



The draft Nigerian Petroleum Industry Bill 2020: an analysis of environmental and host community matters

Summary

The latest iteration of Nigeria's Petroleum Industry Bill (PIB) was forwarded to the National Assembly in September 2020. It has gone through first reading at both the Senate and House of Representatives but full deliberation and public hearing is expected to take place in the first quarter of 2021. The new draft sees the four components of the bill (governance, administration, host communities, and finance) brought back together under one bill; the scrapping of a number of bodies to be replaced by two regulators (the Nigerian Upstream Regulatory Commission—NURC, and the Nigerian Mid and Downstream Petroleum Regulatory Authority—NMDPRA); the privatisation of NNPC; and a number of other significant changes to the way the industry will be governed.

Policy recommendations

- Clarity is needed on how current provisions in the bill relate to the National Oil Spill Detection and Response Agency (NOSDRA) and several key pieces of existing legislation to avoid weakening or confusing the existing environmental regulatory framework.
- The creation of Environmental Remediation Funds could be a very positive step, but the bill should clearly place responsibility for environmental regulation under the Ministry of Environment and NOSDRA, to avoid a conflict of interest for the two proposed new regulators who will be responsible for expanding and maximising returns from the industry.
- The bill does contain several positive provisions, which if developed further could help provide a much more robust framework for environmental regulation. This includes remediation funds and stronger provisions on decommissioning.
- This bill should be amended to support Nigeria's climate commitments and a transition to clean energy. This could be done, for example, through the creation of a Clean Energy Development Fund financed by a levy on oil and gas sales.
- Host community development considerations are limited to the creation of trust funds by oil and gas companies without strong representation and decision making by host communities. Ideally the bill would provide a much more holistic framework for host community development beyond only trust funds.
- The bill also places too much onus on communities to prevent third-party damage to infrastructure, and punishes whole communities by reducing their trust fund allocation if damage occurs.

Introduction

While Nigeria should rapidly focus on the transition to clean energy and a diversified economy, for as long as the petroleum industry remains, it must be well governed. This briefing primarily focuses on environmental regulation and how host community concerns and needs are integrated into the emerging Nigerian Petroleum Industry Bill (PIB). These are the two main areas that SDN has focussed its advocacy efforts on in previous versions of the bill, and this brief builds on previous SDN analysis of the PIB, which can be found on our [website](#).

Our analysis is also framed by a focus on the Niger Delta, where our work—and the vast majority of Nigeria’s oil industry—is based, but is also relevant to oil and gas industry operations elsewhere in Nigeria.

We have confined our analysis of the PIB to a few key issues, grouped below, with associated recommendations for improvements. SDN welcomes discussion on these and wider matters in the PIB, and our contact details are provided in this briefing.

Analysis

Where will environmental regulation of the oil and gas industry sit?

SDN has long campaigned for the clear separation of the regulation of environmental issues from wider regulation of the industry. Where a regulator is responsible for both maximising production and protecting the environment, the latter responsibility risks being deprioritised. This is too big a risk in the Niger Delta, which continues to be affected by widespread oil spills and gas flaring.

The draft PIB makes no reference to existing environmental regulatory agencies, legislation, or guidelines, such as the National Oil Spill Detection and Response Agency (Establishment) Act, and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria. Instead, the responsibility for environmental protection risks being further embedded within industry regulators with conflicting interests—for example, the creation of Environmental Funds to be managed by NURC and NMDPRA (more on these below).

This creates uncertainty over the primacy of wider existing environmental regulation, and responsibility for environmental regulation between industry regulators and the Ministry of Environment and National Oil Spill Detection and Response Agency (NOSDRA).

Recommendations:

- The PIB should reference existing environmental legislation in all relevant sections and confer full responsibility for regulation of environmental matters to the Ministry of Environment and NOSDRA.
- If the latter change is made within the PIB, the next step to strengthen environmental regulation would be the reintroduction of the National Oil Spill Detection and Response Agency (NOSDRA) Amendment Bill, which would seek to address a number of gaps in the current regulatory framework.

How are the industry’s major environmental challenges dealt with?

There are a number of provisions for the metering, prevention, and utilisation of flared gas. However, similar existing provisions have failed to eliminate gas flaring, so stronger implementation and enforcement is required should this version of the PIB be passed. For example, this draft retains the possibility for the regulator to offer exemptions from gas flare penalties at its discretion (section 104, clause 1b). Presently, it is difficult to

access information on exemptions, but they are understood to be fairly widespread.

While several provisions are in place to prevent gas flaring, there is a missed opportunity to also require operators to monitor and minimise methane leakage from their infrastructure, which is an important contributor to greenhouse gas emissions.

Oil spills are a frequent occurrence associated with the oil and gas industry in Nigeria. However, the current draft PIB contains no reference to oil spills or oil spill contingency plans.

Recommendations:

- Remove the possibility for *general* exemptions from flaring.
- Require the publication of monthly metered volumes of flared gas by company and flare stack, and the publication of exemptions from penalties, to promote transparency on the progress of gas flare elimination.
- Require companies to monitor and report on steps taken to minimise methane leakage.
- Environmental concerns could be mainstreamed in important areas of the bill, such as including social and environmental concerns as part of the selection criteria for selecting winning bidders for Petroleum Prospective Licenses and Petroleum Mining Leases.
- The PIB does not necessarily need to contain explicit provisions on oil spills, but it should make reference to related legislation for the prevention, reduction, and management of pollution from oil spills.

How would an Environmental Remediation Fund work?

The PIB draft provides for the creation of an Environmental Remediation Fund ‘for the rehabilitation or management of negative environmental impacts with respect to the licence or lease’. The general principle of setting aside funds for environmental clean-up is welcome. However, designating this fund under the proposed NURC and

NMDPRA risks further confusing responsibilities with existing environmental regulators such as NOSDRA.

Key details are missing, such as the amount to be paid to this fund. Instead, there is a vague requirement to ‘take into consideration the size of the operations and the level of environmental risk that may exist’. In addition, the main purpose of the fund is to “rehabilitate or manage the negative environmental impact” where the operator fails to do so. However, if the licensee/lessee has already paid its contribution to the fund, then it is unclear what incentive it has to pay for its own clean up separately, or what’s to be done with the funds in the event that lessees do take responsibility for clean-up. This situation could incentivise less responsible companies to ‘freeload’ on the existence of the fund.

Given the extensive challenges the government-led oil spill clean-up has faced in Ogoniland, if a centralised fund is to be managed by government, there should also be significant investment to build the capacity and skills to respond to oil spill pollution.

Any fund must not be a replacement for provisions to enforce environmental standards and prevent and manage pollution, including monitoring and fines, and the primary responsibility for the prevention of, and response to, pollution must continue to fall on the company responsible.

Recommendations:

- More detail should be provided on the proposed workings of the Environment Remediation Fund to enable an understanding of how, and if, this would ensure more effective prevention and management of pollution.
- House this fund within the existing regulator, NOSDRA.

Compensation

There is a risk that the new PIB would significantly weaken an already weak compensation framework for those impacted by oil and gas production activities—namely the acquisition of land and damage to land from petroleum production, particularly oil spills.

The provisions of the Petroleum Act and Oil Pipelines Act would be repealed on expiry of Oil Prospecting Licenses and Oil Mining Leases (the oil license regime established under the Petroleum Act). These include provisions for disturbance of surface rights, damage to land, crops, economic trees, buildings and works, and loss of value of land.

The PIB contains very brief provisions on the prevention of damage from petroleum operations (see section 101, clause 2). However, the conditions for determining compensation are extremely general: that “fair and adequate compensation” should be paid (section 101, clause 3) and that this would be determined by the NURC through regulation under the act.

Recommendations:

- The current compensation framework [has a number of problems](#), and therefore there is the opportunity for the provisions of the PIB to lay the ground for harmonising and rationalising this framework. This would include:
 - harmonised compensation rates.
 - rates which account not only for present day damage but also future losses (e.g. due to reduced productivity of farmland).
 - a clear and single process for the determination and payment of compensation, and for arbitration in the event of disputes.
 - clarity over recourse to compensation from oil spills caused by third parties ([read more](#) on improvements needed for the compensation framework). The details of this do not need to be placed within the PIB, but the NURC should be charged with this in creating regulation under the act, once passed.

Decommissioning

Any company submitting a field development plan must, under the proposed PIB, not only provide a decommissioning and abandonment plan, but also establish a fund where the costs of this are put aside. The requirement to specifically put funds aside for these plans is a positive new development.

Recommendations:

- Specify that decommissioning and abandonment funds are also a retrospective requirement for existing projects. This is a practical measure as all lessees/licensees should already have a costed plan, and it should be standard industry practice to have funds put aside for this.
- Specify that decommissioning and abandonment plans must also be approved and overseen by the environmental regulator, NOSDRA.

What does the PIB mean for Nigeria’s climate commitments?

An intended aim of overhauling petroleum industry legislation has been to unlock new investments in oil and gas production. In 2019, NNPC also stated its aim was to increase oil production by a third by 2023. These aims are at odds with Nigeria’s commitment under the Paris Agreement to cut business-as-usual emissions by 20%.

The PIB draft provides for the creation of a Midstream Gas Infrastructure Fund to support an increase in domestic consumption of natural gas, funded by a levy on oil and gas sales. Access to energy is extremely low across Nigeria and solutions must be found, but large-scale investment in gas infrastructure will lock Nigeria into decades of high dependence on hydrocarbon fuels.

While gas is viewed as a cleaner option to coal, it is increasingly recognised that its production is carbon intensive, and, therefore, the marginal benefits are less than has been suggested in the past. Natural gas

will undoubtedly have to play some role in Nigeria's short-term energy future, such as for cooking—especially where that replaces wood fuel, reducing indoor pollution and deforestation—but the fund should be invested into growing renewable energy infrastructure.

Recommendation:

- Create a Clean Energy Development Fund to support the development and expansion of cleaner and renewable energy access and infrastructure

Fuel standards

[Research by SDN](#) shows that Nigeria is importing extremely low quality petroleum products. In public responses from government, the Department of Petroleum Resources, Nigeria National Petroleum Corporation, and the Standards Organisation of Nigeria have pointed to each other as responsible for the monitoring and enforcement of quality standards.

While the draft PIB does contain provisions for the NMDPRA to 'establish, monitor and ensure compliance with the standards for the processing of petroleum products in Nigeria' and for refiners to 'produce petroleum products to a quality suitable for use in accordance to the specifications approved by the Authority', this does not cover fuel imports—which are the major source of petroleum products at present.

Recommendation:

- Include explicit provisions allocating the NMDPRA (or other relevant government body) responsibility for setting, monitoring, and enforcing fuel specification standards for both domestic and imported products.

Are the needs of host communities adequately considered?

Chapter three of the PIB is what was previously a standalone bill on host communities¹—although note also that under chapter two, the provision for consultation on the finalisation and amendment of any regulations (section 216) does not explicitly note that host communities should be a key stakeholder (lessees, licensees and permit holders are).

The content of this part of the bill is entirely focussed on the creation of Host Community Development Trusts which are funded through an annual contribution of 2.5% of the previous annual operating expenditure of the lessee/licensee in that location.² Some voices in the Niger Delta have suggested this should be increased to 5%. Regardless of what the right level it, it is worth noting that 2.5% of operating expenditure appears to represent a significant increase on current, non-mandatory, social expenditure by oil companies³—which is effectively what the trust funds would replace. Note that it is not clear how spending would be allocated among host communities.

The trust funds are potentially a very narrow response to the needs of host communities, particularly if issues like the environmental regulatory framework are not strengthened. The bill legislates for the existence of corporate social responsibility initiatives, but says nothing on government responsibility to support development in host communities—for example, through the 13% derivation or the Niger Delta Development Commission. Furthermore, the objectives of these trusts are wide-ranging and potentially overlap with what should be basic government services (e.g. healthcare and education provision).

1 Note that much of [our analysis](#) of the previous version of the standalone bill remains relevant, and therefore we have limited the analysis here to a few key concerns.

2 To our knowledge, operational expenditure is not systematically reported publicly, but this data should be held by the National Petroleum Investment Management Services. However, companies currently pay a 3% levy to the Niger Delta Development Commission based on their operational expenditure. This amounted to around \$680m in 2018 (NEITI, 2018 Audit Report).

3 Reported by the Nigerian Extractive Industries Transparency Initiative (c. \$60m in 2018).

Putting aside these fundamental concerns, if the Federal Government is to pursue this approach, there are a few key issues with the trust funds, as they are currently proposed, that need addressing.

The control over the management and direction of the trusts is vested too heavily in the companies that establish them, for example:

- The Board of Trustees are selected by the settlor—there is no requirement for any of the trustees to come from the affected communities.
- There are no requirements for broader consultation and communication with community members throughout the provisions for the needs assessments and the creation of community development plans.
- Throughout, emphasis is put on upward accountability—to the board, and not downward accountability—to the affected communities.

Provisions for the trust fund, and the role of the Community Advisory Committee place an unfair onus on communities to ensure the security of oil and gas infrastructure. Section 250 notes that the Community Advisory Committee *‘take responsibility for first line protection of facilities and ensure that petroleum operations are uninterrupted by members of their community—failing which, benefits from the trust to the host community shall be disallowed’*. This provision collectively punishes a host community if damage to oil and gas infrastructure occur, by partially⁴ or entirely withdrawing their trust funds.

Oil theft and vandalism are major problems in the Niger Delta and solutions are needed to incentivise their prevention. However, it is unreasonable to make communities take responsibility for the prevention of damage to infrastructure, which may be at the hands of armed groups and done in complicity with officials in authority—or for “civil unrest”. This section of the bill seems to abdicate oil and gas companies of their responsibility to protect their own infrastructure from third party action.

Finally, the definition of Host Communities requires further consideration. Currently, there appears to be a degree of flexibility in the operator defining which communities are host communities, which risks creating inconsistencies within and between areas of oil production and associated grievances.

A number of further issues need clarification. Some of the most important include:

- Clarification of the timeframe that community development plans should cover and how frequently these should be reviewed
- Clarity over the costs for administering the trust fund. Section 244 includes a clause which provides 5% of a trust fund to *‘be utilised solely for administrative cost of running the trust and special projects, which shall be entrusted by the Board of Trustee to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilisation of the fund to the Board of Trustees’*. It is unclear whether this administrative cost means all running costs, including those of the trustees, management committee, and advisory committee—nor is it clear what ‘special projects’ are.

Recommendations:

Ideally, a fundamentally different approach to the Host Communities Development section of the bill should be taken to minimise the negative impacts and maximise the benefits of the oil and gas industry. However, in its current format, at a minimum:

- The governance and management structure of trusts needs to integrate greater community representation and decision making power.
- A ‘host community’ should not be defined by the settlor. The regulators and government should work with the settlor to identify all host communities.
- Provisions must be made to ensure the trust funds are not spent on activities that the government and existing agencies have a responsibility to fund, and that activities are planned and implemented in coordination with wider government initiatives.
- Remove provisions that punish communities for third-party damage to pipelines, and consider

⁴ Section 257 suggests settlors only deduct the costs of “vandalism, sabotage or other civil unrest”

alternative approaches to tackle oil theft and incentivise improved pipeline security.

Transparency and data:

The existence and availability of good quality data on the oil and gas industry is a significant challenge in Nigeria. This can be seen, for example, in our own research on the environmental performance of the oil and gas industry, where competing sources of data exist or basic data is hard to access, such as

production volumes by individual Oil Mining License. There are a number of provisions in the draft PIB which are therefore welcome, including that upstream contracts will not be confidential and should be published (section 7), and a requirement for metering of gas flare stacks .

Recommendation:

- The PIB could be improved with stronger provisions for the metering and publication of oil production volumes, and for all data to be published in open data formats.



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SDN supports those affected by the extractives industry and weak governance. We work with communities and engage with governments, companies and other stakeholders to ensure the promotion and protection of human rights, including the right to a healthy environment. Our work currently focuses on the Niger Delta.

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