to the Federation Account?

NNPC and CBN are joint signatories to the naira Crude Oil Account. This should give them joint authority over the funds in it, yet NNPC appears to have exclusive say over how money moves. Starting in 2002, CBN began waiting for NNPC to tell it what to transfer to the Federation Account each month.²⁴ The reasons for this change are unclear. Statements made by former CBN governor Sanusi indicate that the CBN even lacks basic information about NNPC’s withholding decisions and the use of the withheld revenues.

19 1999 NNPC Act Sec.7 (4).

20 KPMG Review of NNPC Claims Report sec.1.7, 4.4.

21 NEITI, 2012 Oil and Gas Audit Report, p.330.

22 Some doubts were raised, however, as to the legality of the Yar’adua era directive. For a summary of the competing arguments, see KPMG Review of NNPC Claims Report p.35; PwC Report p.17.

23 PwC Report p.23.

24 NEITI 1999-04 Financial Audit Report, Appendix 5, p.7.

When did NNPC start withholding DCA proceeds to cover its downstream losses?

The limited documents from parliament (2004)²⁵ and NEITI (2006)²⁶ available show different answers to this question. CBN has said it only started reporting NNPC's subsidy withholdings on its monthly Federation Account Component Statements in October 2009.²⁷ It is unclear what policy decision drove this change, whether there were any limitations placed on the amounts, and if so, whether NNPC has observed them.

How much of the unremitted DCA proceeds are recorded as debt from NNPC to the treasury?

For legal and accounting purposes, it is not clear whether CBN, the finance ministry, the accountant-general's office or other agencies involved in oil revenue collection have written off, booked as bad debt, or forgiven some DCA withholdings, and if so, how much. Language in some financial reporting documents for the DCA reads as though no further funds are due.²⁸

Does NNPC have a repayment plan with government for unremitted DCA revenues?

NNPC has occasionally agreed to refund some of the money it withheld from the DCA. In late 2011, for instance, it began repaying to the treasury ₦450.776 billion (approximately \$3 billion) in domestic crude proceeds that it supposedly withheld to pay subsidy costs through 2009.²⁹ NNPC submitted to the payment plan under political pressure from Nigeria's powerful state governors, not based on any broadly applicable rule.³⁰ The *ad hoc* nature of its repayments suggests that no bigger plan exists.

The list of questions could continue, but those provided should serve two purposes: to illustrate the need for clear rules going forward, and to highlight issues that any backward-looking audit should address.

25 Nigerian House of Representatives, Report of the Ad-Hoc Committee To Verify and Determine the Actual Subsidy Requirements and Monitor the Implementation of the Subsidy Regime in Nigeria (Farouk Lawan, chair) ("the Lawan Report"), April 2012, p.158.

26 NEITI, 2006-08 Financial Audit Report p.57.

27 Lawan Report p.158.

28 For example, on the monthly sweeping (i.e. transfer) mandates NNPC sends CBN, NNPC labels the lesser amounts it tells CBN to pay as "Settlement of Domestic Crude Oil Cost." Monthly Federation Account component statements prepared by CBN have a line item marked "under-remittance of funds by NNPC," but the line is left blank. Samples reviewed from 2009, 2013, 2014 and 2015.

29 Federal Ministry of Petroleum Resources, Report of the Petroleum Revenue Special Task Force (Nuhu Ribadu, chair) ("the PRSTF Report"), August 2012, p.66.

30 Author interviews with NNPC and Finance Ministry officials, 2012.

Excessive discretion by NNPC officials leads to poor accounting and reporting practices

The way in which NNPC accounts for and reports on domestic crude sales creates still more confusion. With no effective checks on its powers to collect and spend DCA revenues, NNPC's top officials control the narrative about how much money comes in, and where the money goes. Information-sharing is patchy, both to the public and to other government agencies. This creates further unanswered questions, reflected in the following discussion of some poor practices:

Duplicated withholdings. NNPC appears to have duplicated some expenses when justifying its DCA withholdings, indicating that it claimed the same expense more than once. For example, PwC's auditors found that between January 2012 and June 2013, NNPC double-claimed \$63 million in losses for fuel that it sold at subsidized prices (figure A5).

Item	Total NNPC claim for the period	Total cost items claimed more than once	Percent duplicated
Product losses, 2009*	₦9.75 billion (\$66 million)	₦1.08 billion (\$7 million)	11
Crude oil losses, 2009*	₦9.24 billion (\$63 million)	₦1.72 billion (\$12 million)	19
Pipeline repairs, 2006-09*	₦22.41 billion (\$174 million)	₦75 million (\$23 million)	13

*KPMG Review of NNPC Claims, Sec.4

Figure A5. Examples of duplicated NNPC claims for DCA withholdings

Withholdings without supporting documentation. During past audits, NNPC regularly failed to produce proper documentation—be it invoices, payment vouchers, wire receipts—for large amounts of its DCA withholdings. For the KPMG and PwC reviews, for example, it did not hand over the paper trails needed to verify several hundred million dollars in claims (figure A6).

Item	Total NNPC claim	Not supported by documents	Percentage not supported
Product losses, 2006-2009*	₦85.34 billion (\$661 million)	₦8.06 billion (\$62 million)	9
Pipeline repairs, 2009*	₦15.92 billion (\$108 million)	₦4.52 billion (\$31 million)	28
Strategic fuel reserve costs, Jan. 2012-Jul.2013 ⁺	\$449 million	\$241.1 million	54

*KPMG Review of NNPC Claims, Sec.4
⁺Senate Finance Committee Report p.37

Figure A6: Examples of NNPC claims for DCA withholdings not supported by documentation

Questionable items included in withholdings. NNPC lumps seemingly unrelated expenses together when accounting for its DCA withholdings. Reviewing NNPC's 2006-2009 withholdings, KPMG discovered a range of items that seemed unrelated to the claims, or otherwise should not have been included. For instance, the auditors found that NNPC conflated crude and products lost through technical equipment failures with incidents of sabotage.³¹ It also added general corporate expenses (e.g., vehicle hire,

31 KPMG-S.S. Afemikhe, Final Report on the Process and Forensic Review of the Nigerian National Petroleum Corporation (Project Anchor) – Executive Summary and Main Report (“the KPMG Project Anchor Report”), March 2011, sec.4.1-4.2. The data on 2009 incidences of vandalism that NNPC provided to KPMG does not match the numbers in NNPC's own Annual Statistical Bulletin for 2009. A simple comparison of the two datasets shows NNPC included non-sabotage based incidents in its claims, incorrectly labelling them “vandalizations.”

catering, and unexplained payments to a phone company and a bank) to its pipeline repair and maintenance claims.³² Furthermore, if the general corporate expenses lumped in were covered by NNPC's federally appropriated annual budget, NNPC would have been able to double-claim them.

Non-disclosure of what buyers actually pay for domestic crude. As figures A1 and A2 (p.A2 and A5) show, there are at least three steps between DCA sales and revenue reaching the treasury:

- 1 Buyers of domestic crude pay NNPC for the oil—or for refined products derived from the oil—into various NNPC accounts.
- 2 NNPC periodically transfers funds from these accounts to the NNPC/CBN Oil and Gas Naira Account. It apparently has sole authority to determine the amounts transferred.³³
- 3 Once a month, NNPC mandates CBN to transfer money from the Oil and Gas Naira Account to the Federation Account.

None of the official records we reviewed reveal anything about step 1. In particular, we have not seen any NNPC document that discloses how much buyers of domestic crude actually paid the corporation for the oil they lifted. The main DCA reports that NNPC generates in-house and sends to other government agencies list prices, sales values and payment due dates but not actual receipts.³⁴ Contrast this with the export sales reports, which also show what lifters wired into NNPC's accounts and explain any underpayments.³⁵ NNPC must know what domestic crude buyers pay. But we have seen no evidence that it tells others.³⁶

We asked the corporation if it regularly discloses to any other government body the actual amounts buyers of domestic crude, or refined products gotten from domestic crude, pay into NNPC accounts. We also asked for confirmation that all buyers of domestic crude remit to NNPC the full assessed value of all the oil they lift, as shown on the oil sale records that NNPC shares with other agencies. We received no response.

Former CBN governor Sanusi brought up the secrecy around actual payments for DCA crude in his September 2013 letter to then-President Jonathan about the “missing” oil sales revenues. He asked Jonathan to order “a thorough audit of activity on any domiciliary accounts held by NNPC outside of the CBN,” explaining that this was needed because “the CBN has no record of either the dollar proceeds [held in them] or the naira equivalent being transferred to the Federation Account.”³⁷ Given his role as

32 KPMG Review of NNPC Claims Report sec.4.3.

33 PwC Report p.52.

34 We reviewed the monthly N.N.P.C. Crude Oil Lifting Profile for Domestic Consumption reports from 2005 to 2014 which listed “values payable” for each cargo but contained no information about payments. This is true of all other DCA-related documents from NNPC that we have seen, including its Domestic Crude Reports, Schedules of Payments for Domestic Crude, Statements of Account for the CBN/NNPC Naira Oil and Gas Account, Reconciled Receipts of Domestic Crude Cost, Gas Revenue and Other Miscellaneous Receipts or Computations of Revenue from Domestic Crude Oil Receipts.

35 N.N.P.C. Crude Oil Sales Profiles, 2005-2014. NNPC also sends FAAC a monthly report that lists underpayments by export buyers, but we have not seen any similar document for DCA sales. Samples of NNPC Report: Summary of Export Crude Oil and Gas Sales and Other Receipts, 2009-2014. The export reports also list total “sales receipts” by month, while the DCA documents speak in terms of “crude cost” payable.

36 We examined samples of the monthly reporting packets on oil sales that NNPC sent to CBN, FAAC and the interagency crude oil sales reconciliation committee. For domestic crude, all of them showed only what NNPC paid to the Federation Account, not what buyers paid NNPC.

37 Sanusi Lamido Sanusi, September 23, 2013 letter to H.E. President Goodluck Jonathan (“Sanusi Letter to President Jonathan”), p.2.

chief banker for the Nigerian Federation and one of the president's top advisers on fiscal and monetary matters, the CBN governor should have access to such information.

Sanusi pointed to a significant hole in existing audits of NNPC. NEITI, KPMG and the 2012 report of the Petroleum Revenue Special Task Force (PRSTF) all stopped at comparing NNPC's assessments of what the oil was worth with the much smaller amounts that wound up in the Federation Account each month.³⁸ Read closely, the methodology sections of their reports suggest they did not ask NNPC for records of receipts from buyers.³⁹ PwC says that it did trace financial movements into the various NNPC accounts "to confirm the total amount received from domestic crude sales," but its final report did not say what its auditors found.⁴⁰ Verifying payments is a basic part of auditing sales transactions. The omissions seem especially glaring given the multi-billion dollar revenue shortfalls that happened each year. Notably, the auditors did verify receipts from export sales.⁴¹

Alleged under-reporting of DCA revenues to FAAC

During its 2014 audit, PwC found that the sales figures that NNPC gave FAAC for some DCA transactions were lower than what buyers actually paid. For these sales, the auditors wrote, "after the buyer elects a pricing option under which the purchase will be made, NNPC prepares a separate valuation of the lowest under the three pricing options. NNPC would then report the sale to FAAC using the lowest price valuation while invoicing the off-taker a higher price. We requested for a schedule and valuation documents invoiced to buyers under unutilized crude and Product Exchange contracts during the review period, in order to fully quantify the impact of this practice on the Federation Account. Our request was not granted."⁴² This alleged practice, if true, echoes then-presidential candidate Buhari's statement in December 2014 that NNPC maintains "two sets of books, one for public consumption and another for insiders."⁴³

Incomplete, contradictory explanations for withholdings

Most troubling of all, NNPC's explanation for how it spends unremitted DCA earnings has not been consistent or complete. Prior to the Sanusi scandal, the corporation usually told outsiders that it held back funds to recoup its subsidy-related losses, but did not explain other withholdings.⁴⁴ For the ten years of NEITI and FAAC submissions we analyzed, the subsidy costs NNPC reported were almost always smaller than its total

38 NEITI, 2006-08 Reconciliation Report, Appendix B p.39; NEITI, 2005 Financial Audit Report, Appendix A p.19; NEITI, 1999-04 Financial Audit Report, App.5 p.2f; NEITI, 2009-11 Physical and Process Audit Report, Appendix B,p.29f.; Confidential Draft Report of the Petroleum Revenue Special Task Force, 30 June 2012, p.17f.

39 Ibid.

40 PwC Report p.53.

41 For export cargoes, NEITI for instance checked lifting volumes reported by NNPC against copies of shipping documents, checked assessed prices against invoiced prices, tracked payments for individual cargoes to NNPC's JP Morgan account, and performed random tests of invoices against bank statements to confirm full payment. NEITI, 2005 Financial Audit Report, Appendix A p.7.; NEITI, 2009-11 Financial Audit, Appendix B p.9f, 14.

42 PwC Report p.58.

43 See Pres. Muhammadu Buhari, "It's Time to Rebuild Nigeria," Speech given at the All Progressives Congress (APC) Convention on December 12, 2014, reprinted at: <http://dailypost.ng/2014/12/12/time-rebuild-nigeria-full-text-buharis-acceptance-speech/>. NNPC publicly disputed the claim. Leadership, "NNPC Faults Buhari's Allegation, Says We Don't Keep 2 Account Books," December 12, 2014, available at: <http://leadership.ng/news/394893/nnpc-faults-buharis-allegation-says-dont-keep-2-account-books>.

44 See e.g., PRSTF Report p.13, 59, 66; NEITI, 2009-11 Financial Audit Report, Appendices p.8, 38.

withholdings. The other, unexplained withholdings accounted for anywhere from \$270 million to nearly \$7 billion a year (figure A7).

Item	2004*	2005*	2006*	2007*	2008*	2009*	2010*	2011*	2012*	2013
Total withholdings	1,623	3,165	2,364	2,992	3,349	4,115	3,828	6,209	7,903	6,996#
Subsidy claims (\$ million)	0	0	1,744	1,908	3,079	1,348	2,814	5,204	1,688^	0#^
Other (\$ million)	1,623	3,165	620	1,084	270	2,767	1,014	1,005	6,215	6,996
Percentage unexplained	100	100	26	36	8	67	26	16	79	100

Figure A7. NNPC explanations for DCA withholdings, 2004-2013

* All figures in column taken from NEITI financial audit report for the relevant year, or are conversions based on average exchange rates (see FN 9)
 ^ Uses info NNPC provided contemporaneously to FAAC and to NEITI, not later explanations given to PwC. For PwC's findings, see figure A8.
 ! 2013 NNPC Annual Statistical Bulletin
 # NNPC Report: Reconciled Receipts of Domestic Crude Cost, January 2013-date; NNPC Report: Computation of Revenue from Domestic Crude Oil Receipts, January 2013 to Date
 NB: Data comes with the same caveats explained on p.A6.

In early 2014, officials started attributing the payment shortfalls to downstream-related costs aside from just subsidy payments (see figure A8, p.15). NNPC's monthly reports on DCA revenues to the FAAC now list withholdings for some of these additional expenses.⁴⁵ The additional explanations only surfaced after ex-governor Sanusi's queries focused unprecedented attention on NNPC's DCA withholdings and the corporation was suddenly asked to explain \$10.8 billion in "missing" DCA revenues.⁴⁶ (See box 1 for more background.) But even since then, NNPC has not factored in some items that necessarily would reduce domestic crude earnings—expenses that traders can charge back to the corporation under the provisions of the swaps, for instance.⁴⁷ The CBN ex-governor showed no satisfaction with NNPC's updated explanation, and added that it did not answer some of the deeper issues he had raised. Speaking to the *Financial Times* in 2015, Sanusi said: "My claim was always that these amounts were being withheld illegally and unconstitutionally—not that some explanation cannot be provided or conjured for what they were spent on. [...] Anyone can produce invoices."⁴⁸

45 See e.g., NNPC, Computation of Revenue from Domestic Crude Receipts from January 2014 to Date, August 2014.

46 NNPC told the Senate Finance Committee that "the seeming delay" in it disclosing its subsidy claims for 2012 and 2013 "arises from the intricacies of PPMC operations," adding: "PPMC is a subsidiary of NNPC and a bulk supplier of petroleum products to other marketers. It takes fairly longer amount of time to assemble documentation from ship-to-ship (STS) operations involving coastal marketers and submitting to PPPRA compared to other marketers. This is due to the singular fact that NNPC supplies 100% HHK and about 60% of PMS to the market." The corporation did not explain why it was also late reporting costs for pipeline maintenance and protection, overheads and other costs it supposedly used DCA funds to cover. NNPC, Response to the Memorandum Submitted by the Governor of CBN to the Senate Committee on Finance on the Non-Remittance of Oil Revenue to the Federation Account ("NNPC Response to Sanusi"), February 2014, p 4.

47 Traders with NNPC swap contracts are allowed to recoup certain costs associated with running the deals—freight and demurrage costs, for instance—either in cash or physically, in oil. This means that NNPC necessarily will receive less than full market value for oil lifted under the swaps. For more on this point, see annex B.

48 *Financial Times*, "Nigeria says oil audit answers critics," February 12, 2015, available at: <http://www.ft.com/intl/cms/s/0/063ee2cc-b2c8-11e4-b234-00144feab7de.html?siteedition=intl#axzz3eZ2im4dQ>.

Box 1: The “missing” \$20 billion

On September 25, 2013, then Central Bank of Nigeria Governor Lamido Sanusi wrote a six-page letter to President Goodluck Jonathan, claiming that NNPC had not remitted \$49.8 billion in NNPC oil sales revenues to the Federation Account in the nineteen-month period from January 2012 to July 2013. The controversy that followed illustrates in dramatic fashion the murkiness surrounding NNPC’s management of the DCA.

Sanusi told the president that between January 2012 to June 2013, “76 percent of the value” of oil sold by NNPC had been “diverted from the CBN and the Federation Account” without clear explanations and in “gross violation of the law.” He attached some high-level data supporting his claims and recommended various audits and investigations.⁴⁹

The letter leaked to the press in November. Shortly thereafter, the president set up a reconciliation committee to review Sanusi’s claims, with members drawn from CBN, NNPC and the petroleum and finance ministries. By late December, the committee concluded that NNPC had failed to remit \$12 billion in DCA revenues to the Federation Account from January 2012 to July 2013, not \$49.8 billion as originally stated. Most of the \$49.8 billion, the committee found, went toward traceable operational expenses—joint venture cash calls, for example. It could explain only \$1.2 billion of the \$12 billion, which it said were fuel subsidy withholdings—a figure supported by internal NNPC and CBN documents.⁵⁰ This left \$10.8 billion unaccounted for. NNPC, which attended the reconciliation meetings, did not dispute the committee’s findings.

One month later, however, the corporation offered a new story. Convening a press conference at its Abuja headquarters, NNPC’s top officials told reporters that subsidy expenses in fact totaled \$8.49 billion, and that the \$10.8 billion also covered various other downstream expenditures.⁵¹ (See figure X for a list). NNPC gave this same explanation to the Senate Finance Committee in February 2014—around the same time that President Jonathan suspended Sanusi for alleged “financial recklessness and misconduct.” Once again, less than a month later, the corporation’s figures were different—sometimes by as much as \$270 million.⁵² The senate committee endorsed NNPC’s latest explanation in May 2014, with mostly small changes.⁵³

The president’s office hired PwC to look into the matter in June 2014, and the firm submitted its report to the auditor-general’s office on November 28th. PwC said that in January 2015 it was “recalled by the Auditor General for the Federation and asked to visit with NNPC (the nominal Auditee) to share our key findings and receive feedback from them.” During this process, NNPC once again produced documents showing different numbers—some items departed from its last submissions by over a billion dollars.⁵⁴

The Jonathan government released the PwC report in April 2015—one day after then president-elect Buhari vowed to do so. The report is a useful document, as it provides further detail on the sheer scale of discretionary spending by NNPC. However, the PwC audit suffered from several problems, including limited terms of reference. The final report does not touch many of the claims Mr. Sanusi presented to parliament in 2014—for instance, regarding the terms and management of oil-for-product swaps.⁵⁵ PwC relied mostly on documents (from NNPC and other agencies) that that it did not or could not authenticate. At times NNPC did not grant auditors access to the data or people they for which they had asked. At the front of their report, PwC authors included among the many caveats a statement that their work was “not an examination or a review in accordance

49 Sanusi letter to President Jonathan.

50 2012 NNPC oil revenue sweeping mandates to CBN and CBN Federation Account Component Statements.

51 *Vanguard* Nigeria, “How we spent \$10.8 bn oil revenue – NNPC,” January 17, 2014, available at: <http://www.vanguardngr.com/2014/01/spent-10-8bn-oil-revenue-nnpc/>.

52 Senate Finance Committee, Report on the Investigation of the Alleged Unremitted \$49.8 Billion Oil Revenue By Nigerian National Petroleum Corporation (“the Senate Finance Committee Report”), p.35f.

53 *Ibid.*

54 PwC Report p.8.

55 See Sanusi Senate submission p.7f.

with generally accepted auditing standards or attestation standards,” and that they could not vouch for “the information upon which [their] work was based.”⁵⁶ But the PwC audit cannot, and most likely will not, be the final word on this controversy. President Buhari already has said he’ll probe the “missing” \$20 billion.⁵⁷

To date, Sanusi’s inquiries have led to five different accounts of what happened to the \$10.8 billion, none of which can be taken as definitive (figure A8). While debates around precise figures likely will continue, the picture of DCA revenues remains murky.

Item	Sanusi and 2012 docs	NNPC, Jan. 2014	NNPC, Feb. 2014	Senate Finance Committee report	PwC
Total DCA value	28.0	Not stated	Not stated	Not stated	28.22
Remitted to Federation Account	16.0	Not stated	Not stated	Not stated	15.99
Subsidy	1.2	8.49	8.76	8.76	8.70
Crude oil and product losses	0	0.72	0.76	0.81	0.83
Pipeline maintenance and protection	0	1.22	0.91	0.88	0.49
Strategic fuel reserve	0	0.37	0.46	0.22	0.14
Other overheads	0	0	0	0	2.81
Unexplained	10.8	0	0	0	0
TOTAL unremitted	10.8	10.80	10.89	10.86	12.23

Figure A8. Five conflicting explanations for NNPC’s DCA withholdings from January 2012 to July 2013 (\$ billion)

NB: Some numbers may not tally due to rounding by the authors.

4. NNPC SPENDING FROM THE DCA DELIVERS POOR VALUE, SHOW SIGNS OF MISMANAGEMENT.

Concerns have also arisen around how NNPC spends DCA revenues, and whether it uses the huge sums it withholds in ways that achieve value for money. This is a crucial question: every naira spent by NNPC is a naira that never reaches the national treasury.

NNPC has claimed that its withholdings from the DCA went to cover the following expenses:

- its losses from selling gasoline and kerosene at subsidized prices
- recouping the value of oil and petroleum products lost from PPMC’s 5,000-kilometer pipeline network due to sabotage
- expenses NNPC incurs to maintain and protect the pipelines
- the costs of keeping a 90-day strategic fuel reserve for the nation; and miscellaneous overheads and operational costs⁵⁸

(For numbers and a sense of the scale of each, see figure A8, this page.)

56 For more on the audit, see <http://www.resourcegovernance.org/news/blog/nnpcs-blank-check-pwc-nigeria-audit-and-upcoming-research-nrgi>.

57 *Vanguard Nigeria*, “I’ll probe NNPC’s missing \$20 billion – Buhari,” April 27, 2015, available at: <http://www.vanguardngr.com/2015/04/ill-probe-nnpcs-missing-20bn-buhari/>.

58 PwC Report p15f.

Each category of spending prompts questions around value-for-money:

Fuel subsidy claims

The fuel subsidy is by far the largest black box in DCA revenues, totaling a reported \$8.76 billion in DCA earnings in just nineteen months. The method for verifying the appropriateness of these subsidy claims is flawed, and past practice suggest that the amounts withheld for subsidy payments may exceed what they should be.

The main institutional check on this spending comes from PPPRA, which vets and approves NNPC's claims. NNPC argues that this step guarantees the claims are accurate, but in reality the process seems deeply flawed. PPPRA's review of NNPC subsidy claims is a classic example of the corporation carrying on without effective checks against mismanagement. Past examinations found grave errors and abuses of discretion in the process, most notably:

- NNPC as a matter of course made—and PPPRA approved—subsidy claims based on import volumes, rather than volumes of products physically evacuated from fuel storage depots, as PSF guidelines require.⁵⁹
- PPPRA's work is a "book keeping verification exercise rather than physical verification of products and claims."⁶⁰
- NNPC claimed—and PPPRA approved—subsidy on fuel from its refineries as if the fuel were imported. It regularly collected freight, finance and port charges on refinery products, even though it never paid these to any third party.⁶¹ NNPC also added in an unauthorized "pipeline tariff" that private marketers cannot claim under the PSF.⁶²
- As with other DCA withholdings, NNPC could not provide PPPRA with adequate supporting documentation for all of its claims. The agency disallowed ₦163.65 billion for this reason in 2007-09 alone.⁶³
- At other times PPPRA signed off on claims with incomplete paper trails for reasons it did not explain.⁶⁴
- NNPC sometimes withheld DCA funds for subsidy before it sent a corresponding claim to PPPRA for approval.⁶⁵
- NNPC regularly ignored PPPRA's approvals and kept back extra funds—as much as ₦285 billion in 2011, for example.⁶⁶
- PPPRA told parliament in 2012 that NNPC consistently claimed to import more product than PPPRA verified and approved, sometimes close to one billion liters in a year.⁶⁷

59 KPMG Project Anchor Report sec.6.3; Senate Finance Committee Report p.20.

60 Senate Finance Committee Report p.54.

61 KPMG Project Anchor Report sec.6.3.2.

62 KPMG Review of NNPC Claims Report sec.3.1.

63 KPMG Project Anchor Report sec.6.3.6. Payments for many shipments did not have vessel notices of readiness to discharge (NoRs) attached as supporting documentation. Id sec.6.3.9.1. PPMC paid suppliers for products without evidence of certificates of discharge. Id. sec. 6.3.9.2.

64 KPMG Project Anchor Report p.6.3.

65 Id p.47.

66 KPMG Project Anchor Report sec.6.3; Lawan Report p.82.

67 Lawan Report p.165.

The most thorough probes to date—one in 2010, two more in 2012⁶⁸—raised serious doubts about the integrity of NNPC’s revenue withholdings. Relying on the corporation for most of their information, the examiners saw signs of “substantial product losses and other control weaknesses,”⁶⁹ together with huge calculation and payment anomalies. Reported annual figures can vary by several billion dollars (figure A9). KPMG found that in the 2007-2009 period, NNPC paid itself ₦885.89 billion (approx. \$6.7 billion) in subsidy on 15.6 billion liters of gasoline, kerosene and diesel that “apparently were not available to the Nigerian market.” This added up to 36 percent of all fuels that NNPC claimed it imported during the period, and 35 percent of its total subsidy claims.⁷⁰

Source	Amount
NNPC presentation to parliament (cited in Lawan report p.156)	₦586 billion
PRSTF (p.76)	₦732.87 billion
Technical committee on fuel subsidies (Aig Technical Committee Report p.12)	₦764.94 billion
NEITI (2009-2011 Process Audit, Appendix D, p.8)	₦786 billion
Sanusi presentation to Senate Finance Committee (cited in Lawan p.158)	₦844.94 billion

Figure A9: Five conflicting published totals for NNPC’s 2011 fuel subsidy withholdings

Pipeline protection costs

The case for letting NNPC deduct pipeline protection costs is even weaker, as spending for this purpose does not seem to buy security. PPMC initially hired community members as guards, but then brought in the military after the local guards started breaking into the lines themselves. Under the soldiers’ watch, sabotage “continued unabated.”⁷¹ NNPC then took a new tack in 2011, reportedly signing pipeline protection contracts with ex-Niger Delta militant leaders worth at least \$39.5 million a year.⁷² Government touted the deals as effective tools in the fight against oil theft, yet NNPC’s own data shows pipeline losses actually went up after the new contracts started (figure A10).⁷³ By mid-2012, the corporation was avoiding using its own pipelines, and supplying oil to the Warri refinery by ship through an opaque, costly arrangement described below. A similar arrangement for Port Harcourt followed quietly in 2014.

Item	2010	2011	Percentage increase, 2011 over 2010
Value of Port Harcourt refinery pipeline losses (₦ billion)	6.43	21.86	340
Value of Warri refinery line losses (₦ billion)	10.42	60.65	582
PPMC crude oil pipeline losses (barrels per day)	4,854	17,718	365
PPMC crude oil pipeline losses (percentage of total deliveries)	5.2	14.2	273

Figure A10. Refinery crude oil pipeline losses, 2010 versus 2011

Sources: NNPC responses to PRSTF, 2012; NNPC 2010 and 2011 Annual Statistical Bulletins

68 KPMG Project Anchor Report; Aig Technical Committee Report; Lawan Report.

69 KPMG Project Anchor Report sec.6.3.

70 Id. sec.6.3.4.

71 KPMG Review of NNPC Claims Report sec.4.4. For more on the role of officers of the military Joint Task Force (JTF) for the Niger Delta in oil theft, see Stakeholder Democracy Network, Communities Not Criminals: Illegal Oil Refining in the Niger Delta, October 2013, available at: <http://www.stakeholderdemocracy.org/sdn-report-communities-not-criminals-illegal-oil-refining-in-the-niger-delta/>.

72 *Wall Street Journal*, “Nigeria’s Former Oil Bandits Now Collect Government Cash,” August 22, 2012, available at: <http://www.wsj.com/articles/SB10001424052702304019404577420160886588518>. NB: From available evidence, it is not clear that NNPC made payments for these contracts out of domestic crude proceeds. Two ex-militants who managed one of the companies with a contract claimed NNPC typically paid them late, and had not paid in full. Author interviews, 2012.

73 The Senate Finance Committee also found that PPMC’s reported surveillance costs rose precipitously in 2013 over 2012 “without a corresponding decrease in pipeline oil losses.” Senate Finance Committee Report p.37.

Transportation of crude oil to the refineries

In August 2014, Nigeria’s petroleum minister told a U.S. audience that NNPC was spending an average of \$7.52 per barrel to transport domestic crude to the Port Harcourt and Warri refineries by ship.⁷⁴ Figures in the PwC report suggest the Warri arrangement cost at least \$43.6 million over nineteen months, though the number is not sufficiently broken down to show whether it included all associated costs.⁷⁵

NNPC began delivering crude oil to the Warri refinery by water in 2011, supposedly due to high theft from the refinery’s supply pipeline.⁷⁶ A similar arrangement for the Port Harcourt refinery commenced in 2014. Under the Warri arrangement, PPMC contracted PPP Fluid Mechanics Ltd., a private Nigerian company, to manage deliveries to the refinery. The company chartered a “very large crude carrier” (VLCC) that could hold roughly 2 million barrels of crude. Once it arrived offshore of the Niger Delta, the VLCC would begin lifting domestic crude barrels from the Escravos oil terminal—usually about a million barrels at a time. It would then travel to a point close to the mouth of the Forcados River, where it would anchor. Soon thereafter, smaller shuttle vessels would arrive and take crude from the VLCC by ship-to-ship transfer. They would then transport the oil up the Forcados River to the Warri refinery jetty for discharge to the refinery.⁷⁷ The Port Harcourt arrangement works in similar ways, but with different vessels and locations.⁷⁸

Public information about the refinery transport deals is scarce, yet what information is available raises concerns about the deals’ structure and management. A cost of \$7.52 per barrel, if accurate, is an expensive average fee, especially compared to PPMC’s charge to the government of only ₦0.30/liter (or roughly \$0.03 per barrel) to move oil through the refinery supply pipelines.⁷⁹ PPMC does not seem to have held a competitive, open tender to award the original transport deals.⁸⁰ At no time has the government disclosed the terms of the contracts it has with the companies involved. It is not known, for example, what costs make up the purported \$7.52 per barrel, nor if or how PPMC keeps watch over the flows of oil or cash involved in the deals. Government also has not disclosed how much oil the contractors lifted. PwC and NEITI’s published figures for 2012 differed by more than two million barrels—11,637,246 barrels versus 13,874,531, respectively.⁸¹ Some of the vessels involved sat anchored offshore—presumably at a significant cost to the nation—for long periods when NNPC was not sending crude to the refineries.⁸² NNPC records also show that the corporation

74 *Platts*. “Nigeria’s refining costs up on transporting crude oil by ship: minister,” August 6, 2014, available at: <http://www.platts.com/latest-news/oil/lagos/nigerias-refining-costs-up-on-transporting-crude-26851625>

75 PwC Report p.90.

76 This was not the first time the Nigerian government transported crude oil to the refineries by ship. The Abacha regime used a similar arrangement between 1993 and 1998. Nigerian Presidency, Report of the Special Committee on the Review of Petroleum Products Supply and Distribution (“the Gbadamosi Report”), October 2000, p.27.

77 Description based on satellite vessel tracking data viewed by author, 2011-14 NNPC oil sale records and crude oil loading data obtained from export terminals. Copies on file with NRG1.

78 *Id.* For more description of the deal’s mechanics, see *This Day*, “How Crude Oil Swaps, OPAs Stalled NNPC Refinery Operations,” June 21, 2015, available at: <http://www.thisdaylive.com/articles/how-crude-oil-swaps-opas-stalled-nnpc-refinery-operations/212663/>.

79 Federal Ministry of Petroleum Resources, Report of the Refineries Special Task Force (Kalu Idika Kalu, chair) (“the Kalu Task Force Report”), 2012, p.42.

80 The arrangements were re-tendered in 2013, but the results, if any, were not announced. See: <http://www.nnpcgroup.com/Portals/0/Invitation%20for%20Pre-qual%20using%20marine%20vessels%20from%20bonny%20to%20okrika%20jetty.pdf>.

81 PwC figure based on lifting data shown in PwC Report Appendix 6.1.1; NEITI 2012 Oil and Gas Audit Report p.109.

82 Finding based on a comparison of NNPC oil sale records with commercial tanker reports viewed by author,

kept pumping crude through the Escravos-Warri refinery pipeline well after the ship transports started—even though they supposedly were set up because too much oil was being lost from the line.⁸³ We sent PPP Fluid Mechanics director and shareholder Captain Idahosa Wells Okunbo a letter asking for information about the refinery supply arrangement but did not receive a reply.⁸⁴

Miscellaneous overhead

NNPC claims that it draws on DCA revenues to pay some of its general operating expenses. For instance, officials told PwC’s auditors that between January 2012 and June 2013, NNPC retained domestic crude earnings to cover \$1.5 billion in salaries, \$480 million in “monthly operations,” and \$810 million in “other third party payments (including training course fees, estacode [a Nigerian government term for travel expenses], and consultancy fees).” They apparently booked these costs as related to pipeline maintenance, though the PwC report does not make clear the provenance of the claimed expenses.⁸⁵

The report did not break down the charges in any detail. From available information, we cannot discern whether some of them were, or should have been, covered by NNPC’s annual budgetary subvention from the Federal Government. Spending such large sums to bankroll the corporation’s lossmaking, mismanaged subsidiaries—PPMC especially—is a poor use of public money. Moreover, NNPC only declared these costs to PwC after the auditor’s submitted their initial findings to Nigeria’s auditor-general in November 2014. According to PwC, in January 2015 NNPC produced documents showing the extra \$2.81 billion in expenses, saying it had “understated [...] amounts incurred by the Corporation’s subsidiaries” in its initial submissions for the audit. PwC reviewed the documents and subsequently revised its figures for the final, released report.⁸⁶

5. NNPC ENGAGES IN CONFLICT OF INTEREST BEHAVIOR IN MANAGING THE DCA.

The DCA features a built-in conflict of interest. When NNPC COMD allocates “domestic crude” on an intercompany basis to PPMC, whether for use in refining, swaps or export sales, it creates a situation in which NNPC acts as buyer and seller, through its subsidiaries. This leaves COMD officials with no incentive to charge top prices to PPMC. Indeed, a shelf’s worth of past audits and investigations—most of them ordered or supported by the Nigerian government—have raised the following two main concerns in this area:

NNPC may use low exchange rates to convert dollar payments into naira.

NNPC negotiates, invoices and takes payment for all domestic crude sales in dollars, but then converts earnings into naira before releasing them to the Naira Crude Oil Account for eventual credit to the Federation Account. Various inquiries and press reports have claimed that NNPC employs dollar-to-naira conversion rates that are lower than CBN’s

other market intelligence data, and satellite vessel tracking data viewed by author. Copies on file with NRGi.

83 In October and November 2013, for example, NNPC sent 159,191 bbls of Escravos crude worth \$17.6 million through the line. NNPC domestic crude profiles, October and November 2013.

84 NRGi May 2015 letter.

85 PwC Report p.30, 96.

86 Ibid.

official advertised rates when it computes the conversions.⁸⁷ By doing this, NNPC reduces how much it owes the federation for barrels of domestic crude. NEITI suggested losses from these conversions were as high as \$217 million per year for 2009 to 2011.⁸⁸ NNPC denies that it engages in this practice,⁸⁹ and some audit work suggests the gap between CBN rates and those NNPC uses shrunk in recent years.⁹⁰

NNPC may sell itself crude for the refineries at “discounts.”

By comparing data from export and refinery sales, a number of government probes of the DCA found that the refineries consistently enjoyed lower per barrel prices than export buyers.⁹¹ Explanations for this have varied. According to some, NNPC picks the most favorable of the three available price options retroactively when paying for its refinery oil. By not gambling on the options, as other buyers do, it secures better prices over time.⁹² Others claimed more ambiguously that NNPC grants itself “discounts” on the refinery oil, but left the exact mechanics unexplained.⁹³ Estimates of discount-related losses from 2002 to 2011 ranged from \$22 million to \$460 million per year.⁹⁴ In their examinations of 2012 and 2013, authors of PwC and NEITI’s most recent reports pointed out a number deliveries to the refineries that NNPC priced at levels below the monthly official selling prices (OSPs) set by NNPC COMD.⁹⁵

NNPC responded that it has paid “market price”—a somewhat malleable and non-specific term—for all crude piped to the refineries since October 2003.⁹⁶ The corporation argued (correctly) that at least some of the audits relied on questionable assumptions and comparisons, and further that any differences in price resulted from the complexities of OSP pricing. NNPC produced its own figures showing that there is no pattern of lower priced refinery sales.⁹⁷ Given these opposing accounts, the question remains open year after year.

These potential challenges —though they need attention—are not the crux of why the DCA delivers so few dollars per barrel for Nigeria. They relate to how NNPC values barrels of domestic crude up front, not whether it turns over the full value to the treasury at the back end.

87 See e.g., NEITI, 2006-08 Reconciliation Report, Appendix B, p.51; PRSTF Report p.63.

88 NEITI, 2009-11 Core Audit Report, Appendix B, p. 31.

89 NNPC, Further Responses to the Observations of Forensic Examiners (“NNPC Responses to KPMG Project Anchor Report”), p.46.

90 See e.g., PRSTF Report p.64.

91 See e.g., NEITI, 2006-2008 Reconciliation, Appendix B, p.52; KPMG Project Anchor Report sec.3.4.3.

92 NEITI 2006-2008 Financial Audit, p.18, KPMG Project Anchor Report sec.3.4.3.

93 See e.g., Lawan Report p.12, 101.

94 See e.g., KPMG Project Anchor Report sec. 3.4.3 (claiming that retroactive pricing cost government \$67 million in three years); Lawan Report p.101 (reporting N108.648 billion in “discounted sales” between 2009 and 2011); PRSTF Report p.68 (calculating \$4.6 billion in losses between 2002 and 2011).

95 NEITI, 2012 Oil and Gas Audit Report, Appendix 9.3.4.3; PwC Report p.141.

96 In that month, President Obasanjo canceled a long-time subsidy on NNPC refinery oil, issuing a directive that all future refinery sales would “attract the prevailing international market price.” Office of the President, PRES/158, to Group Managing Director, NNPC, dated October 9, 2003. Before then, NNPC had paid fixed fees ranging from \$9.50 and \$22/bbl.

97 NEITI 2006-08 Reconciliation Report, Appendix B, p.53; NNPC Responses to KPMG Project Anchor Report, p.46.

CONCLUSION

This section of the report has demonstrated why the DCA should be eliminated and replaced with purpose-fit and clearly articulated mechanisms for financing NNPC operations and providing crude to Nigeria's refineries. Given the scale of the revenue waste, the DCA is a sensible place to start in a broader effort to turn NNPC into a profitable, commercially oriented, accountable national oil company.

Upon eliminating the DCA, the Nigerian government would need to identify new mechanisms for supplying oil to the refineries, funding NNPCs operational expenses, and delivering adequate petroleum products into the country. In the main report, we offer a number of proposals for how to pursue these tasks. Broadly speaking, the reform should proceed on two tracks: immediate measures to reign in bad practices, and longer-term steps to address the fundamental dysfunctions inherent to the current NNPC system. Some of the near term recommendations, to complement the elimination of the DCA, would include:

- Establishing a clear legal mechanism that governs NNPC revenue withholdings
- Placing strict legal and operational limits on extra-budgetary spending by NNPC
- Limiting sales of oil to the refineries to their actual needs; excluding PPMC from sales
- Reviewing and revising the refinery oil marine transport arrangements
- Targeting impunity by auditing and investigating problem areas, including the spending of DCA receipts by NNPC, the swaps and the NNPC fuel supply chain
- Publishing more information about NNPC oil sales, including sales to the refineries

The more fundamental reforms would involve:

- Eliminating the fuel subsidy
- Removing NNPC as a commercial player from the downstream sector
- Developing and implementing a road map for restructuring and commercializing NNPC