





# EIRA

## ENERGY INVESTMENT RISK ASSESSMENT

2021

# ECOWAS-THE GAMBIA

COMMON RULES FOR **GLOBAL ENERGY SECURITY**

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**THE GAMBIA-ECOWAS EXTENDED ENERGY INVESTMENT RISK ASSESSMENT 2021**
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# ABOUT THE INTERNATIONAL ENERGY CHARTER

In the early 1990s, after the end of the Cold War, the Dutch Prime Minister at the time, Ruud Lubbers, took the initiative to establish cooperation in the field of energy between the East and the West. This paved the way for the Energy Charter Treaty (ECT) which was signed in December 1994 at Lisbon and entered into force in April 1998.

The ECT establishes a unique multilateral legal framework for facilitating international energy cooperation. Its key principles, namely, openness of energy markets, investment protection and non-discrimination stimulate foreign direct investment and cross-border trade. As of 1 April 2021, the ECT has 56 Signatories and Contracting Parties (including the European Union and Euratom).

The *International Energy Charter* is the informal working name of the Energy Charter Conference, its subsidiary bodies and the ECS. The name was adopted in 2016 to better reflect the global nature of the Organisation.

The Energy Charter Conference is the governing and decision-making body of the Organisation. Each year its Chairmanship is entrusted to a different Contracting Party of the ECT. In 2021, Armenia holds the Chairmanship. The 99 Members and Observers of the Energy Charter Conference represent governments and regional intergovernmental organisations from six continents, including all significant energy producing, transit and consuming regions.

The Energy Charter Secretariat is based in Brussels, Belgium. It is headed by Secretary-General Urban Rusnák. The main functions of the Secretariat include:

**Providing administrative support and facilitating the work of the Energy Charter Conference and its subsidiary bodies;**

**Monitoring the implementation of the ECT;**

**Assisting governments in enhancing their investment climate through various instruments;**

**Offering support for dispute settlement and conflict resolution;**

**Developing regulation and model agreements for cross-border energy projects;**

**Organising capacity building and training sessions related to the ECT;**

**Assisting Observer countries with ECT accession.**

# FOREWORD

The Gambia signed the International Energy Charter in 2017 and has since demonstrated its commitment to the Energy Charter Process, participating in its various activities. It has cooperated intensively with the Energy Charter Secretariat on the Energy Investment Risk Assessment (EIRA) report since 2018. EIRA assists policy-makers in identifying and mitigating legal and regulatory risks to investment in the energy sector. Its objective is to assist the Members and Observers of the Energy Charter Conference in attracting and retaining investment to the maximum extent possible.

Given the high added value of the technical assistance provided through EIRA, in 2021, the Ministry of Petroleum and Energy of The Gambia requested the Energy Charter Secretariat to develop an extended EIRA country risk report. This extended report provides in-depth recommendations on reducing legal and regulatory risks in The Gambia's energy sector and identifies measures to ensure affordable and reliable access to clean energy.

The Gambia's extended EIRA Country Profile has been developed under the purview of the AGoSE technical assistance project to improve governance in the energy sector of the Economic Community of West African States (ECOWAS) and the ECOWAS Commission. The AGoSE project is funded by the European Union (EU) and implemented by ECOWAS with the support of various partners. We are grateful to the EU, ECOWAS, and the Ministry of Petroleum and Energy of The Gambia for this collaboration and their support of the EIRA report. We hope that this report will give an impetus to policy, legal, and regulatory reforms to attract and retain investment in The Gambia's energy industry.

The Extended EIRA Country Profile of The Gambia reflects on the progress made by the Government of The Gambia in meeting its energy priorities. I am pleased the findings of this report signal that the country is revitalising the energy sector, securing affordable and reliable energy access, and working towards its international commitments under the Paris Agreement. To this end, in 2021, The Gambia submitted to the UNFCCC Secretariat its final updated NDC with progressive climate change adaptation and mitigation plans and $CO_2$ emission reduction targets.

I hope that the 2021 Extended EIRA Country Profile of The Gambia will assist the Government of The Gambia in making correct policy choices and driving the implementation of much-needed reforms to ensure the Gambian people have access to affordable, reliable and clean energy.

**Urban Rusnák**
Secretary-General
Energy Charter Secretariat
Brussels

# MESSAGE FROM THE NATIONAL FOCAL POINT

The Government of The Gambia adopted the International Energy Charter as a declaration of its political will to strengthen global energy cooperation, and enhance its investment climate to attract investments in the energy sector, which is in the middle of a major transition as the government recently adopted a Strategic Electricity Roadmap to guide the development of the sector from 2021 to 2040. The electricity roadmap outlines the investment requirements to achieve universal electricity access by 2025.

As the National Focal Point for the International Energy Charter, the Ministry of Petroleum and Energy has been participating in the Energy Investment Risk Assessment (EIRA) of the Energy Charter Secretariat since its flagship publication in 2018. EIRA provides an analysis of the existing policies and legal and regulatory frameworks related to energy investments, and evaluates specific risks affecting energy investments that can be mitigated by reforming and aligning the national energy policies and legal framework with international best practices and principles.

I wish to thank the Energy Charter Secretariat and partners for supporting The Gambia's participation in the EIRA process. I look forward to more fruitful collaborations with the Energy Charter Secretariat, especially in the areas of investment promotion and protection, policy dialogue, energy efficiency, and capacity development, as The Gambia begins implementation of its Strategic Electricity Roadmap (2021-2040).

**Hon. Fafa SANYANG**
Minister of Petroleum and Energy

# ABBREVIATIONS

| | |
|---|---|
| BIT | Bilateral Investment Treaty |
| ECN | Energy Commission of Nigeria |
| ECOWAS | Economic Community of West African States |
| ECS | Energy Charter Secretariat |
| ECT | Energy Charter Treaty |
| EIRA | Energy Investment Risk Assessment |
| EITI | Extractive Industries Transparency Initiative |
| FDI | Foreign Direct Investment |
| GWh | Gigawatt Hour |
| IECh | International Energy Charter |
| IPP | Independent Power Producers |
| kV | Kilovolt |
| MDA | Ministries, Departments and Agencies |
| MW | Megawatt |
| MWh | Megawatt Hour |
| NAWEC | National Water And Electricity Co. Ltd |
| PV | Photovoltaic |
| TES | Total Energy Supply |
| USD | United States Dollar |

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# RISK AREAS AND INDICATORS FOR EIRA

EIRA evaluates risks to energy investment that can be mitigated by adjusting policy, legal and regulatory frameworks. The performance of countries against the EIRA risk areas is evaluated through four indicators. The indicators reward countries for sound regulation and efficient processes, and capture their ability to cope with the risks through predictable policy objectives, transparent decision-making, strong public institutions, competent market oversight mechanisms, and the successful resolution of investor-State disputes.

## What are the risks assessed by EIRA?

EIRA analyses the following risk areas:

**Unpredictable policy and regulatory change**
Governments reserve the right to adopt policy and regulatory measures that are necessary to pursue legitimate public policy objectives. Nevertheless, unsystematic and arbitrary modifications can detrimentally affect the interests of foreign investors. They can lead to increased or stranded costs for operating a business, reduced attractiveness of investment, and an overall distorted competitive landscape. Foreign investors may reconsider investing in the country or relocate the investment. It follows that in exercising their right to regulate, governments must make investors aware of the conditions and nature of policy and regulatory changes.

**Discrimination between domestic and foreign investors**
Foreign investors need clarity on the extent to which markets are competitive and whether they offer a level playing field. While discrimination can take various forms, e.g. between energy resources, technologies and types of investors, EIRA focuses on discrimination between domestic and foreign investors. This risk area assesses the likelihood of an unfair advantage to local investors, as recipients of rights and privileges, to the exclusion of foreign investors, and "protectionist" practices that give rise to foregone investment gains.

**Breach of State obligations**
Disputes brought by investors against a State can disrupt the relations between the two parties and even damage the overall investment climate. Investors must have confidence that they will have recourse to mechanisms for dispute resolution and the enforcement of rights if governments default on their obligations. Such obligations include protection against discrimination, expropriation and nationalisation, breach of investment treaties, and limited access to alternative dispute settlement avenues.

## How are the EIRA indicators selected?

The indicators are constructed from a wide range of variables. They are premised on the objective of governments to guarantee investors a secure, favourable, and transparent investment environment.

Five criteria are applied to determine the appropriate indicators:

**Functionality/actionability** – The indicators are "reform-oriented". They reflect best practices through which countries can manage the risks, and capture aspects of policy-making and regulation that are under the control of governments.

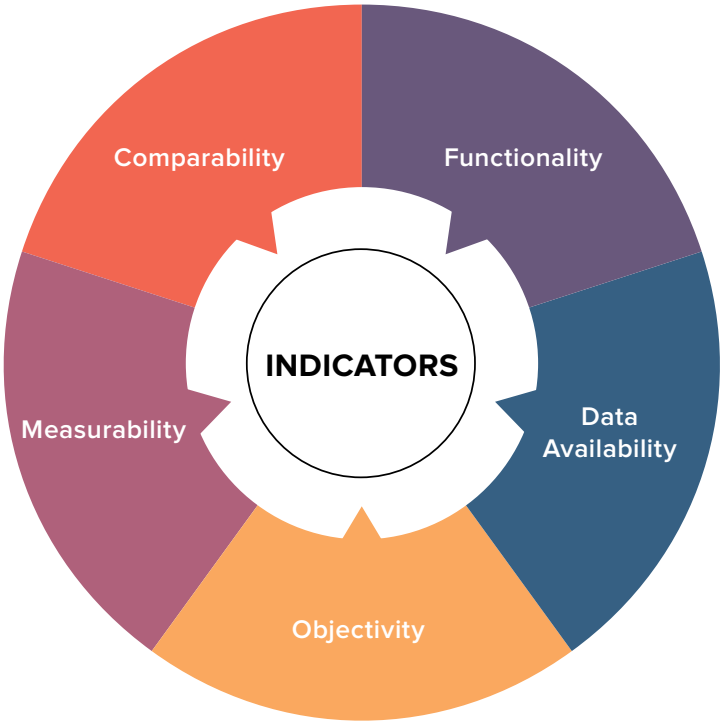
**Data availability** – Data for the indicators is available from sources that are reputable and reliable. The indicators are based on data that is relevant, readily accessible and easy to collect.

**Measurability** – The indicators provide a quantifiable assessment, are robust, and unaffected by minor changes to their construction methodology.

**Comparability** – The indicators remain comparable over time, and across countries, energy sub-sectors, and the energy value chain.

**Objectivity** – The indicators reflect an accurate overview of the policy, regulatory and legal reality in the countries.

Figure I.1 – Criteria for selection of indicators




## What are the EIRA indicators?

Based on the above criteria, the EIRA indicators developed are:

- Foresight of policy and regulatory change
- Management of decision-making processes
- Regulatory environment and investment conditions
- Rule of law (compliance with national and international obligations)

The indicators apply to more than one risk, and consist of two sub-indicators each. They measure the ability of governments to identify whether the assessed risks exist, and the extent to which they can mitigate these risks. The indicators reward countries for taking concrete measures to manage and limit arbitrary or discriminatory policy changes, and for reducing the possibility of breaches of State obligations. Such measures include setting long-term policy objectives and goals, ensuring transparency in decision-making, granting equal treatment to domestic and foreign investors, and effectively managing disputes with foreign investors.

Table I.1 – Correlation between EIRA risk areas and indicators

| RISK AREAS | INDICATORS | | | |
|---|---|---|---|---|
| | Foresight of policy and regulatory change | Management of decision-making processes | Regulatory environment and investment conditions | Rule of law |
| **Unpredictable policy and regulatory change** | ✓ | ✓ | | ✓ |
| **Discrimination between domestic and foreign investors** | | ✓ | ✓ | ✓ |
| **Breach of State obligations** | | | | ✓ |

## INDICATOR 1
# Foresight of policy and regulatory change

National energy priorities and regulatory frameworks evolve in response to changing circumstances. Ensuring stable investment conditions is a significant challenge as the global energy transition is proving to be a highly dynamic process. Policy and investment patterns are likely to evolve as countries seek to decarbonise their energy sectors under the Paris Agreement. Meeting new objectives will result in policy revisions, and governments must be able to anticipate the impact of these revisions on long-term investments. They must, therefore, communicate any adjustments to their energy policy objectives well in advance, and have a realistic plan to implement these adjustments with minimal impact on the country's investment climate. Investors can then better manage risk, modify investment portfolios and cope with the policy changes.

### SUB-INDICATOR:
### COMMUNICATION OF VISION AND POLICIES

This sub-indicator evaluates whether governments are effectively communicating their short- and long-term energy sector vision to investors. It looks into the immediate and future energy sector targets of countries, and the timely adoption and implementation of policies and action plans.

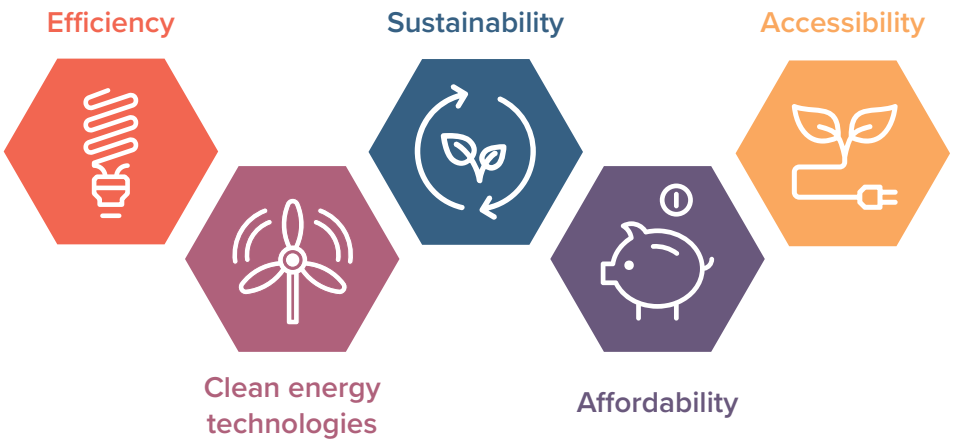
Risk management requires a view of the future. As countries transition to sustainable energy systems, there will be new demands placed upon regulatory frameworks and existing decision-making structures. Understanding the energy landscape, and how it is evolving, is a central element of investment planning. National policies are the most relevant documents for informing investors about the goals governments intend to pursue, and the timeframes they have set for achieving these goals. Accordingly, governments must make investors aware of their current and future national energy priorities, and of any course corrections in these priorities, by adopting clear and timely energy policies. By doing so, they will be able to retain the confidence of investors better, keep them updated on the need, pace and nature of policy changes, and in turn, avert risk.

### SUB-INDICATOR:
### ROBUSTNESS OF POLICY GOALS AND COMMITMENTS

Effective monitoring mechanisms play a significant role in assessing how far governments have progressed on achieving their policy goals. Conversely, a fragmented or weakly implemented monitoring and evaluation framework can greatly reduce the ability of policymakers and investors to track if there has been any real progress made on the goals.

This sub-indicator focuses on proper monitoring and evaluation of the energy goals, policies and targets. Monitoring and evaluation authorities, which are financially and institutionally independent of governments, will be more objective in assessing the implementation of the national energy priorities. The existence of independent monitoring authorities will also give investors confidence that policy revisions will be proportionate to the situation, subject to evidence-based evaluations, and not due to arbitrary and unsupported reasons.

Figure I.2 – Energy priorities under the UN Sustainable Development Goal 7



## INDICATOR 2
# Management of decision-making processes

The second indicator addresses the importance of coordinated and transparent policies in eliminating perceived or actual opacity of government initiatives, and the inclusion of investors in the planning and decision-making phases. The roles and responsibilities of the national and sub-national government levels must be clear to ensure structured and simplified decision-making processes. It is also essential that investors are well informed and consulted whenever governments intend to revise laws or regulations. Stakeholder engagement will allow foreign investors to participate in decision-making processes actively and take well-informed and timely decisions.

### SUB-INDICATOR:
### INSTITUTIONAL GOVERNANCE

Formulating investment and energy policies requires the engagement of multiple government levels. Provinces, municipalities as well as regional and local authorities participate in framing and implementing these policies. Multi-level governance can make the decision-making process complex and result in the risk of overlapping or contradictory decisions. Unless managed and coordinated correctly, policy choices of countries with multi-layered governance structures may end up being sub-optimal, and in turn, inadequately implemented.

This sub-indicator measures how well governments coordinate the decision-making process in their respective countries. While the degree of centralisation in each country may differ significantly, one central body should ultimately be responsible for coordinating across different levels of government, and for reconciling the diverging perspectives of public agencies. Effective intra-governmental coordination in policy design and implementation is, therefore, an essential precondition for minimising unpredictability and maintaining an investment-friendly climate.

Figure I.3 – Key aspects of effective decision-making processes




### SUB-INDICATOR:
### TRANSPARENCY

Policy and regulatory changes that are systematised and transparent give investors time to plan and align their business models, operations, and finances according to the changing circumstances. While transparency is beneficial to all types of investors, it is particularly crucial for foreign investors who have to cope with regulatory systems and administrative frameworks that may be unfamiliar to them. This sub-indicator measures inclusiveness shown by governments in designing and implementing their laws and policies.

EIRA understands transparency as (1) the effective communication of information on national laws, regulations and practices that may materially affect investments, and (2) prior notification of and consultation on regulatory changes that are of interest to investors.

Governments can enhance the quality and predictability of their regulatory framework by reviewing and publishing administrative decisions, codifying legislation, disseminating regulatory materials, and developing registers of the existing and proposed regulation. These measures will help to ensure that investors are aware of policies affecting them. Prior consultation on investment- and energy-related governmental actions can provide investors with more foresight on the conditions in the host countries. For instance, it may reveal indirect discrimination in secondary measures, even though the enabling legislation does not intend for this. Moreover, affording interested parties the right to comment on policy options and regulatory decisions will allow policy-makers, legislators and regulators to take stock of different opinions, parameters and considerations before modifying the existing framework.

## INDICATOR 3
# Regulatory environment and investment conditions

This indicator evaluates the independence energy regulators exercise in taking decisions, setting tariffs, and in performing their functions. Regulatory independence guarantees neutrality and helps to avoid situations where decisions are continuously revised, to the detriment of some market actors and investors. The indicator further examines the restrictions faced by foreign investors in the energy sector. Despite the increasing realisation that international capital flows are crucial for developing the energy sector, persisting restrictions tend to deter foreign investors. Key FDI restrictions include investment screening, local content and other performance requirements, and limitations on currency and investment-related capital transfers.

SUB-INDICATOR:
### REGULATORY EFFECTIVENESS

When an independent and specialised institution monitors the market, there is a lower risk of biased decision-making, discriminatory rules, and anticompetitive behaviour. Political distance gives regulatory authorities credibility because it limits governmental influence, and provides investors assurance that political events will not interfere with regulatory decision-making.

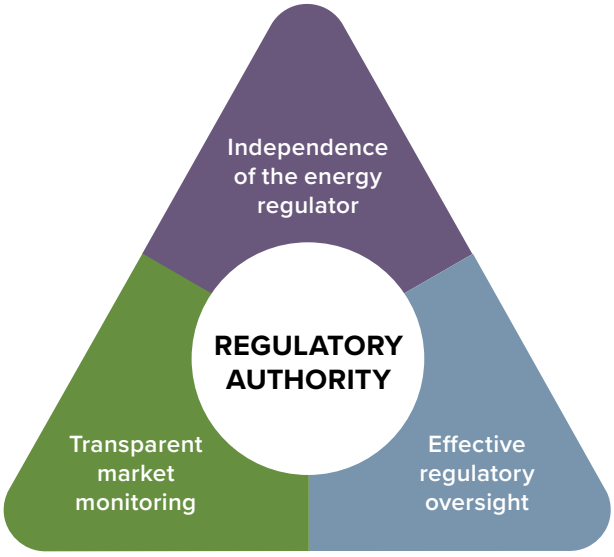
This sub-indicator examines the autonomy of energy regulators through various parameters, such as their legal basis, sources of funding, financial accountability to independent institutions, and their relationship to ministries and other public authorities. It also assesses the level of transparency exercised in the selection of the regulatory staff.

SUB-INDICATOR:
### RESTRICTIONS ON FOREIGN DIRECT INVESTMENT

Policy and regulatory measures that discriminate between domestic and foreign firms can restrict inward investment flows. They can obstruct foreign investments or make the cost of operation financially unviable. Some of the typical restrictive measures foreign investors may face are lengthy investment screening and approval procedures, regional investment restrictions, and operational controls.

This sub-indicator assesses the commitment of countries to accord non-discriminatory treatment to foreign investors. It evaluates whether domestic and foreign investors receive equal treatment in the application of domestic laws and regulations, and gives particular attention to sectoral restrictions, limits on the transfer of profit and repatriation of capital abroad, and onerous local content requirements.

Figure I.4 – Regulatory environment and investment conditions



## INDICATOR 4
# Rule of law (compliance with national and international obligations)

EIRA relies on the "rule of law" definition presented in the UN Report *The rule of law and transitional justice in conflict and post-conflict societies*[1]. It focuses on three aspects of this definition. First, fair and effective implementation of national laws and international commitments arising from treaties and international agreements; second, settlement of investor-State disputes promptly and according to due process; and third, respect for the property rights of foreign investors. Peace, security and human rights are outside the purview of EIRA.

### SUB-INDICATOR:
### MANAGEMENT AND SETTLEMENT OF INVESTOR-STATE DISPUTES

This sub-indicator examines the efficiency of case-management and dispute settlement procedures. International companies tend to invest in low-risk host countries that provide them with transparent and predictable legislation, avoid retrospective changes to laws, and make efforts to resolve disputes through alternative dispute resolution mechanisms, without unnecessary cost or delay.

Well-organised judicial procedures help to foster trust between investors and the State. Timely and cost-effective enforcement of foreign judgements and awards give investors assurance that the domestic courts of host countries will safeguard and uphold their rights. Similarly, the existence of appeal mechanisms and domestic dispute mitigation instruments, such as an investment ombudsperson and mediation, provide additional avenues for resolving conflicts between investors and States. Beyond the national legal system, governments must provide an extra layer of protection to investors by granting them recourse to dispute settlement mechanisms under international law. They may give foreign investors this benefit either through BITs or on a case-by-case basis.

### SUB-INDICATOR:
### RESPECT FOR PROPERTY RIGHTS

This sub-indicator assesses the risk of companies losing ownership, or control, over their investment as a result of government action. Arbitrary acquisition of property by the State can also lead to the risk of discrimination when foreign investors, in particular, suffer a loss.

In this sub-indicator, the term "investment" refers to tangible and intangible assets, including IP rights. It does not delve into the forms of expropriation. Instead, it focuses on whether expropriation, nationalisation or confiscation (or any action equivalent to these) was undertaken for a legitimate public purpose, following the due process of law, in a non-discriminatory manner and with adequate compensation.

There are some steps governments may take to reduce the risk of perceived arbitrariness. For instance, they should define in the national laws (1) activities and areas of "public interest" that are grounds for expropriation, (2) the process for determining expropriation compensation, and (3) a timeframe for paying the compensation. These details will give increased security to foreign investors operating under BITs, and also protect investors not covered under these treaties. Investors will also be able to assess better whether the host country's laws, mechanisms and guarantees are in line with international practice and investment agreements.

Figure I.5 – Rule of law elements covered by EIRA




1 EIRA interprets "rule of law" as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency". United Nations, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies (2004). UN Member States reaffirmed their commitment to uphold "rule of law" in the United Nations, Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels,* A/RES/67/1 (30 November 2012).

# EIRA METHODOLOGY

EIRA assesses three types of risk to energy investment. It applies four indicators to (1) identify the actions needed to address these risks, and (2) highlight the corrective measures countries may take to mitigate them.

EIRA evaluates risks by examining whether countries have adopted the necessary laws, policies and implementation actions. However, legislation and policy measures have maximum impact when they are enforced. EIRA 2021 recognises this and tries to give a clearer picture regarding the enforcement of laws and policies. This year, the country profile of Nigeria reflects the implementation of the existing policy framework and highlights the progress made by the country in translating its commitments to actions. The report also contains an annexe summarising the actions taken by the Federal Government of Nigeria (FGN) to implement the improvements suggested in the previous editions of EIRA. Depending on the progress made, the FGN's progress is categorised as fully implemented, partially implemented, ongoing, or pending.

There has been no change to the methodology since last year. The indicator scores are derived from a questionnaire, developed over two years, which allows comparability across energy sub-sectors and captures trends over time. The questions are designed to be user-friendly and ensure that the responses received can be easily verified. While most of them are binary, requiring simple "yes" or "no" answers, some are cascading and multiple-choice. The EIRA website allows respondents to give detailed information, clarifications and additional remarks on each question.

## How are the respondents for EIRA selected?

The EIRA questionnaire is provided to the national governments in the participating countries. It is also sent to selected external parties to counter the perception of self-assessment and secure an objective viewpoint.

The unit of analysis for EIRA is a country. The policies taken into consideration are those framed and implemented at national level. In federal arrangements, such as the Federal Republic of Nigeria, the central government is designated as a single point of contact responsible for collecting and processing inputs from relevant ministries/ departments at State and municipal level.

External parties are chosen from a pool of experts comprising local and international law firms, legal practitioners, business councils, accounting and consulting firms, think-tanks, energy associations, chambers of commerce, international institutions and non-governmental organisations operating in the assessed countries. Before inviting external parties to participate in the assessment, the ECS conducted extensive research on various aspects, such as their expertise, renown, and previous participation in other international reports. All the final participants contributed to the report pro-bono.

The main parameters for selecting the external parties are:

> **Expertise in the energy sector:** Active involvement in different stages of energy projects, and experience of providing consulting services in multiple energy sub-sectors and on regulatory issues.

> **Diversity of clients and neutrality:** Vast experience working with governmental entities as well as private investors. This ensures the external party has a holistic understanding of issues in the energy sector and contributes to a more balanced approach.

> **Reputation:** Parties with extensive global reach or local partner groups. For law firms, international guides identifying leading providers of legal services (local and global) in each country are consulted.

## What is the data collection and validation process for EIRA?

Data was collected in a standardised manner through the EIRA questionnaire. The ECS received responses from the national government focal point and the external parties over five months. The respondents provided copies of the source documentation to support their responses. The questionnaire responses, and the supporting documents, were collected through the EIRA website.

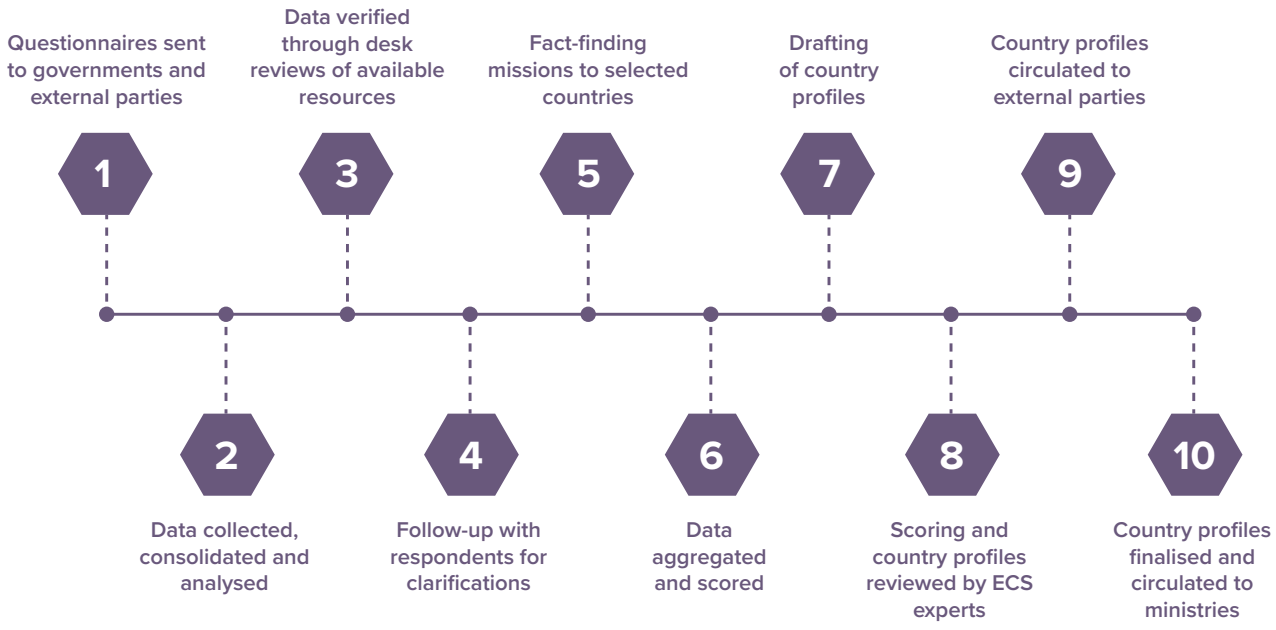
The answers provided by the respondents were accepted only to the extent that they relied on laws, regulations, national plans, and strategies that are currently in force. The cut-off date was 1 April 2021. Accordingly, the scores are based only on legislation, regulation, policies, legislative initiatives and regulatory reforms that came into force before this date.

Upon receiving responses to the questionnaire, the ECS in-house experts engaged in an extensive data-validation process. They confirmed that the respondents correctly understood each question, and that the submitted documents supported the responses. In the absence of supporting documents, or if respondents gave conflicting answers, the ECS experts sought clarifications from government officials and external parties through correspondence and phone interviews.

The ECS took steps to address the issue of low data availability in certain countries, but the spread of the COVID-19 pandemic made this challenging. At the same time, the national government focal point, namely the ECN, and external parties made substantial efforts to ensure that the ongoing global crisis has minimal impact on the report's quality by providing the ECS with exhaustive information and documents, and continual updates.

Overall, the process of data collection and validation lasted eight months, from December 2020 to July 2021.

Figure I.6 – Data collection and validation process



## How are risks assessed in EIRA?

EIRA assesses countries through a quantitative and qualitative analysis. The quantitative assessment is by a scoring system that shows the performance of the countries on the EIRA indicators. The qualitative evaluation is through "country profiles" that describe their strengths and identify areas for improvement.

### Scoring system

All indicators carry equal weight. The score of each indicator is the average of its component sub-indicators. The score of each sub-indicator is calculated through a set of questions. The questions are scored between 0 and 100 and are equally weighted. The highest possible score for each question is 100. All the scores are rounded off for the risk areas and the indicators. A country's total indicator score is the average of (1) the score received on the government questionnaire, and (2) the combined average of the external party scores.

Figure I.7 – Scoring an indicator for individual respondents

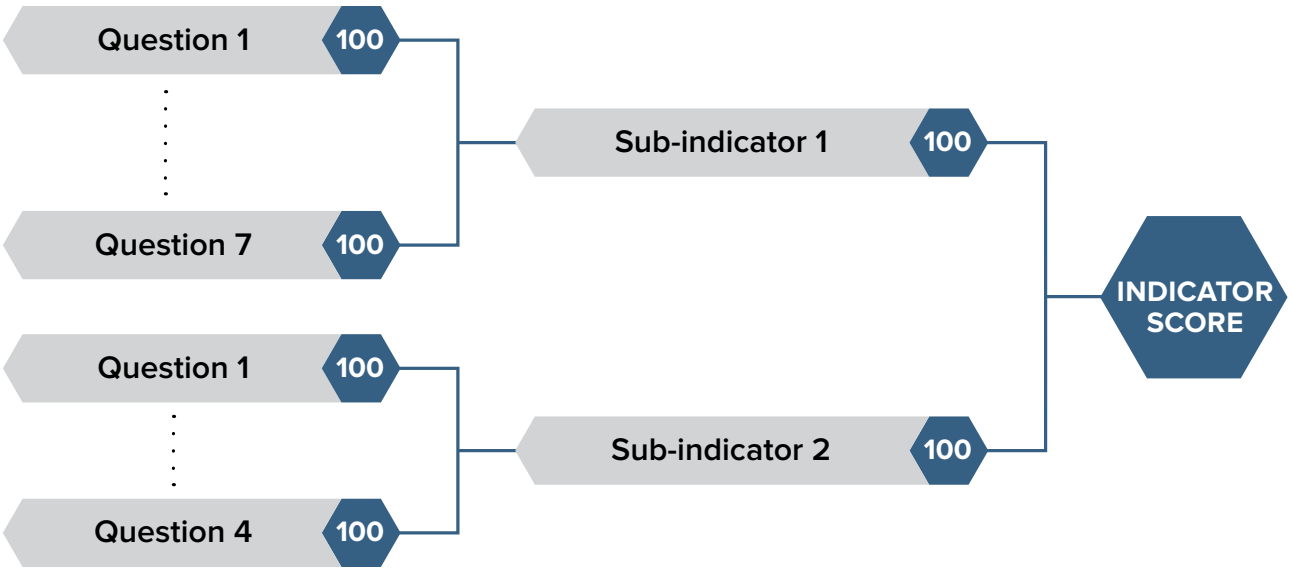
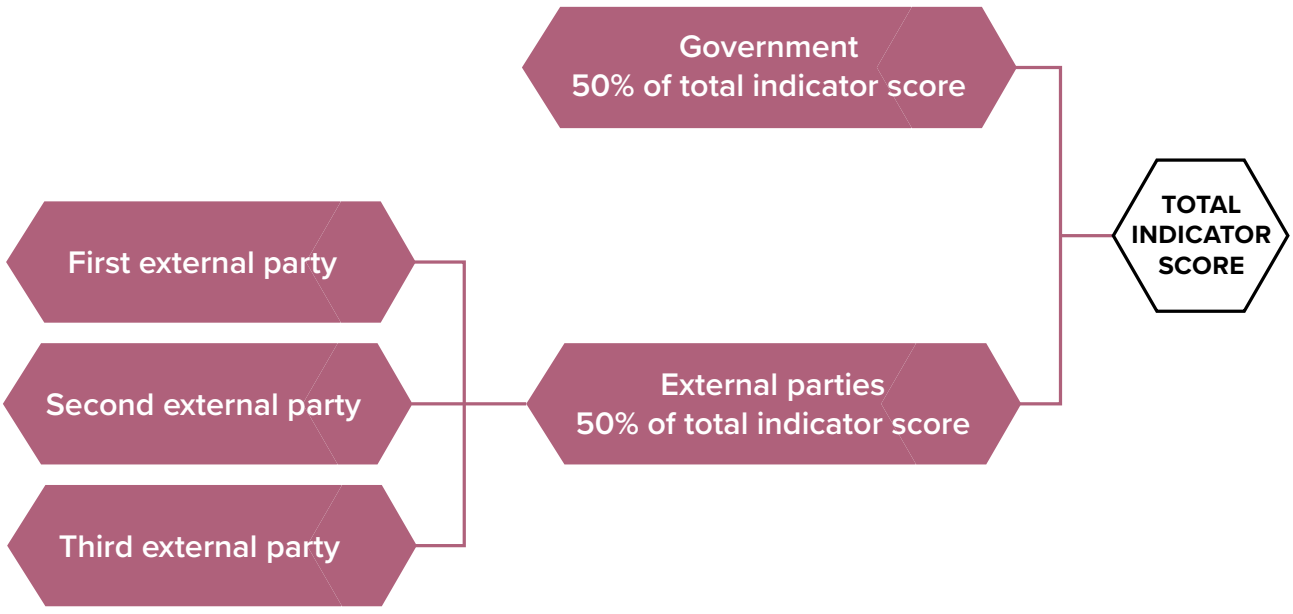
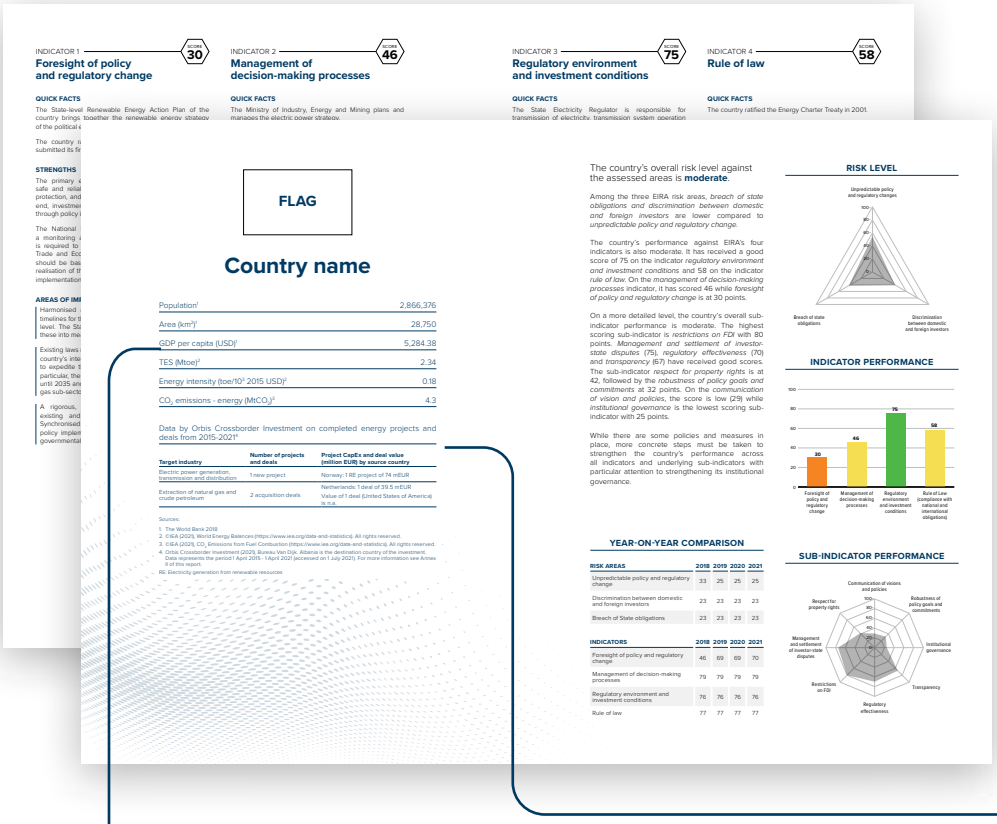



Figure I.8 – Total score of an indicator



## Country profile outline

The qualitative assessment for each country is through a four-page profile. The first page gives background information on the assessed country. It features a table of key metrics on area, population, GDP per capita, total energy supply, energy intensity and $CO_2$ emissions. This year, the page also includes new information from Orbis Crossborder Investment on energy projects and deals completed between 2015-2021 in the participating countries. The second page of the profile contains three charts showing the risk level across the assessed areas, the performance of the country on the four indicators, and the score on the sub-indicators. A five-colour-coded bar chart depicts the indicator scores. Dark green represents the highest band of scores, while the colour red represents the lowest. In the radial chart, representing the sub-indicator scores, 0 denotes the weakest performance and 100 the strongest. Profiles of the recurrent countries have a table that reflects changes to their performance, vis-à-vis the past years. The final two pages of the profile describe the country's strengths on the EIRA indicators and the main areas for improvement.




## KEY METRICS

**Population and surface area:** Data refers to year 2018. *The World Bank 2018, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, https://data.worldbank.org/ (accessed on 19 June 2021).**

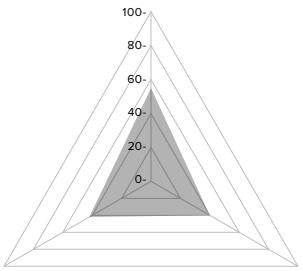
**GDP per capita (current USD):** Data refers to year 2018. *The World Bank 2018, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, https://data.worldbank.org/ (accessed on 19 June 2021).**

**Total energy supply (TES):** TES is made up of production + imports - exports - international marine bunkers - international aviation bunkers ± stock changes. Note, exports, bunkers and stock changes incorporate the algebraic sign directly in the number. Data refers to the year 2018. *IEA (2021), World Energy Balances (https://www.iea.org/data-and-statistics). All rights reserved.**

**Energy intensity:** This is a measure of total primary energy use per unit of gross domestic product. Data refers to year 2018. *World Energy Balances (https://www.iea.org/data-and-statistics). All rights reserved.**

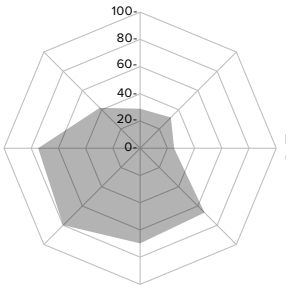
**$CO_2$ emissions from fuel combustion:** Data refers to year 2018. *IEA (2021), $CO_2$ Emissions from Fuel Combustion (https://www.iea.org/data-and-statistics). All rights reserved.**

*N/A means data is not available for this metric




### RISK LEVEL

The risk level is displayed by the grey triangle. Each axis represents a risk area. The smaller the size of the grey triangle, the lower the level of risk.




### SUB-INDICATOR PERFORMANCE

Each axis represents a sub-indicator. The larger the size of the grey area, the better the country's performance.

### DATA FROM ORBIS CROSSBORDER INVESTMENT

Energy projects and deals completed between 2015-2021.

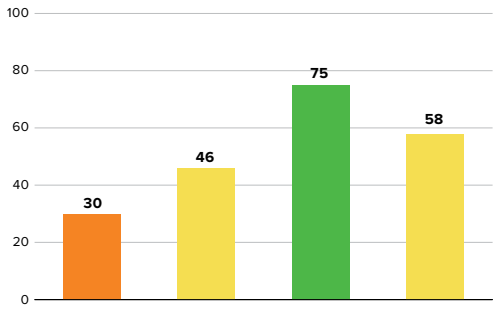
### INDICATOR AND SUB-INDICATOR CORRELATION

**Indicator 1**
1. Communication of vision and policies
2. Robustness of policy goals and commitments

**Indicator 2**
1. Institutional governance
2. Transparency

**Indicator 3**
1. Regulatory effectiveness
2. Restrictions on FDI

**Indicator 4**
1. Management and settlement of investor-State disputes
2. Respect for property rights




## INDICATOR PERFORMANCE

The indicators affect the risk areas differently. For example, *rule of law* has the highest impact since it influences all three risk areas. For details on the correlation between the indicators and the risk areas, see Table I.1.

The bars are colour-coded. Each colour corresponds to a performance level.

81-100

**VERY GOOD**
The performance against the assessed indicators is very good and the risk level is very low. The country provides attractive conditions for investors and is working in the right direction.

61-80

**GOOD**
The performance against the assessed indicators is good and the risk level is low. While the country has relevant policies and measures in place, there is some potential for improvement.

41-60

**MODERATE**
The performance against the assessed indicators is moderate and the risk level is moderate. There are some policies and measures in place but more concrete steps must be taken to further strengthen the performance.

21-40

**LOW**
The performance against the assessed indicators is low and the risk level is high. Considerable steps need to be taken to improve the performance.

0-20

**VERY LOW**
The performance against the assessed indicators is very low and the risk level is very high. Significant and immediate steps need to be taken to improve the performance.



# THE GAMBIA COUNTRY PROFILE



# The Gambia

| | |
|---|---|
| Population[1] | 2,280,102 |
| Area ($km^2$)[1] | 11,300 |
| GDP per capita (USD)[1] | 732.71 |
| TES (Mtoe)[2] | N/A |
| Energy intensity (toe/$10^3$ 2015 USD)[2] | N/A |
| $CO_2$ emissions - energy ($MtCO_2$)[3] | 0.6 |

There is no data by Orbis Crossborder Investment on completed energy projects and deals from 2015-2021

Sources:

1. The World Bank 2018
2. ©IEA (2021), World Energy Balances (https://www.iea.org/data-and-statistics). All rights reserved.
3. ©IEA (2021), $CO_2$ Emissions from Fuel Combustion (https://www.iea.org/data-and-statistics). All rights reserved.

The Gambia's overall risk level against the assessed areas is **moderate**.

Of the three risks assessed in EIRA, *discrimination between domestic and foreign investors* is lower compared to *breach of State obligations* and *unpredictable policy and regulatory change*.

The Gambia's performance is good on one indicator, and it is moderate on three indicators. It has maintained a good score of 68 on *regulatory environment and investment conditions*. On *rule of law* it has a score of 57, same as in EIRA 2020. Its score on *management of decision-making processes* has increased by two points and stands at 52. On the indicator *foresight of policy and regulatory change*, its performance has improved by 19 points, and its score is now 52.

On a more detailed level, The Gambia's overall sub-indicator performance is moderate. The highest-scoring sub-indicators are *restrictions on FDI* at 75 and *management and settlement of investor-State disputes* at 73. On *regulatory effectiveness* its score is 61, the same as in EIRA 2020. Its score has improved by 15 points on the sub-indicator *communication of vision and policies*, from 41 to 56. Following this is *institutional governance* at 53 and *transparency* at 50. Its score on *robustness of policy goals and commitments* has improved the most, from 25 to 49. This year, *respect for property rights* is the lowest-scoring sub-indicator at 42.

While there are some improvements in The Gambia's performance compared to EIRA 2020, further steps need to be taken to build on the work done. Particular attention should be given to strengthening the respect for property rights in the country.

## YEAR-ON-YEAR COMPARISON

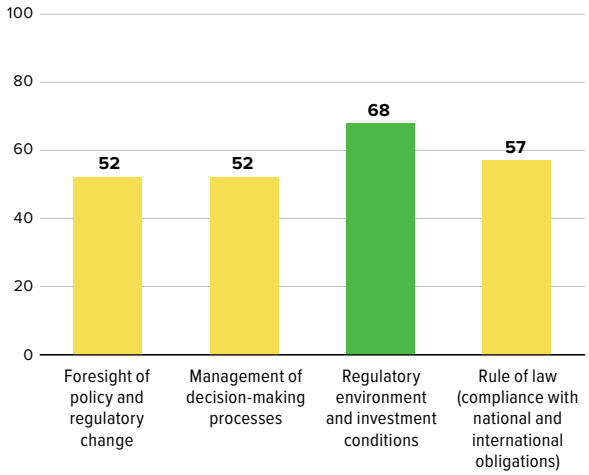
| RISK AREAS | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|
| Unpredictable policy and regulatory change | 53 | 53 | 53 | 46 |
| Discrimination between domestic and foreign investors | 42 | 42 | 42 | 41 |
| Breach of State obligations | 43 | 43 | 43 | 43 |

| INDICATORS | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|
| Foresight of policy and regulatory change | 33 | 33 | 33 | 52 |
| Management of decision-making processes | 50 | 50 | 50 | 52 |
| Regulatory environment and investment conditions | 68 | 68 | 68 | 68 |
| Rule of law | 57 | 57 | 57 | 57 |

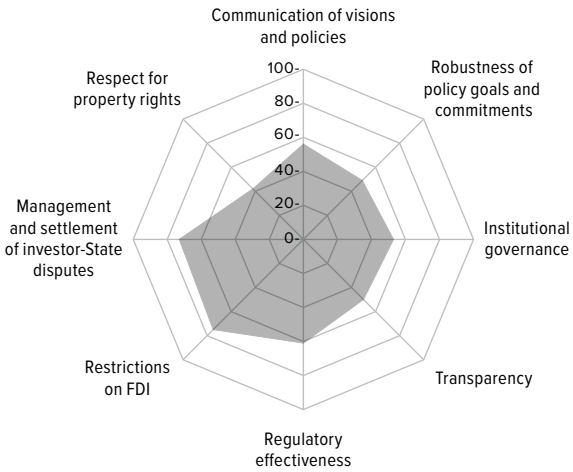
## RISK LEVEL




## INDICATOR PERFORMANCE




## SUB-INDICATOR PERFORMANCE



INDICATOR 1

SCORE 52

# Foresight of policy and regulatory change

Over the last year, the Government of The Gambia worked towards developing its future national development policy and the vision for its energy sector. The Ministry of Petroleum and Energy (MoPE) launched a short-term strategic plan that outlines the pathway from 2021 to 2025 for the MoPE to strengthen accountability in the energy, petroleum and mineral sectors.

Although The Gambia is updating its energy policies, priorities and targets in line with the national requirements and international commitments, its mid-century vision remains unclear. Policy predictability is low since there is little clarity among investors and other stakeholders on the priorities that the Government aims to pursue in the long term. There is also little information available on the energy objectives that have been achieved in the last decade, the areas where progress was not made, and how the Government plans to make up for the missed policy targets.

### QUICK FACTS

The Gambia's National Development Plan sets the country's development and investment programme from 2018-2021.

The Ministry of Petroleum and Energy (MoPE) recently published its Strategic Plan 2021-2025 (Strategic Plan). It has also developed a Strategic Roadmap for The Gambia's Electricity Sector (2021-2040) to update the 2017 Electricity Sector Roadmap.

### STRENGTHS

The Gambia's National Development Plan, set in 2018, contains ambitious targets to improve the country's access to reliable and clean energy. Between 2018 and 2021, it aims to increase electricity access from 40% to 60% of the population, boost the electricity installed capacity from 102 to 250 MW, reduce electricity losses from 25% to 17%, and scale up the share of renewable energy in total electricity generation from 2% to 40%.

On the sectoral level, the MoPE published its Strategic Plan in 2021, setting a comprehensive and integrated policy framework to guide its work. The Strategic Plan replaces the two existing draft plans on petroleum and energy developed when these two areas were under separate ministries. The Strategic Plan outlines the Government's two goals. The first is to set appropriate policy, legal and regulatory frameworks and enhance service delivery in the energy, petroleum, and geology sectors. The second is to ensure that the MoPE has the institutional and human capacities to implement the Strategic Plan fully. To measure the MoPE's progress, the Strategic Plan identifies 50 Key Performance Indicators (KPIs) for the first goal and 17 for the second goal.

The Strategic Plan sets out several actions that the Government must fulfil in the short term to increase energy access, power reliability, renewable power generation, and energy efficiency. The MoPE aims to expand electricity generation from 351 GWh in 2020 to 421 GWh in 2021, 505 GWh in 2023 and 600 GWh in 2025. At the same time, solar, wind, biomass and hydro energy should increase from 1% in 2020 to 25% in 2021, 50% in 2023 and 60% in 2025. The transmission and distribution capacity is expected to increase from 55% in 2020 to 65% in 2021, 85% in 2023 and 100% in 2025. Electricity transmission and distribution losses are expected to reduce from 20% in 2020 to 2% between 2021 and 2025 and 15% by 2030.

In the petroleum sector, significant reforms are anticipated by 2025. The Strategic Plan requires the Government to ensure that at least 50% of the petroleum (upstream and downstream) policies are revised by 2023. Additionally, a communication strategy for the petroleum upstream and downstream sectors must also be published in 2021. A petroleum law must be drafted by 2023 and adopted by 2025. Two sectoral regulations should be revised in 2012, four in 2023, and seven by 2025. The MoPE must also create a regional database on petroleum by 2021. Along with this, an independent Petroleum Commission should be established by 2021, and the enabling law must be published in the Official Gazette.

To promote the mining sector, the MoPE intends to publish a revised energy policy and a minerals and mining policy by the end of 2021. Moreover, by 2021 the MoPE will provide GPS coordinates for nationwide maps of all mining sites, and geological maps and reports must be fully digitalised. The Strategic Plan of the MoPE also targets the rehabilitation of all abandoned mining sites by 2021. An annual report should be produced on

the mineral mined tonnage and revenues accrued in 2021, with three reports to be published in 2023 and five in 2025.

Another key priority of the MoPE from 2020 to 2025 is to promote regional integration and cooperation in the energy sector. To ensure South-South engagement,

it aims to sign five Memoranda of Understanding with neighbouring countries by 2021, one more by 2023 and two in 2025. Five regional cooperation proposals must be developed by 2021, two by 2023 and two more by 2025. Electricity imports – at affordable rates – from the regional markets must increase from 1.2% to 20% by 2021, 25% by 2023 and 30% by 2025. The ECOWAS Model Mining and Minerals Development Act should also be adopted by 2021. The number of staff on secondment with regional partners should increase from five in 2020 to 10 by 2021, 15 by 2023 and 20 by 2025.

The Strategic Plan requires the MoPE to establish organisational structures and systems – with the appropriate human resources, skills, and competencies – to implement its second goal. It is mandated to create a management board for each institution in the energy and petroleum sectors by 2021. All institutions must ensure 100% implementation of all board decisions recorded through meeting minutes. Moreover, by the end of 2021, the MoPE should create a monitoring and evaluation system, a human resource system and a management information system. To ensure proper policy implementation in the mining sector, it must also set up geological department offices in all regions by 2021. Grievance Redress Systems for licensees in the petroleum and mining sectors should be outlined by 2021, and the systems must be fully functional by 2023. The percentage of complaints resolved by these systems should be 80% in 2021, 80% in 2023 and 100% in 2025.

The MoPE has set quantifiable targets to ensure that qualified and adequate skilled personnel are available to fulfil the tasks of these new organisational structures. To this end, the Strategic Plan obliges the MoPE to recruit at least ten specialised energy engineers by 2021, 15 by 2023, and 18 by 2025. Two specialists in renewable energy must be employed by 2021, eight by 2023 and 10 by 2025. Along with this, an Undergraduate Earth Science Programme must be launched in the University of The Gambia by 2021. The Government also plans to make available a training budget for the MoPE. A costed training plan will be developed by 2021, and its implementation rate should be at least 30% in 2021, 85% in 2023 and 100% in 2025. The MoPE is also charged with preparing a recruitment policy in 2021 for women in managerial and technical posts.

In March 2021, the Ministry of Finance and Economic Affairs produced the Mid-Term Evaluation of The Gambia's National Development Plan. As per the report, MDAs have successfully achieved 60% of the outcomes or will achieve them by December 2021. Out of the four outcomes set for the energy sector, three are on track. These are the outcomes on improving the policy and regulatory framework, increasing electricity access and ensuring household energy security, and enhancing management of public works infrastructure. The only outcome that is not on track is the development of petroleum resources and products.

## AREAS FOR IMPROVEMENT

Since the MoPE is currently revising the national energy policy, it should use this opportunity to define ultimate outcomes and a long-term vision (2050) for the energy sector. It should also update the national renewable energy and energy efficiency action plans (drafted in 2014) in line with its Strategic Plan.

The MoPE should ensure that the monitoring and evaluation process in its Strategic Plan is fully implemented.

## RECOMMENDATIONS

### Update energy sector policies and action plans by 2021

The MoPE is commended for setting the short-term strategy of the energy sector and for its ongoing efforts to update the country's national energy policy. At the same time, it is **encouraged to ensure that the new national energy policy has a long-term energy vision covering the period until 2050**, considering the country's current and future energy needs.

**There is also a strong need to align the national energy policy with the Strategic Roadmap for The Gambia's Electricity Sector (2021-2040)**. Currently, electricity production in The Gambia is heavily dependent on imported fuel which is costly and subject to oil price and foreign exchange volatility. One IPP (Karpowership), and the cross-border West Africa Power Pool (WAPP) interconnection from Senegal, supply almost half of the country's electricity. **Given the high potential for solar power generation in the country, the Government should set long-term measures to diversify the generation mix and integrate a higher share of clean energy into it.**

**Finally, the Government is advised to finalise and adopt a new national development plan as the existing one expires in December 2021**. In light of the COVID-19 pandemic, the Government should use the opportunity to develop this cross-sectoral development plan to build back better. The recently published Mid-Term Evaluation of the NDP outlines some of the energy sector outcomes that remain unaccomplished. The Government should set the future NDP, including these unachieved targets and integrating measures to ensure their completion.

### Implement the policy monitoring and evaluation processes set in the NDP and sector-specific action plans

The Government must periodically monitor and evaluate the achievement of its policy targets and publish the results. **It should conduct an ex-post impact assessment of its national energy policy and a mid-term evaluation of its National Renewable Energy Action Plan (set in 2015)** that has targets for 2030 on renewable electricity, domestic cooking energy, solar water heaters and biofuels. Finally, it should make the performance evaluation and budget execution reports of MDAs publicly available to improve accountability.

INDICATOR 2

SCORE 52

# Management of decision-making processes

The Gambia is working to improve the local governance of the country. In particular, over the last year, the MoPE introduced plans to coordinate policy decisions and their implementation by different MDAs engaged in the energy sector.

At the same time, the Government and the National Assembly must hasten the adoption of critical legislation to boost trust in public authorities and promote participatory decision-making.

## QUICK FACTS

The Gambia has a unicameral legislature.

The Gambia's energy policies are framed and implemented by the MoPE.

## STRENGTHS

The Government and the National Assembly are taking measures to strengthen local governance in The Gambia. To this end, in June 2020, deputies at the National Assembly referred the Local Government Amendment Bill 2020 to the National Assembly's Business Committee for scrutiny before it undergoes the third reading. The Bill seeks to grant independence to members of the area councils from their respective parties and political leaders and further enhance the system of local governance, autonomy, freedom of speech, and debate according to section 193 of the 1997 Constitution.

In 2020, the MoPE undertook some preliminary work to streamline the institutional governance of the energy sector. It assessed public sector capacity on the institutional, organisational and individual level using various tools, such as questionnaires and interviews. In addition, a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis was conducted through a participatory group session with a cross-section of staff from the various units of the MoPE. The SWOT analysis was complemented by a desk review of key documents relevant to the capacity development needs of the civil services of The Gambia.

To improve coordination in downstream oil activities, the MoPE's Strategic Plan seeks to establish an inter-institutional licencing and monitoring committee for oil marketing companies, importers, traders and facilities by 2023. It also requires the MoPE to set up a permanent inter-institutional licencing committee by 2021.

The MoPE plans to enhance policy monitoring and evaluation by increasing the Policy Committee meetings from four in 2021 to 12 in 2023 and 20 in 2025. The Policy Committee must publish the minutes of the policy committee's meeting for verification. The percentage of recommendations implemented by the Policy Committee should increase from 0% (baseline) in 2020 to 100% in 2023 and 2025. The means of verification will be the policy committee's minutes of meetings. Adherence to the EITI standards is expected to increase from 0% in 2020 (baseline) to 50% by 2021, 80% by 2023 and 100% by 2025. The progress will be verified through annual MoPE reports on its activities.

The Government and the National Assembly are working in tandem to increase public accountability and reduce the perception of corruption. In a significant move, the National Assembly of The Gambia enacted the Access to Information Act in July 2021. The law gives citizens, investors, civil society organisations and other key stakeholders the right to access government records and information maintained by public authorities. Per the Law, MDAs must actively disseminate and disclose financial, operational, and all other data available to them. They must establish procedures for the public to make information requests, set timeframes for responding to these requests, disclose the grounds for not granting access to information and create a procedure for filing appeals against decisions not to provide information access. Moreover, in 2021, the Government submitted the Anti-corruption Bill of The Gambia to the National Assembly for deliberations. It will be tabled for discussion in the National Assembly's next legislative session of the year.

## AREAS FOR IMPROVEMENT

Under the current institutional setup, multiple MDAs are responsible for implementing a single priority. As a result, approaches to dealing with these issues may be duplicated or, in some cases, contradictory.

The Government is encouraged to enact the Anti-Corruption Bill as soon as possible to increase public accountability and disclose financial and operational data available to MDAs.

## RECOMMENDATIONS

### The Government must streamline the responsibilities, functions, and human and financial resources of different MDAs to ensure services are delivered in the most effective and efficient manner

The MoPE should replicate the collaborative decision-making approach of its Strategic Plan in other priority areas, such as regulating the household energy sector which accounts for 80% of energy demand. Fuelwood, which is the main energy source for households, currently falls under the joint responsibility of the MoPE and the Ministry of Environment as per the Forest Act, with several MDAs regulating different aspects of the value chain. The **ministries are advised to develop institutional tools for coordinating decisions between themselves and the relevant MDAs and avoid implementation overlaps or gaps.**

### Take measures to strengthen public accountability across MDAs

The Government's implementation of the EIRA recommendation on enacting the Right of Information Act is appreciated. In the same vein, it is **encouraged to enact the Anti-corruption Bill pending in the National Assembly for several years now.**

Moreover, the requirement to **make financial and operational data available to the public should be mandatory for all MDAs, and this requirement should be enforced without exception**. Currently, critical data is not released by MDAs. This makes it difficult for stakeholders to assess their efficiency and progress towards high-level national objectives. In particular, the National Audit Office (NAO) has not yet updated its website with the most recent financial and performance audit reports. Neither has it uploaded the four financial audit reports on the Banjul City Council, the Jangjangbureh Area Council, the Kuntaur Area Council, and Kanifing Municipal Council finalised in 2020 and submitted to the National Assembly. Additionally, it completed 94 audits of Government institutions, but has not published these documents. In fact, the most recent reports available on the NAO's website are from 2018.

**The Auditor General of The Gambia should be legally required to submit financial and performance audit reports directly to the National Assembly without the involvement of the Government**. The practice now is that the Government of The Gambia submits the annual financial reports through the Minister for Finance and Economic Affairs to the National Assembly. As a result of the Government's involvement, the submission of audit reports to the National Assembly has been delayed on several occasions and resulted in the absence of discussions on the reports' findings. For instance, in December 2020, the NAO submitted seven Performance Audit Reports on several issues, but these were not deliberated in the National Assembly and the NAO delayed the publication of these reports and their access to the public.

INDICATOR 3

SCORE 68

# Regulatory environment and investment conditions

**In 2020 and 2021, the Government of The Gambia took measures to strengthen the financial and operational performance of NAWEC. Renewable power generation received an impetus through off-grid solutions.**

**Inadequate investment in power infrastructure continues to impede the electricity sector's operations. Due to the existence of the single-buyer model, private investment is effectively blocked in power infrastructure. As a result, the Government needs to take urgent measures to introduce competition in the wholesale electricity market and allow private investment in electricity transmission and distribution networks.**

## QUICK FACTS

The Public Utilities Regulatory Authority (PURA) regulates, among other sectors, the electricity and downstream petroleum sub-sectors.

The Petroleum (Exploration, Development and Production) Act of 2004 defines the regulatory functions of the MoPE.

NAWEC is a vertically integrated public utility that handles electricity generation, transmission and distribution.

## STRENGTHS

The Government is availing funding from international development agencies and financial institutions to strengthen NAWEC's creditworthiness. It has secured USD 300 million from the International Development Association (IDA), European Investment Bank (EIB) and the European Union (EU) for the Gambia Electricity Restoration and Modernisation Project (GERMP). The GERMP project aims to optimise the operational and financial performance of NAWEC and increase its capacity to dispatch variable renewable electricity. The funding will finance on-grid solar PV with storage, transmission and distribution restoration and modernisation, urgent institutional support for sector turnaround, and urgent actions to ensure access to electricity for all Gambians. Commendably, the project is progressing well, despite the adverse impacts of COVID-19. The contract for the first phase of the transmission and distribution modernisation project has been signed, and civil works have commenced.

Meanwhile, the on-grid solar PV with storage is expected to commence in the first half of 2022. In addition to this project, NAWEC is making efforts to improve energy efficiency and load management. In March 2021, it published an expression of interest calling interested consultants to provide recommendations in this respect. The consultants will assist NAWEC in exploring ways to deploy renewable energy, including floating solar, rooftop PV, and solar pumps.

The Gambian Government is exploring various options to ensure reliable electricity access for its growing economy through national generation, medium voltage imports from Senegal, local IPPs and high voltage imports from countries in the West Africa region. The Government of The Gambia is progressing with the implementation of The Gambia River Basin Development Organization (OMVG) Energy Project. The MoPE's Strategic Plan anticipates that the country will be connected to WAPP via the OMVG by 2023. At the operational level, the OMVG and the Senegal River Basin Development Organization (OMVS) interconnection are expected to bring frequency and voltage stability and greater security of supply. Cost is expected to decrease through many channels, including shared reserves allowing a reduction in national reserve requirements, imports of low-cost hydropower and gas-fired thermal power from neighbouring countries, and efficient IPPs within the ECOWAS Regional Electricity Market. It will also allow The Gambia to develop large renewable energy generation projects primarily for export, thus further reducing the cost of electricity supply. The immediate export opportunity under consideration is for The Gambia to host one of the first regional 150 MW PV projects under the WAPP Solar Park Program. This regional PV project is intended to improve the supply and reduce the cost of electricity.

The Gambian Government is also engaging in other projects to increase domestic renewable electricity production, explore opportunities for energy storage, and expand and modernise the power infrastructure. In March 2020, NAWEC concluded the preliminary tender phase for a 20 MWp solar project in Greater Banjul. The project will consist of four PV plants ranging from 3 MW to 6 MW. In September 2021, the WAPP issued two tenders for consultants to conduct feasibility studies for the development of a 150 MW solar plant potentially linked to energy storage. Additionally, as part of the GERMP project, NAWEC plans to conclude a tender for an 8 MWh battery storage and a 33 kV power evacuation line. In addition to this, it also plans to construct a new 225 kV transmission line, substations and the National Dispatch Centre between the two IPPs in the Greater Banjul Area. Through these works, the Government intends to lay about 485 km of medium voltage lines to facilitate reliable electricity supply for over 275 communities in The Gambia. NAWEC signed a contract with MBH Power Ltd of about USD 8.2 million to implement the 30 kV medium voltage transmission line

that will give electricity access to 685 villages across The Gambia. The arrangement is financed by the World Bank, EIB, and the EU and is part of the Government's target to ensure universal energy access for all citizens by 2025.

The Government is also planning to revise the institutional and regulatory framework of the oil and gas sector. In March 2021, the National Assembly's Public Enterprises Committee and the Environment and Sustainable Development and NGO Affairs Committee adopted the Petroleum Commission Bill 2020. This Bill anticipates an independent Petroleum Commission that will ensure good resource governance, transparency and efficiency in oil and gas development. It aims to implement the ECOWAS guidelines on separating policy from operational responsibilities in the oil and gas sector.

To attract private investment, the MoPE aims to increase public-private partnership projects from three in 2021 to five in 2023 and nine in 2025. It expects investment funds available for energy infrastructure to increase to USD 430 million in 2021, to USD 516 million in 2023, and to USD 600 million in 2025.

There was also some progress made on significant oil and gas investments. The Gambia had initially licenced blocks A2 and A5 to Camac Energy, who farmed it out to Erin Energy. Before filing for bankruptcy, Erin Energy entered into a farm-out arrangement for 80% of its interest in blocks A2 and A5 to Australian-based FAR Limited. The A2 and A5 licence currently have Petronas and FAR on a 50/50 interest, with FAR Gambia Ltd standing as Operator of the License. On 25 June 2020, FAR signed new Joint Operating Agreements (JOAs) regarding the A2 and A5 offshore blocks, with PC Gambia, a subsidiary of the Malaysian-based Petronas. The updated JOA better reflects the terms and conditions of the new licences. Although drilling activities were temporarily put on hold due to COVID-19, FAR confirmed in April 2021 its intention to resume operation during the second half of the year.

## AREAS FOR IMPROVEMENT

The Government should consider establishing an independent authority to regulate energy sector activities.

The Government should try to liberalise the electricity market and reduce the MoPE's role in NAWEC's decision making. Without delay, it should establish the legal and regulatory framework for private investment in transmission and distribution, a segment that is currently under NAWEC's exclusive domain. This will help to attract much-needed investment in the electricity network.

## RECOMMENDATIONS

### Ensure the energy regulatory authority has the human and financial capacity to carry out its functions and activities

PURA currently regulates multiple highly demanding sectors, such as electricity, downstream petroleum and telecommunications. The Government should **increase PURA's institutional capacity and streamline the existing resources to meet the objectives set for all the regulated sectors**. Alternatively, it may also consider **establishing a separate and independent authority dedicated exclusively to energy regulation.**

### Take regulatory measures to encourage private sector-led growth in power transmission and distribution networks

Despite the Government's substantial efforts, there continues to be a considerable gap in the supply and demand of electricity. Currently, the installed generation capacity of The Gambia is estimated to be about 154 MW, while the actual generation is 50 MW. Although 71% of the urban population has access to electricity, the electrification rate in rural areas is only 13%. The high system losses also contribute to increasing the electricity supply and demand gap.

In the last year, the Government entered into new power projects for domestic generation and electricity import. As a result, it needs to substantially increase investment in the electricity transmission and distribution infrastructure to absorb and evacuate this new energy. Although some power transmission and distribution modernisation and expansion projects are underway, these are funded either by the Government or international development institutions.

While the Government has liberalised power generation, the transmission and distribution of electricity are still exclusively under the State's domain. The single-buyer model prevalent in The Gambia was envisaged as an intermediate step in transitioning from a vertically integrated system to a completely liberalised one. Although the purpose of the single-buyer model is to facilitate private investment by ensuring financial guarantees by the off-taker, the approach may prove counterintuitive in The Gambia's case as the off-taker – NAWEC – is not bankable and may be unable to guarantee the purchase of electricity. In fact, the MoPE's Strategic Plan states that NAWEC spends about 70% of its annual revenue on fuel and spare parts and consequently cannot finance its operations and meet other financial obligations. Therefore, the Government should **liberalise the wholesale electricity market so investors can participate in the market without needing government-backed guarantees, and at the same time, NAWEC can increase its revenue through cost-reflective prices.**

At the same time, the Government should give serious consideration to opening the transmission and distribution segment of the power sector to private investment. **Since the electricity sector is not fully unbundled, the Independent Power Transmission (IPT) investment model would probably be the most suitable for The Gambia.** In this model, the State-owned utility enters into a contract with the winning bidder that builds and operates the transmission line for payments. The amount of payments depend upon the availability of the transmission line. Government should explore options to implement this model.

INDICATOR 4

# Rule of law

SCORE 57

**The legal regime on the protection of private property has remained stable, with no changes to the detriment of foreign investors. In fact, the Government remains committed to resolving differences with foreign investors amicably and without recourse to adversarial proceedings.**

**At the same time, reforms to improve the efficiency of the national judiciary have remained limited. Moreover, the legal provisions on the protection of private property, though in place, are quite broad and need to be more robust to inspire confidence in foreign investors.**

## QUICK FACTS

The Gambia ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1975.

Intellectual property rights are guaranteed by the Industrial Property Act 2007.

The Gambia became a member of the World Trade Organization (WTO) on 23 October 1996.

The Gambia signed the International Energy Charter on 11 August 2017 and is an observer country to the Energy Charter Conference. At present, The Gambia has not signed the Energy Charter Treaty.

## STRENGTHS

Domestic laws promote alternative dispute resolution mechanisms to resolve disputes between investors and the State. The Gambia investment and Export Promotion Agency Act 2015 (GIEPA Act) requires that investors and the Government must settle their disputes amicably through conciliation or mediation. Failing these, they may resort to arbitration according to the mechanisms provided by the Alternative Dispute Resolution Act 2005, or any applicable BIT or international treaty to which The Gambia is a party.

The Foreign Judgment (Reciprocal Enforcement) Act 1922 provides the enforcement of judgments given in foreign countries that accord reciprocal treatment to judgments delivered in The Gambia. National laws do not oblige investors to exhaust local judicial remedies before recourse to international arbitration. Similarly, International Investment Agreements do not impose such conditions on investors.

Although The Gambia is not a Party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it has fully transposed its provisions. According to the Alternative Dispute Resolution Act 2005, its provisions apply to awards made by an arbitration tribunal with its seat in a New York Convention Contracting State, provided (i) such a State has reciprocal legislation recognising the enforcement of arbitral awards made in The Gambia and (ii) the dispute in question arises out of a legal and contractual relationship.

In the last year, the Government settled a high-profile dispute with a foreign investor to give resource exploration an impetus. It reached an agreement in September 2020 with the Norwegian oil and gas company PetroNor to settle its arbitration related to the A1 and A4 offshore licences. PetroNor has regained the A4 licence and signed a 30-year lease under new terms per the settlement agreement. At the same time, it has relinquished its claim to the A1 block.

There is a considerably developed legal framework to protect the property and assets of foreign investors operating in the country. The Constitution of The Gambia protects private property. Compulsory acquisition of property is only permitted for the public interest, with prompt payment of adequate compensation. The GIEPA Act 2015 also mentions the criteria for expropriating the private property of investors. It states that such an expropriation may only be carried out for a public purpose defined by law, on a non-discriminatory basis, following the procedures prescribed by the law and on the payment of compensation.

The Land Acquisition and Compensation Act (LACA) 1991 provides the legal basis for the acquisition of property by the State for public/planning purposes. Section 11 of LACA stipulates that compensation for land acquired should use the cost of the replacement method. The method is based on the prevailing cost of construction and improvements, including design, supervision etc. LACA also sets out a mechanism for dispute resolution at the formal and informal (traditional) levels.

In March 2021, the MoPE published Resettlement Action Plans (RAPs) for two sub-projects under The Gambia Electricity Restoration and Modernisation Project (GERMP). One sub-project is for modernising the transmission and distribution infrastructure of the Greater Banjul Area, and the other is for the Laminkoto-Diabugu Electricity Transmission Corridor. The RAPs aim to minimise the adverse economic, social and

environmental impact of involuntary resettlement. They require that all persons affected by the project activities receive compensation calculated from a specific date. The RAPs contain detailed provisions to establish the eligibility for compensation, the procedure for valuation and payment of compensation for losses and resettlement measures. Each RAP also establishes a project-level grievance mechanism to address complaints and concerns raised during the RAP's implementation.

### AREAS OF IMPROVEMENT

As foreign investments in The Gambia are increasing, the Government should adopt appropriate dispute prevention policies and institutional setups, such as an early-warning mechanism and an investment ombudsperson, to assist investors in addressing potential grievances against public authorities early on.

In addition to project-specific tools, such as RAPs, acts of expropriation should be underpinned by law and conducted following due process.

### RECOMMENDATIONS

#### The Government should establish an early-warning mechanism and promote the use of instruments to manage conflicts between foreign investors and MDAs before they become disputes

To avoid the escalation of investor grievances – and costly judicial or arbitration proceedings – the Government should consider setting up an investment ombudsperson or similar institution to handle the complaints of foreign investors against public authorities during the licencing procedures. **The Government and the National Assembly should consider amending the Alternative Dispute Resolution Act of The Gambia 2005 to allow recourse to mediation in investor-State conflicts.**

It should be noted that some West African nations, such as Nigeria, are currently reforming their BITs to align them with the current needs of the country. One of the main reforms centres on exploring dispute de-escalation and resolution options apart from investor-State dispute settlement (ISDS). The Government of The Gambia can use the example of Nigeria to **modernise its existing six BITs – and construct the new ones – to include provisions on dispute mitigation, promoting sustainable investment and environmental protection considerations**. It could also **draw inspiration from the Energy Charter Model Instrument on Management of Investment Disputes** that aims to assist States in handling investment disputes while keeping in mind their particular needs and circumstances.

#### The Government should amend the GIEPA Act to include detailed provisions on determining compensation and establishing a timeframe for its payment

The Government and the National Assembly should review and amend **the GIEPA Act to define legal provisions on determining the valuation method, timelines and amount of compensation paid by the State** when compulsorily expropriating tangible and intangible private property. To ensure transparency and non-discrimination, the GIEPA Act should also specify the activities considered of "public interest" in the expropriation of private property. An exhaustive list of activities will help establish the legitimacy of the expropriation decision in the eyes of the investors, citizens and other stakeholders.



# ANNEX I: IMPLEMENTATION STATUS OF THE EIRA AREAS FOR IMPROVEMENT

## The Gambia

| PROPOSED IN | EIRA AREAS FOR IMPROVEMENT | IMPLEMENTATION STATUS AS OF 1 APRIL 2021 |
|---|---|---|
| **Indicator 1** | | |
| **2018** | Prepare and adopt, at the earliest, a new energy strategy that sets the overarching framework for actions after 2020. | **Work ongoing.** The Ministry of Petroleum and Energy (MoPE) recently published its Strategic Plan 2021- 2025 (Strategic Plan). One of the targets under the Strategic Plan is to adopt an updated national energy policy in 2021. |
| | Create ex-ante and ex-post policy evaluation and review mechanisms. | **Work ongoing.** The MoPE's Strategic Plan contains a results-based monitoring and evaluation framework to track its implementation. |
| **2021** | Integrate ultimate outcomes and a long-term vision (2050) in the upcoming national energy policy and update the national renewable energy and energy efficiency action plans. | **Improvement suggested in 2021.** Status will be updated in 2022. |
| | Grant public access to the performance evaluation reports and budget execution reports of MDAs. | **Improvement suggested in 2021.** Status will be updated in 2022. |
| **Indicator 2** | | |
| **2018** | Draft and adopt a law facilitating public access to information held by State authorities. | **Work ongoing.** In December 2020, the Government presented the Access to Information Bill to the Parliament of The Gambia for consideration and enactment during its second reading. |
| | Establish the Competitiveness Improvement Forum as required in the Gambia Investment and Export Promotion Agency Act of 2015. | **Pending** |
| **2020** | Give public access to the extractive industry contracts and consider joining the EITI. | **Work ongoing.** The MoPE's Strategic Plan aims to ensure the rate of adherence to the standards of EITI must increase from 0% in 2020 (baseline) to 50% by 2021, 80% by 2023 and 100% by 2025. |
| **2021** | Develop institutional tools to coordinate decisions on fuelwood monitoring and regulation between the MoPE and the Ministry of Environment, Climate Change and Natural Resources. | **Improvement suggested in 2021.** Status will be updated in 2022. |
| | Adopt the Anti-Corruption Bill and set up an independent Anti-Corruption Commission that has sufficient financial and human resources. | **Improvement suggested in 2021.** Status will be updated in 2022. |
| **Indicator 3** | | |
| **2018** | Increase the Public Utilities Regulatory Authority's institutional capacity and streamline its operations so that it may effectively perform its functions. | **Pending** |
| | Ease access to land and provide certainty on land titles by creating registry mechanisms and comprehensive records. | **Pending** |
| | Limit the Government's right to own some, or the majority, of shares in strategic industries, such as mining, and petroleum exploration and refining activities. | **Pending** |
| **2020** | Liberalise the energy market and limit the State's involvement in the National Water and Electricity Company. | **Pending** |
| **2021** | Establish without delay the legal and regulatory framework for private investment in transmission and distribution. | **Improvement suggested in 2021.** Status will be updated in 2022. |
| **Indicator 4** | | |
| **2018** | Set definitive timelines for domestic courts to deliver judgements in commercial disputes. | **Work ongoing.** Constitutional, institutional, and legal reforms are underway in line with the National Development Plan 2018-2021. |
| | Adopt dispute prevention policies and institutional setups, such as an early-warning mechanism and an investment ombudsperson, to assist investors in addressing potential grievances against public authorities. | **Pending** |
| | Enact a law protecting investors against the expropriation of property. The law may define the conditions of "public interest" that can prompt an act of expropriation, the procedure to determine the compensation, and the timeframe for its payment. | **Work ongoing.** In March 2021, the MoPE published Resettlement Action Plans (RAPs) for two sub-projects under The Gambia Electricity Restoration and Modernisation Project. Each RAP also sets up a project-level grievance mechanism to address complaints and concerns raised during the RAP's implementation. |

# ANNEX II: ORBIS CROSSBORDER INVESTMENT GLOSSARY AND INDUSTRY CLASSIFICATION

# Terms used in EIRA 2021 from Orbis Crossborder Investment*

| | |
|---|---|
| **Acquisition deal** | A deal in which the acquiror ends up with a stake of 50% or more in the target's equity. Even deals involving the purchase of a very small stake will be defined as an acquisition if the final stake held by the acquiror is 50% or above. |
| **Co-location project**** | The same company (investor) investing into the same location (city) in a different business activity (for example, XYZ company could be setting up a regional distribution centre as well as a manufacturing plant). Sometimes companies will create a new warehouse to complement an existing manufacturing plant. |
| **Completed project status** | If a company has opened a facility or a location that is deemed to be operational, the project will be deemed to have been completed. |
| **Completed deal status** | This is the date when the deal has officially completed. |
| **Institutional buyout (IBO) deal** | A deal in which a private equity firm has purchased a stake of 50% or more in a company. As with acquisitions, even deals involving the purchase of a very small stake will be defined as an IBO if the final stake held by the acquiror is 50% or above. The only difference between a standard acquisition and an IBO is that the acquiror in an IBO is a private equity firm. |
| **Joint venture deal** | A deal in which two or more companies create a new, jointly owned entity. The two or more companies that have established the new entity continue to exist. |
| **Minority stake deal** | A deal in which the acquiror has purchased a number of shares in the target and the resulting final stake is less than 50%. A deal involving the purchase of a 2% stake could be defined as an acquisition if the acquiror's overall final stake is 50% or more, such as if a buyer increases its stake from 49% to 51%. |
| **New project** | A new operation, whether it is a manufacturing plant, regional headquarters, sales office, and so on. |

*The value of some deals and the CapEx of some projects may be unofficial or modelled by Orbis Crossborder Investment. For more information on the Orbis Crossborder Investment methodology, data collection and definitions please visit https://www.bvdinfo.com/orbis (data accessed on 1 July 2021).

# Industry Classification used in EIRA 2021 from Orbis Crossborder Investment

The data for EIRA 2021 is compiled using the following NACE Rev. 2 classes.**

| | | |
|---|---|---|
| **Electrical energy** | | |
| **35.11** | **Production of electricity** | This class includes the operation of generation facilities that produce electric energy; including thermal, nuclear, hydroelectric, gas turbine, diesel and renewable. |
| **35.12** | **Transmission of electricity** | This class includes operation of transmission systems that convey the electricity from the generation facility to the distribution system. |
| **35.13** | **Distribution of electricity** | This class includes operation of distribution systems (i.e., consisting of lines, poles, meters, and wiring) that convey electric power received from the generation facility or the transmission system to the final consumer. |
| **35.14** | **Trade of electricity** | This class includes the sale of electricity to the user; activities of electric power brokers or agents that arrange the sale of electricity via power distribution systems operated by others; operation of electricity and transmission capacity exchanges for electric power. |
| **Petroleum and gas** | | |
| **06.10** | **Extraction of crude petroleum** | This class includes extraction of crude petroleum oils; extraction of bituminous or oil shale and tar sand; production of crude petroleum from bituminous shale and sand; processes to obtain crude oils: decantation, desalting, dehydration, stabilisation etc. |
| **06.20** | **Extraction of natural gas** | This class includes production of crude gaseous hydrocarbon (natural gas); extraction of condensates; draining and separation of liquid hydrocarbon fractions; gas desulphurisation; mining of hydrocarbon liquids, obtained through liquefaction or pyrolysis. |
| **09.10** | **Support activities for petroleum and natural gas extraction** | This class includes oil and gas extraction service activities provided on a fee or contract basis:<br>• In exploration services in connection with petroleum or gas extraction, e.g. traditional prospecting methods, such as making geological observations at prospective sites<br>• In directional drilling and redrilling; “spudding in”; derrick erection in situ, repairing and dismantling; cementing oil and gas well casings; pumping of wells; plugging and abandoning wells etc.<br>• In liquefaction and regasification of natural gas for purpose of transport, done at the mine site<br>• In draining and pumping services, on a fee or contract basis<br>• In test drilling in connection with petroleum or gas extraction |
| **19.20** | **Manufacture of refined petroleum products** | This class includes production of motor fuel: gasoline, kerosene etc.; production of fuel: light, medium and heavy fuel oil, refinery gases such as ethane, propane, butane etc.; manufacture of oil-based lubricating oils or greases, including from waste oil; manufacture of petroleum briquettes; blending of biofuels, i.e. blending of alcohols with petroleum (e.g. gasohol); manufacture of peat briquettes; manufacture of hard-coal and lignite fuel briquettes. |
| **49.50** | **Transport via pipeline** | This class includes transport of gases via pipelines. It also includes the operation of pump stations. |

| Coal | | |
|---|---|---|
| **05.10** | **Mining of hard coal** | This class includes the mining of hard coal: underground or surface mining, including mining through liquefaction methods; cleaning, sizing, grading, pulverising, compressing etc. of coal to classify, improve quality or facilitate transport or storage; recovery of hard coal from culm banks. |
| **05.20** | **Mining of lignite** | This class includes mining of lignite (brown coal): underground or surface mining, including mining through liquefaction methods; washing, dehydrating, pulverising, compressing of lignite to improve quality or facilitate transport or storage. |
| **08.92** | **Extraction of peat** | This class includes peat digging; preparation of peat to improve quality or facilitate transport or storage. |
| **09.90** | **Support activities for other mining and quarrying** | This class includes support services on a fee or contract basis, required for mining of coal and lignite, among other:<br>• In exploration services, e.g. traditional prospecting methods, such as taking core samples and making geological observations at prospective sites<br>• In draining and pumping services, on a fee or contract basis<br>• In test drilling and test hole boring |

| Nuclear energy | | |
|---|---|---|
| **24.46** | **Processing of nuclear fuel** | This class includes the production of uranium metal from pitchblende or other ores; smelting and refining of uranium. |
| **07.21** | **Mining of uranium and thorium ores** | This class includes mining of ores chiefly valued for uranium and thorium content: pitchblende etc.; concentration of such ores; manufacture of yellowcake. |

** For more information on the NACE Rev. 2 statistical classification of economic activities please visit https://ec.europa.eu/eurostat/web/nace-rev2.

Electrical energy, petroleum, gas, coal and nuclear energy are covered by Annex EM I “Energy Materials and Products” of the ECT (as amended).

# ANNEX III: EIRA SCORING GUIDE

The score for each indicator is the average of its component sub-indicators. The score of each sub-indicator is the average of its underlying questions. The scoring rules for different types of questions are as follows:

## 1. Questions with proportionate scores

This category is scored based on the number of energy policy goals set by the country. In the example given below, the first sub-indicator of Indicator 1 allows the respondents to list the energy priorities of the country. Under the first question, there are nine identified options for respondents to select. Additionally, they are given the opportunity to specify other priorities considered relevant to their respective energy sectors. The response to the first question sets the premise on which the following questions will be answered and scored. For example, a country has set 5 goals. As a result, 20 points are attributed to each of the selected goals for the scoring of the next questions. Subsequently, the respondent identifies an energy strategy document for three out of the five selected goals, and the country receives 60 points on that question. The scores for the third and the fourth questions are calculated likewise. The final score of this sub-indicator is the average scores of its component questions, which in this case is 66.7.

Sample Question Type 1

| INDICATOR 1: FORESIGHT OF POLICY AND REGULATORY CHANGE | SCORING | RESPONSE | SCORE |
|---|---|---|---|
| **Sub-indicator 1: Communication of vision and policies** | | | **66.7** |
| **1. What are the key priorities or goals of the energy sector policy?**<br>**a. Energy security [Y/N]**<br>**b. Power reliability [Y/N]**<br>**c. Affordability – energy poverty [Y/N]**<br>**d. Access to energy [Y/N]**<br>**e. Investment in the energy sector [Y/N]**<br>**f. $CO_2$ reduction [Y/N]**<br>**g. Renewable energy [Y/N]**<br>**h. Energy efficiency [Y/N]**<br>**i. Innovation [Y/N]**<br>**j. Others issues related to the energy sector (like air quality, water quality job creation etc.). Please specify.** | Not scored | 5 goals selected: energy security; power reliability; access to energy; $CO_2$ reduction; and Innovation<br><br>(100/5=20 for each goal in the related questions) | – |
| **2. Does the country have an energy strategy document for the key priority areas selected above (e.g. a vision document/roadmap etc.)? [Y/N]** | Based on the number of goals selected in the previous question, proportionate scores are allocated | Energy strategy document for 3 goals: energy security; $CO_2$ reduction; and innovation | 3x20=60 |

## 2. Binary questions

These questions can be answered with a simple “yes” or “no”. In the example below, the respondent must answer “yes” to all three questions to obtain the highest score. However, the respondent gives two positive answers and a negative one. As a result, the score for the sub-indicator is 66.7.

Sample Question Type 2a

| INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS | SCORING | RESPONSE | SCORE |
|---|---|---|---|
| **Sub-indicator 1: Regulatory effectiveness** | | | **66.7** |
| **1. Does the energy regulator derive its authority from a law? [Y/N]** | Yes-100 No-0 | Yes | 100 |
| **2. Are the functions and obligations of the energy regulator stated in a law? [Y/N]** | Yes-100 No-0 | No | 0 |
| **3. Does the energy regulator have a budget that is separate from the government’s budget? [Y/N]** | Yes-100 No-0 | Yes | 100 |

In some cases, a negative response may yield a high score while a positive answer may be scored 0. In the following example, the respondent must answer “no” to all the questions to obtain the highest score. However, the respondent gives one negative and one positive answer. As a result, the score for the sub-indicator is 50.

Sample Question Type 2b

| INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS | SCORING | RESPONSE | SCORE |
|---|---|---|---|
| **Sub-indicator 2: Restrictions on FDI** | | | **50** |
| **1. Are foreign investors required by law to partner with State/ State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]** | Yes-0 No-100 | No | 100 |
| **2. Are foreign investors required to purchase a certain percentage/ value/quantity of products or services from local suppliers? [Y/N]** | Yes-0 No-100 | Yes | 0 |

## 3. Questions with alternative responses and granulated scores

In some cases, the respondent is asked to select an answer from a group of alternatives. The answer reflecting best practice is scored 100, whereas the score for the rest of the options is granulated. In the table below, the respondent states that only some legal and regulatory information is made available. This alternative is not considered optimal and, thus, yields only 50 points. In the following question, the respondent states that laws and regulations are accessible both electronically and in print. This is considered best practice and gets a score of 100. Similarly, the respondent answers that the energy regulator makes available all its decision to the public, which again is considered best practice and gets 100. The overall score for this sub-indicator is 83.3.

Sample Question Type 3

| INDICATOR 2: MANAGEMENT OF DECISION-MAKING PROCESSES | SCORING | RESPONSE | SCORE |
|---|---|---|---|
| **Sub-indicator 1: Transparency** | | | **83.3** |
| **1. Does the country make available legal and regulatory information to the public?** | | 1-b | 50 |
| **a. Yes, all information is made available** | 100 | | |
| **b. Only some information is available** | 50 | | |
| **c. No information is available** | 0 | | |
| **2. How are laws and regulations made accessible to public?** | | 2-a | 100 |
| **a. Both electronically and in print** | 100 | | |
| **b. Only electronically** | 66.7 | | |
| **c. Only in print** | 33.3 | | |
| **d. Available only upon request/or payment of fee** | 0 | | |
| **3. Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?** | | 3-a | 100 |
| **a. Yes, all decisions are made available** | 100 | | |
| **b. Only some decisions are made available** | 50 | | |
| **c. No decisions are made available** | 0 | | |

## 4. Questions with alternative sub-questions

This type of question provides alternatives to the respondents, in case a negative answer to the main question is compensated by other measures. In the example provided below, the respondent claims that investors need authorisation before investing in the energy sector. Since this imposes a restriction on investors, the answer to the main question gets a 0. Where the prior authorisation requirement results in restrictiveness but is not discriminatory in nature, 50 points are "recovered" by answering "yes" to question 1a.

Sample Question Type 4

| INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS | SCORING | RESPONSE | SCORE |
|---|---|---|---|
| **Sub-indicator 2: Restrictions on FDI** | | | **50** |
| **1. Is there a pre-screening or prior-authorisation requirement for investing in the energy sector? [Y/N]** | Yes-0 No-100 | Yes | 0 |
| **If yes:**<br>**1a. Is pre-screening applicable to both domestic and foreign investors? [Y/N]** | Yes-50 No-0 | Yes | 50 |

## 5. Divided questions

For some sub-indicators the main question is bifurcated into sub-questions, which are awarded identical scores since they are equally important. The sub-questions develop a joint perfect score of 100, when answered positively. In the example below, the country scores 50 because it is a Contracting Party only to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Sample Question Type 5

| INDICATOR 4: RULE OF LAW (COMPLIANCE WITH NATIONAL AND INTERNATIONAL OBLIGATIONS) | SCORING | RESPONSE | SCORE |
|---|---|---|---|
| **Sub-indicator 1: Management and settlement of investor-State disputes** | | | **50** |
| **1. Is the country a Contracting Party to:** | | | |
| **1a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N]** | Yes-50 No-0 | Yes | 50 |
| **1b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N]** | Yes-50 No-0 | No | 0 |

# ANNEX IV: EIRA QUESTIONNAIRE 2021

# Indicator 1: Foresight of policy and regulatory change

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **Sub-indicator 1.1: Communication of vision and policies** | | |
| **1.1.1 What are the key priorities or goals of the energy sector policy?**<br>a. Energy security [Y/N]<br>b. Power reliability [Y/N]<br>c. Affordability – energy poverty [Y/N]<br>d. Access to energy [Y/N]<br>e. Investment in the energy sector [Y/N]<br>f. $CO_2$ reduction [Y/N]<br>g. Renewable energy [Y/N]<br>h. Energy efficiency [Y/N]<br>i. Innovation [Y/N]<br>j. Others issues related to the energy sector (like air quality, water quality job creation etc). Please specify. | This is not an exhaustive list and countries are only expected to tick the boxes relevant to them. Countries may add priorities or goals not listed. | Not scored |
| **1.1.2 Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/ Roadmap)? [Y/N]** | Kindly provide details of the energy strategy (such as date when the document was endorsed). Please also provide a link to the document or send the pdf version. | Based on the number of goals selected |
| **1.1.3 Has the country set any short-, medium- term targets for the priority areas selected above? [Y/N]** | This may include any specific short-, medium-term outcomes/targets for the energy sub-sectors. | Based on the number of goals selected |
| **1.1.4 Has the country set any ultimate/final outcomes for the priority areas selected above? [Y/N]** | This may include any specific final outcomes or end game for the energy sub-sectors. | Based on the number of goals selected |
| **1.1.5 Is there a timeframe for achieving the ultimate/final outcomes for the priority areas selected above? [Y/N]** | | Based on the number of goals selected |
| **1.1.6 Is there a binding national action plan in place for implementing the priorities selected above? [Y/N]** | | Based on the number of goals selected |
| **1.1.7a Is the country a party to the United Nations Paris Climate Agreement? [Y/N]** | | Yes-50 No-0 |
| **1.1.7b If yes, does the country's NDC contain details on energy sector $CO_2$ contribution? [Y/N]** | | Yes-50 No-0 |
| **Sub-indicator 1.2: Robustness of policy goals and commitments** | | |
| **1.2.1 Is there a body responsible for monitoring the implementation of each energy priority? [Y/N]** | | Based on the number of goals selected |
| **1.2.2 Is the monitoring body independent of the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]** | For instance a technical/statistics body. | Based on the number of monitoring bodies |
| **1.2.3 Is the monitoring body required to provide feedback to the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]** | | Based on the number of monitoring bodies |
| **1.2.4 Is there a legal provision that allows the government to review the energy priorities selected above, and sets out the process in which the review should be performed? [Y/N]** | Please provide relevant legal acts/provisions. | Yes-100 No-0 |

**Additional remarks:**
Are there any regulatory measures/legal changes that you anticipate in the coming year? *Please describe.*

# Indicator 2: Management of decision-making processes

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **Sub-indicator 2.1: Institutional governance** | | |
| **2.1.1 Indicate the levels of government involved in framing energy legislation:**<br>a. Central government [Y/N]<br>b. Provincial [Y/N]<br>c. Municipal [Y/N]<br>d. More than 3 [Y/N]<br>e. How many levels are involved in total? | | For one level<br>100<br>For two levels<br>50<br>For three levels<br>25<br>For more than three levels<br>0 |
| **2.1.2 Is there a central authority responsible for the overall energy policy formulation process? [Y/N]** | Please provide the name of the institution and its website. | Yes-100 No-0 |
| **2.1.3 Is there a central authority responsible for the overall investment policy formulation process? [Y/N]** | Please provide the name of the institution and its website. | Yes 100 No-0 |
| **2.1.4 Do the energy and investment authorities consult each other while formulating polices related to their respective sectors? [Y/N]** | This includes consultation within working groups, etc. | Yes-100 No-0 |
| **2.1.5 Is there an authority responsible for the overall implementation and monitoring of the country's NDC? [Y/N]** | Please provide the name of the institution and its website. | Yes-100 No-0 |
| **2.1.6 Is there a process that requires the government to periodically review the implementation of its NDC? [Y/N]** | | Yes-100 No-0 |
| **2.1.7a Has the country established a one-stop shop investment approval authority? [Y/N]** | Please provide the name of the institution and its website. | Yes-50 No-0 |
| **2.1.7b If yes, does it also give approval for the energy sector? [Y/N]** | | Yes-50 No-0 |
| **2.1.8a Is there a single window for all enquiries concerning investment policies and applications? [Y/N]** | Please provide the name of the institution and its website. | Yes-50 No-0 |
| **2.1.8b If yes, does it also give information for the energy sector? [Y/N]** | | Yes-50 No-0 |
| **Sub-indicator 2.2: Transparency** | | |
| **2.2.1 Does the country have a law on transparency? [Y/N]** | | Yes-100 No-0 |
| **2.2.2a Do exceptions to transparency rules exist? [Y/N]** | Such exceptions can include national security, public interest, law and order etc. | Yes-0 No-100 |
| **2.2.2b If yes, are these exceptions clearly defined in law or regulation? [Y/N]** | | Yes-100 No-0 |
| **2.2.3 Does the country make available legal and regulatory information to the public?**<br>a. Yes, all the information is made available<br>b. Only some of information is made available<br>c. No information is made available | Legal and regulatory information includes enacted laws, draft laws, regulations, draft regulations. If the information is limited, please state reasons for this answer. | 100<br>50<br>0 |
| **2.2.4 How is law and regulation made accessible to the public? [Y/N]**<br>a. Both electronically and in print<br>b. Only Electronically<br>c. Only in print<br>d. Available only upon request or payment of fee | On request means investors can approach public authorities for hard copies. | 100<br>66.7<br>33.3<br>0 |
| **2.2.5 Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?**<br>a. Yes, all the decisions are made available<br>b. Only some decisions are made available<br>c. No decisions are made available | | 100<br>50<br>0 |

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **2.2.6 Are energy strategy documents and national plans available in any of the UN languages? [Y/N]** | The UN languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this question, unofficial translations are not relevant. | Yes-100 No-0 |
| **2.2.7 Are enacted laws available in any of the UN languages? [Y/N]** | The UN languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this question, unofficial translations are not relevant. | Yes-100 No-0 |
| **2.2.8 Do the bodies responsible for monitoring and implementing energy priorities/objectives publish their data? [Y/N]** | This question refers to monitoring bodies mentioned in question 1.2.1. | Yes-100 No-0 |
| **2.2.9 Is legal information centralised?**<br>a. In an electronic centralised registry of laws and regulations<br>b. Centralised registry/official gazette in print<br>c. No centralisation of laws and regulations | | <br>100<br>50<br>0 |
| **2.2.10 Is consultation between the government and the stakeholders required under any law/regulation/rule? [Y/N]** | Stakeholders may include affected public and private investors, energy agencies, local government administration, non-governmental organisations, and wider community. | Yes-100 No-0 |
| **2.2.11 Is consultation between the energy regulator and the stakeholders required under any law/regulation/rule? [Y/N]** | | Yes-100 No-0 |
| **2.2.12 Are stakeholders notified and consulted in advance when new laws and regulations are enacted? [Y/N]**<br>a. Notified and consulted in advance<br>b. Notified but not consulted<br>c. Not notified or consulted | | <br>100<br>0<br>0 |

**Additional remarks:**
Are there any concerns regarding the transparency in the country or its decision making that you wish to highlight? *Please describe.*

# Indicator 3: Regulatory environment and investment conditions

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **Sub-indicator 3.1: Regulatory effectiveness** | | |
| **3.1.1 Which institution is responsible for regulating the energy sector?**<br>a. A separate energy regulatory body<br>b. An agency under the control of the Ministry<br>c. A Ministry<br>d. Multiple ministries/agencies regulating sub-sectors separately | Hereafter referred to as 'the energy regulator'. | Not scored |
| **3.1.2* Does the energy regulator derive its authority from a law? [Y/N]** | Please provide the name of the legal act which establishes the energy regulator. | Yes-100 No-0 |
| **3.1.3* Are the functions and obligations of the energy regulator stated in a law? [Y/N]** | Please provide the name of the legal act which specifies the obligations of the energy regulator. | Yes 100 No-0 |
| **3.1.4* Is the energy regulator subject to the public control conducted by other institutions?**<br>a. Supreme Audit Office which is independent from the central government and/or Parliament<br>b. Governmental institution<br>c. None of the above | | <br>100<br><br>0<br>0 |
| **3.1.5* Does the energy regulator have a budget that is separate from the government's budget? [Y/N]** | This means the budget is not determined by the government. | Yes-100 No-0 |
| **3.1.6* Does the energy regulator have a dedicated budget for itself? [Y/N]** | Dedicated budget means that the energy regulator is not required to transfer or share its funds with any other governmental entities. | Yes-100 No-0 |
| **3.1.7* Does the energy regulator have the right to allocate its budget?**<br>a. Yes, it has full right to do so<br>b. Yes, but it needs approval from the governmental/ministry<br>c. No, it cannot allocate the budget on its own | | <br>100<br>50<br>0 |
| **3.1.8a* Is there a fixed term appointment for the board of the energy regulator? [Y/N]** | | Yes-50 No-0 |
| **3.1.8b* If so, is the term renewable more than once? [Y/N]** | | Yes-0 No-50 |
| **3.1.9* Is the selection procedure of the board and its finalisation publicly announced? [Y/N]** | | Yes-100 No-0 |
| **3.1.10a Does the energy regulator deal with competition issues? [Y/N]** | | Yes-100 No-0 |
| **3.1.10b If no, is there a separate governmental body dealing with competition issues, including the energy sector? [Y/N]** | | Yes-100 No-0 |
| **Sub-indicator 3.2: Restrictions on FDI** | | |
| **3.2.1a Does the country give equal treatment to domestic and foreign investors? [Y/N]** | Please provide legal acts which grant equal treatment to domestic and foreign investors. | Yes-50 No-0 |
| **3.2.1b If yes, is this equal treatment established in law? [Y/N]** | | Yes-50 No-0 |
| **3.2.2a Are investors in the energy sector allowed to invest in all zones or regions within the country? [Y/N]** | This can include restrictions on undertaking activities in the Exclusive Economic Zones, special economic zones, free trade zones. | Yes-100 No-0 |
| **3.2.2b If no, is this applicable to domestic and foreign investors alike? [Y/N]** | | Yes-50 No-0 |

* For electricity and hydrocarbon regulators

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **3.2.3a Is there a pre-screening or prior-authorization requirement for foreign investors in the energy sector? [Y/N]**<br><br>**3.2.3b If yes, is it only a notification requirement? [Y/N]** | Screening mechanisms include requiring the foreign investors to show that the project is in the national interest of the Host State. However, in some cases, they are automatic and amount to a simple pre-notification requirement for investors. | Yes-0 No-100<br><br>Yes-50 No-0 |
| **3.2.4 Are foreign companies legally allowed to hold a majority stake in energy projects? [Y/N]** | | Yes-100 No-0 |
| **3.2.5 Are foreign investors required by law to partner with the State/State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]** | | Yes-0 No-100 |
| **3.2.6 Are there limitations on the employment of foreign personnel?**<br>a. There are no limitations [Y/N]<br>b. Limitation by percentage [Y/N]<br>c. Limitation on the number of times work permit/visa can be renewed [Y/N] | | <br>100<br>0<br>0 |
| **3.2.7 Are foreign investors required to employ specific percentages of local work force?**<br>a. There are no such requirements [Y/N]<br>b. Yes, for the managerial level (board of directors etc.) [Y/N]<br>c. Yes, for the unskilled labour and non-technical/administrative staff [Y/N] | | <br>100<br>0<br>0 |
| **3.2.8 Are foreign investors required to purchase a certain percentage/value/quantity of products or services from local suppliers? [Y/N]** | Local content provisions require foreign investors to purchase a minimum threshold of goods (e.g. raw materials) and services (e.g. human resources) locally. | Yes-0 No-100 |
| **3.2.9a Are there any currency restrictions and/or foreign exchange controls applied to foreign investors under a law or regulation? [Y/N]**<br><br>**3.2.9b If yes, do these exchange controls include:**<br>a. Banning use of foreign currency? [Y/N]<br>b. Limiting currency exchange to government approved exchangers? [Y/N]<br>c. Fixed exchange rates? [Y/N] | | Yes-0 No-100 |
| **3.2.10a Do restrictions on the transfer of investment related capital, payments and profits exist?**<br><br>**3.2.10b If yes, do they apply equally on foreign and domestic investor?** | e.g. profits, dividends, interest and royalty receipts, original capital, capital appreciation, proceeds from liquidation, payments received as compensation for property expropriation, settlement of disputes etc., and earnings of personnel engaged from abroad in connection with an investment. | Yes-0 No-100<br><br>Yes-50 No-0 |
| **Additional remarks:**<br>Are there any measures by the regulator or restrictions on investment you wish to highlight? *Please describe.* | | |

# Indicator 4: Rule of Law (compliance with national and international obligations)

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **Sub-indicator 4.1: Management and settlement of investor-State disputes** | | |
| **4.1.1 Is the jurisdiction for hearing contractual disputes with foreign investors defined in the domestic law? [Y/N]** | | Yes-100 No-0 |
| **4.1.2 Is there a separate mechanism for appealing against regulatory decisions?**<br>a. Yes, appeals can be heard by the regulator in the first instance<br>b. Appeals can only be heard by general courts<br>c. There is no appeal process | | <br>100<br>50<br>0 |
| **4.1.3 Are national courts and administrative tribunals required by law to deliver decisions within a defined time limit? [Y/N]** | | Yes 100 No-0 |
| **4.1.4 Is arbitration included in:**<br>a. An investment law<br>b. A separate arbitration law<br>c. As a chapter/section in the code of civil procedure<br>d. There is no law that refers to arbitration | | <br>100<br>100<br>100<br>0 |
| **4.1.5 Is voluntary mediation, conciliation or both included in:**<br>a. An investment law<br>b. Arbitration and mediation law<br>c. As a chapter/section in the code of civil procedure<br>d. There is no law that refers to mediation and/or conciliation | | <br>100<br>100<br>100<br>0 |
| **4.1.6 Is there an investment ombudsman to whom foreign investors can refer disputes with the government? [Y/N]** | Please provide the name of the institution and its website. | Yes-100 No-0 |
| **4.1.7a Do national laws allow the recognition and enforcement of foreign judgments? [Y/N]** | | Yes-50 No-0 |
| **4.1.7b If yes, then are these laws equally applicable to different jurisdictions? [Y/N]** | | Yes-50 No-0 |
| **4.1.8 Do national laws and/or International Investment Agreements require exhaustion of local remedies (e.g. domestic courts) before recourse to international arbitration? [Y/N]** | Foreign investors are required to go through the administrative and judicial system of the State before initiating international proceedings directly against the State. | Yes-0 No-100 |
| **4.1.9 Has the country made retroactive changes to its laws in the past 5 years? [Y/N]** | | Yes-0 No-100 |
| **4.1.10 Is the country a Contracting Party to:**<br>a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N]<br>b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N] | | <br>Yes-50 No-0<br>Yes-50 No-0 |
| **Sub-indicator 4.2: Respect for property rights** | | |
| **4.2.1 Are the criteria for 'public interest' as grounds for expropriation clearly stated? [Y/N]** | Please provide the legal act that specifies these criteria. | Yes-100 No-0 |
| **4.2.2 Does the State provide in its laws and/or its International Investment Agreements a process for determining compensation in the event of expropriation in the energy sector? [Y/N]** | e.g., determination of compensation by independent auditors. | Yes-100 No-0 |
| **4.2.3 Does the State provide in its laws and/or its International Investment Agreements a time frame within which compensation needs to be paid? [Y/N]** | Please provide the law which states this time frame. | Yes-100 No-0 |

| QUESTIONS | CLARIFICATIONS TO QUESTIONS | SCORING |
|---|---|---|
| **4.2.4a Does the State include in its laws and/or International Investment Agreements protection against the expropriation of intellectual property rights? [Y/N]** | | Yes-50 No-0 |
| **4.2.4b Is the country a Member State of the World Intellectual Property Organization? [Y/N]** | | Yes-50 No-0 |
| **4.2.5 Does the State have in its laws and/or International Investment Agreements any provisions restricting the transfer of technology in the energy sector? [Y/N]** | Please provide the law which states this restriction. | Yes-0 No-100 |
| **4.2.6 Is the country a Member State/Contracting Party to:**<br>a. The World Trade Organization? [Y/N]<br>b. The Energy Charter Treaty? [Y/N] | | <br>Yes-50 No-0<br>Yes-50 No-0 |

**Additional remarks:**
Are there any risks related to investor state disputes in the energy sector which you anticipate? *Please describe.*

# CONTRIBUTORS & ECS TEAM

## GOVERNMENT CONTRIBUTORS

MINISTRY OF PETROLEUM AND ENERGY

## EXTERNAL CONTRIBUTORS

Amie N.D Bensouda - AMIE BENSOUDA & CO

Abdul Aziz Bensouda - AMIE BENSOUDA & CO

Fatoumata MBenga - AMIE BENSOUDA & CO

# ECS TEAM

## ISHITA PANT

Ishita joined the EIRA team in 2017. As the project manager of EIRA, she oversees its schedule and guides the data collection process, research and analysis, policy recommendations, and the editorial and layout aspects. In 2019, she supervised the development of the EIRA website. In addition to the annual EIRA reports, she has authored the EIRA extended risk profiles of Nigeria (2018-2020) launched by the Energy Commission of Nigeria during the country's first and second National Energy Summits.

Since 2019, Ishita has led discussions with the Energy Charter Conference Members and Observers to include the following new topics in EIRA: achieving the clean energy transition and increasing competition in the electricity markets. In 2021, the Energy Charter Conference approved EIRA's new scope and methodology to be implemented from 2022 onwards.

Ishita is an Investment Coordinator at the International Energy Charter. She is a common law qualified lawyer and holds an LL.M. degree in Energy and Natural Resources Law from the Queen Mary University of London. Before joining the International Energy Charter, she worked as in-house counsel for French-based Air Liquide. Her areas of specialisation are energy, projects and infrastructure, and regulated industries.

## MONICA EMMANUEL

Monica joined the Energy Charter Secretariat as the Expansion Coordinator for Africa. She coordinates communication with the ECOWAS Commission and countries under the East African Community and ECOWAS on activities and technical assistance projects, including EIRA. She has facilitated the signature of the ECOWAS Commission, Nigeria, and The Gambia to the International Energy Charter political declaration. She has also developed the high-level ECOWAS-EU-ECS Energy cooperation by securing for the Secretariat a voluntary contribution under the EU-ECOWAS-AGoSE project for improving energy governance in West Africa. The contribution has been utilised for developing this ECOWAS-The Gambia EIRA Extended Profile.

Monica holds a Doctorate Degree in International Relations from the Geneva School of Diplomacy and International Relations in Switzerland. Before joining the Secretariat, she worked with various national and international organisations across Africa and Europe for several years, including as a Research Fellow with the African Centre for Strategic Research and Studies, National Defence College Abuja, Nigeria. She has authored the book Federalism in Nigeria: Between Divisions in Conflict and Stability in Diversity. Her areas of expertise are international relations and diplomacy, programme management, capacity building, research and training, peace and conflict studies, focusing on Africa.

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eira.energycharter.org

INTERNATIONAL ENERGY CHARTER

Boulevard de la Woluwe 46
B-1200 Brussels, Belgium
info@encharter.org
energycharter.org

T: +32 2 775 98 00
F: +32 2 775 98 01
@Energy_Charter
@SecGenEnCharter