

Beyond Profits

**Review of Host Community Provisions in
Nigeria's Petroleum Industry Bill 2020**



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Executive Summary

Nigeria's journey to achieving a comprehensive legislation that addresses the key issues in the oil sector has been marred by controversies and setbacks. The 2020 PIB represents yet another attempt at establishing new institutional frameworks to govern operations in the oil and gas industry in Nigeria, aiming to ensure improved benefits to Nigerians from the sector. One critical aspect of the Bill is its proposed relationship with communities where hydrocarbons are extracted.

Chapter III of the PIB makes elaborate provisions for the establishment and management of a petroleum host community development trust to manage an annual contribution of 2.5% of the total operating cost of the settlor in the preceding calendar year in respect of all petroleum operations affecting the host community. According to the Chapter, the objectives include to foster sustainable prosperity within host communities, provide direct social and economic benefits from petroleum operations to host communities, enhance peaceful and harmonious co-existence between licensees or lessees and host communities, and to create a framework to support the development of host communities. As well intentioned as the provisions of the Chapter are, this report raises key concerns that require addressing in order to ensure maximum delivery on these objectives.

Among the key issues are the governance structures of the Host Communities Development Trust which overtly emphasizes the control of the settlor who is empowered to establish the key governance structures of the trust, with or without the participation of the communities or the government. This has been rated as a possible conflict trigger. Additionally, the PIB makes the settlor chiefly responsible for determining the needs of host communities and drafting development plans for them, with limited participation of those communities.

Interestingly, the responsibility of defining which communities are 'hosts' of petroleum activities, is left at the discretions of the settlor, without any defined role for communities and the government.

Controversially, the PIB passes the responsibility of protecting oil installations to the communities and proposes to deny them entitlements provided for in the Bill if sabotage or civil unrest occurs in their communities. The Bill expects unarmed communities to protect oil installations from armed cartels of oil thieves.

This report also highlights the fact that the Bill is silent on frameworks for dispute resolution, a neglect which has often led to conflicts, and more recently, led to communities filing litigations against oil companies abroad.

The report also calls attention to the passive manner the Bill deals with the environmentally dangerous, economically wasteful and health threatening practice of gas flaring. The Bill allows the government to introduce discretionary fines, award discretionary permits to flare, and spells no real sanctions for gas flaring, or even propose a deadline to end the practice. Even the paltry fines from flaring are to be paid into the coffers of the federal government and shared as routine revenues without any regard for the communities who suffer the adverse livelihood and health impacts.

To ensure that the PIB 2020 achieves its objectives, this report makes the following recommendations among others;

- The composition of the governance structures of the Petroleum Host Communities Development Trusts should be adjusted to reflect community participation.
- It is recommended that government at the federal and state levels be made to play leading roles in defining host communities. Communities should also be allowed a role in determining this too. In defining host communities, adequate consideration should be given to communities that host oil installations, those that are affected by the often-negative impacts of extraction and those whose land, rivers and creeks provide access for oil facilities.
- It is recommended that provisions for needs assessment be adjusted to include the active participation of communities as well as the government.
- Provisions for penalty in respect of failure to comply with the provisions of the Bill for setting up the Host Communities Development Trusts are weak and imprecise. The use of the word 'may' create openings that could affect the enforcement of penalties. It is recommended that the language in section 238 be changed to ensure definite penalty if a Settlor fails to follow the provisions of the Bill.
- It is recommended that the Bill creates an additional section that establishes frameworks for dispute resolution.
- It is recommended that section 257 which places the responsibility of protecting oil installations on petroleum host communities be completely expunged from the Bill.
- On gas flaring, it is recommended that a new section reading ***“All fines for gas flares under this Section shall be utilized in the following manner: 50% paid into the Environmental Remediation Fund provided for in this Act while the remaining 50% is to be paid into the Host Community Trust Fund of the community from where such flares occurred.”*** be introduced.
- It is recommended that the discretionary powers given to the Commission to determine how much is paid as penalty for gas flaring be removed. The regulations should clearly state the fines for violations and how they should be calculated; while the PIB should state a definite date to end gas flaring.

Introduction

The Nigerian Petroleum sector is still governed largely by legislations established in the 1950s, 1960s and 1970s. Chief among them are: the Petroleum Act, established in 1969; the Petroleum Profit Tax Act, introduced in 1959; and the Nigerian National Petroleum Corporation Act of 1977 (as amended), admitting only limited legislative adjustments over the period, while remaining essentially the same in structure and impact on the sector. In reality, while the legislations governing the petroleum sector in Nigeria has remained essentially static, the global oil and gas industry has transformed profoundly. The governance and investment frameworks of the sector have transformed rapidly to the extent that the present composition of the Nigeria oil and gas sector has not only become obsolete, but it is also becoming an impediment to the proper management and harnessing of benefits from the sector. For example, in the 2017 Resource Governance Index produced by the Natural Resource Governance Institute, Nigeria scored only 42 points out of a possible 100 and ranked 55th. The index measures the quality governance of natural resources in *'81 countries that together produce 82 percent of the world's oil, 78 percent of its gas and a significant proportion of minerals, including 72 percent of all copper.'* Out of 100 available points for each, Nigeria scored 50 on value realization, 44 points on revenue management and 31 points on enabling environment. In all, the scores indicate that Nigeria's oil and gas sector is poorly managed. The challenges in the governance of the sector has manifested in gross inefficiency, corruption, loss of value, environmental degradation and conflicts.

Background

The Petroleum Industry Bill (referred to as 'PIB' for short') is one of the oldest and perhaps most contentious Bills in Nigeria's legislature. The Bill was introduced to the legislature in 2008 at the instance of the Federal Government, following recommendations of the Oil and Gas Reform Committee (OGRC) in 2007. The OGRC was itself established in 2000 by the then President Olusegun Obasanjo for the purposes of examining all existing laws relevant to the oil and gas sector, and developing a framework for improving the governance of the sector. In 2005, another committee, the Oil and Gas Implementation Committee, was established with a mandate to develop strategies for operationalizing the recommendations of the Oil and Gas Reform Committee. The work of the committee formed the core of the PIB submitted for the consideration of the legislature in 2008.

The PIB envisages the emergence of new institutional frameworks to govern the operation of the oil and gas industry in Nigeria. These frameworks include the establishment of a more efficient national oil company, the adoption of improved transparency and accountability measures, as well as new and efficient regulatory institutions for the sector. The PIB brings together about 16 existing legislations around Nigeria's petroleum industry into a single cohesive legislation to govern the industry from the upstream to the downstream sectors. Overall, it aims to ensure improved benefits to Nigerians from the oil and gas sector.

From its first transmission to the legislature in 2008 as an Executive Bill, the PIB has passed through key adjustments, setbacks and controversies. The fiscal proposals in the Bill became a source of discomfort for some international oil companies who considered it harsh and capable of changing the frameworks around existing and future investments in the sector. In 2011, there were different versions of the Bill in circulation, each including or eliminating one contentious provision or the other. Unfortunately, the elections of that year deflected attention from the legislative debates and passage of the Bill. By 2012, a new version of the Bill was developed and presented to the legislature for consideration, with the President following up through the establishment of a taskforce with responsibility for ensuring its quick passage. Again, it generated major controversies with more versions of the Bill emerging - each representing the interest of various groups. The Bill was withdrawn from the National Assembly and replaced with a revised version in 2014. Work on the new proposal made some progress and the House of Representatives passed it in 2015 amidst controversy that the version it passed was heavily doctored to suit vested interests. However, the failure of the Senate to do same rendered the effort futile. No further work was carried out on the PIB until the tenure of the 7th Assembly came to an end and a new President was inaugurated in May 2015.

¹<https://resourcegovernanceindex.org/country-profiles/NGA/oil-gas>

²<https://resourcegovernanceindex.org/>



In 2015, the administration of President Buhari proposed breaking down the PIB according to key issues addressed, and passing them as independent and separate Bills. The PIB was separated into four components- the Petroleum Industry Governance Bill (dealing with reforms in the governance of the oil and gas sector), the Petroleum Industry Administration Bill (PIAB), the Petroleum Industry Fiscal Bill (PIFB) and Petroleum Host and Impacted Communities Bill (PHICB). The administration prioritized the PIGB which it considered as containing less contentious provisions and would receive the bipartisan support of the national legislature. In May 2017, the Senate passed the PIGB, and the House of Representatives followed in January 2018. A harmonized version was passed by both houses of the National Assembly on the 28th of March 2018 and forwarded to the President for approval. Unfortunately, this significant effort by the legislature was frustrated when the President declined assent. Through a communication with the National Assembly, the President cited 'constitutional and legal reasons' for his refusal to approve the law.

There are facts backing the belief that a major point of contention in earlier versions of the PIB which resulted in controversies and setbacks is the proposal for the establishment of a host communities fund. The concerns in several quarters especially among members of the National Assembly was that the fund will only be of benefit to the host communities of oil extraction activities. Some hold the view that the Niger Delta region and oil producing communities, in particular, already have several mechanisms for ensuring the transfer of hydrocarbon resource benefits to them. In particular, the 13% derivation principle, the Niger Delta Development Commission (NDDC) and the Ministry of Niger Delta Affairs (MNDA) are regarded as compensatory mechanisms already established to ensure oil host communities receive additional revenues and development interventions.

The failure of these frameworks - and several previous ones - to adequately transfer benefits to oil producing areas, has been referenced when the argument is made that the key issue with development in the region, is not a lack of resources, but the failure of available resources to translate to tangible benefits for the people. The point is therefore made that more resources to the Niger delta region through the PIB will make no significant difference. Sadly, recent occurrences seem to reflect the continued failure of benefit transfer frameworks. These include: revelations of widespread corruption in the Niger Delta Development Commission, which has necessitated the commencement of a forensic audit; the controversies surrounding the Presidential Amnesty Programme; findings relating to the manner sub national governments manage the 13% derivation funds that accrue to their states; etc. The weaknesses in existing compensatory mechanisms is also held primarily responsible for the mood of discontentment and angst in the region which periodically escalate into episodes of armed conflicts, robberies, kidnappings, attacks on oil installations and widespread theft of crude oil.

³<http://www.petroleumindustrybill.com/tag/petroleum-industry-governance-bill/#.YABY3ulKgWo>

⁴<https://www.premiumtimesng.com/news/top-news/281790-why-buhari-withheld-assent-to-pigb-presidential-aide.html>

A New PIB and New Opportunities for Change

In September 2020, the Presidency transmitted a comprehensive Petroleum Industry Bill titled A Bill for an Act to Provide Legal, Governance, Regulatory and Fiscal Framework for the Nigerian Petroleum Industry, the Development of Host Communities and for Related Matters, containing the 4 components that were previously separated to the National Assembly for consideration. Among others, the new PIB seeks to create conducive business environment for the petroleum industry, enhance exploration and exploitation of petroleum resources for the benefit of the Nigerian people. It further seeks to optimize domestic gas supplies, particularly for power generation and industrial development, establish progressive fiscal framework that encourages further investment in the petroleum industry, establish commercially oriented and profit-driven oil and gas entities. In addition, it will deregulate and liberalize the downstream petroleum sector, create efficient and effective regulatory agencies, promote transparency and openness in the administration of the petroleum resources, promote the development of Nigerian content in the petroleum industry, protect health, safety and the environment in the course of petroleum operations, etc.

Host Communities Development

Chapter 3 of the PIB makes elaborate provisions for the establishment and management of a petroleum host community development trust, and other frameworks for the transfer of development benefits to petroleum host communities. According to the host community development chapter of the Bill, the objectives include to foster sustainable prosperity within host communities, provide direct social and economic benefits from petroleum operations to host communities, enhance peaceful and harmonious co-existence between licensees or lessees and host communities and to create a framework to support the development of host communities.

To achieve the objectives of Chapter 3 of the PIB, the Bill proposes the establishment and incorporation of a Host Communities Development Trust for the benefit of the host communities. The Bill specifically makes the incorporation of this trust the exclusive responsibility of the 'Settlor'. A settlor is defined in the Bill as the holder of an interest in a petroleum prospecting licence or petroleum mining lease or a holder of an interest in a licence for midstream petroleum operations, whose area of operations is located in or appurtenant to any community or communities. The PIB further stipulates that the Host Communities Development Trusts must be incorporated;

- (a) within 12 months from the effective date for existing oil mining leases;
- (b) within 12 months from the effective date for existing designated facilities;
- (c) within 12 months from the effective date for new designated facilities under construction on the effective date;
- (d) prior to the application for field development plan for existing oil prospecting licences;
- (e) prior to the application for field development plan for petroleum prospecting licences and petroleum mining leases granted under this Act; and
- (f) prior to commencement of commercial operations for licensees of designated facilities granted under this Act.

Host Communities Development
Objectives and regulations
The objectives of this Chapter are to -
(a) *foster sustainable prosperity within host communities;*
(b) *provide direct social and economic benefits from petroleum operations to host communities;*
(c) *enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and create a framework to support the development of host communities.*

The Bill further states that any licence or lease holder which fails to incorporate a Trust or reneges on other responsibilities contained in Chapter 3 of the Bill, runs a risk of revocation of the applicable licence or lease.

In terms of funding, the PIB proposes that the Host Communities Development Trust for each host community be funded through an annual contribution of 2.5% of the total operating cost of the settlor in the preceding calendar year in respect of all petroleum operations affecting the host community for which the applicable host community development trust was established. It also establishes the legal framework for other revenues in support of the Trust including donations, gifts, grants or honoraria, as well as inflows from profits and interests accrued from the reserve fund of the host community development trust.

According to the PIB, the objectives of the Trust include to:

- a) finance and execute projects for the benefit and sustainable development of the host communities;
- b) undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes;
- c) facilitate economic empowerment opportunities in the host communities;
- d) advance and propagate educational development for the benefit of members of the host communities;
- e) support healthcare development for the host communities;
- f) support local initiatives within the host communities, which seek to enhance protection of the environment;
- g) support local initiatives within the host communities which seek to enhance security;
- h) invest part of available fund for and on behalf of the host communities



Living in the Niger Delta

Governance of the Host Communities Development Trust

The PIB proposes three levels of governance for the Host Communities Development Trusts. The first level is the Board of Trustees. The Bill gives the power of appointing members into the Board of the Host Communities Development Trust to the Settlor. The Bill states clearly that *“the constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the host communities development trust shall be subject to the approval of the Commission or the Authority, as the case may be”*. In simple terms, not only does the Settlor take responsibility for establishing a Board of Trustees to oversee the incorporation of the Host Community Development Trust, it also exercises the discretionary power of selecting who serves on the board, as well as set the criteria and qualifications for making that selection. The Bill goes further to give the Settlor discretionary powers to determine the procedure for meetings, financial regulations, administrative procedures, remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees, etc.

Incorporation of host communities development trusts

The settlor shall for the purposes of setting up the trust, appoint and authorise a body trustees (the “Board of Trustees”), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter.

Among others, the Board of Trustees is empowered to perform the following functions:

- be responsible for the general management of the host communities development trust
- determine the criteria, process and proportion of the host communities development trust fund to be allotted to specific development programs;
- approve the projects for which the host communities development trust fund shall be utilised;
- provide general oversight of the projects for which the host communities development trust fund shall be utilised;
- approve the appointment of fund managers for purposes of managing the reserve fund;
- set up the management committee of the host communities development trust and appoint its members; and
- determine the allocation of funds to host communities based on the matrix provided by the settlor.

The second level of governance for the Host Community Development Trust is the Management Committee. The PIB requires the Board of Trustees to set up a management committee with responsibility for the general administration of the host communities development trust on an *ad hoc* basis. More specifically, the committee is to be responsible for:

- (a) the preparation of the budget of the host communities development trust and submit it to the Board of Trustees for approval;
- (b) the development and management of the contracting process for project award on behalf of the host communities development trust subject to approval of the Board;
- (c) the determination of project award winners and contractors to execute projects on behalf of the host communities development trust through a transparent process subject to approval of the Board;
- (d) the supervision of projects execution;
- (e) the nomination of fund managers for appointment by the Board of Trustees for approval, to manage the reserve fund;
- (f) reporting on the activities of the management committee, contractors and other service providers to the Board of Trustees

The Management Committee is to be comprised of an unspecified number of executive members who are to be selected by the Board of Trustees. The qualifying requirement is that they should '*be Nigerians of high integrity and professional standing, who may not necessarily be from any of the host communities*'. The number of executive members is to be determined by the settlor. However, it is required that one representative of each host community nominated by the community be included in the management committee. This member is only to have non-executive status.

The third level of governance is the Host Communities Advisory Committee. The PIB defines the function of this Committee as

- (a) nomination of a member to represent the host communities on the management committee;
- (b) articulation of community development projects to be transmitted to the management committee;
- © monitoring and reporting the progress of projects being executed in the community to the management committee;
- (d) advising the management committee on activities that may lead to improvement of security of infrastructure and enhancement of peace-building within the community and the entire area of operation; and
- (e) taking 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.

In constituting the Host Communities Advisory Committee, the Management Committee is to require each Host Community to set up one. However, the framework, criteria and qualification for membership is to be determined by the Management Committee. More specifically on the establishment and functionality of the Advisory Committees, the PIB gives the Management Committee powers to determine;

- (a) the selection process, procedure for meetings, financial regulations and administrative procedures of the host community advisory committee;
- (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the host community advisory committee; and
- © any other matter relating to the operations and activities of host community advisory committee.

Matters Arising on Host Communities Trust Governance Structures

The provisions for the establishment and governance of the Host Communities Trust downgrades the participation of communities, while overtly promoting the role of companies. The PIB makes the Trust the exclusive property of companies operating in the area - giving them overwhelming control. In the first instance, the PIB gives the companies power to nominate all members of the Board of Trustees without any obligation to include any member of any host community. Simply put, the highest governance structure of the Trust which the PIB provides for can be established without the participation, consultation or even membership of a host community member or even any member of an oil producing state. The Bill specifically says in Section 242 (2) that in determining the membership of the BoT, those selected '*may not necessarily come from any of the host communities*'. Weighed against the enormous role the BoT plays in the functioning and performance of the Trust, this neglect of host community participation is not only alarming but also dangerous.



Many oil producing communities battle with ecological disaster

Thereafter, the PIB proposes that the same Board of Trustees established without any host community or government input or serious oversight is empowered in the Bill to appoint members into the Management Committee. Again, the PIB does not make it mandatory to have members of the host communities in the Management Committee. In fact, it makes provision for the inclusion of only one representative of the host community as a 'non-executive member'. Section 247 (2b) only requires that other executive members of the Management Committee be Nigerians of *'integrity and professional standing'*.

The third layer of governance of the Trust, the Host Communities Advisory Committee is the only layer where members of host communities are allowed to participate. While the PIB allows the host communities to take responsibility for establishing the Advisory Committees, it nonetheless

also empowers the Management Committee to decide how those host community representatives are selected. The control of the Management Committee over membership of the Host Communities Advisory Committees includes in determining the selection process, qualification, disqualification, suspension and removal of host community members from the Advisory Committee. Without doubt, this level of influence and control gives the companies total control over the Trust, as well as powers to remove members they are uncomfortable with.

This Bill clearly does not make it a requirement for appointing locals in governance positions, and does not adequately address the need to engender trust through the participation of host communities, a point which has been made consistently through the Natural Resource Charter and the Nigeria Natural Resource Benchmarking Exercise researches. The Charter is a set of principles for governments and societies on how to best harness the opportunities created by extractive resources for development. It provides the ingredients successful countries have used to better manage the sector and harness benefits. In the 2019 research report for instance, the lack of trust building opportunities was highlighted as one of the causes of tension between host communities and oil companies.

Again, the 2019 NNRC report for Precept 5 dealing with local impacts of oil extraction and researched by We

the People, reached the conclusion that of all the benefit sharing mechanisms deployed in oil producing communities, the communities consider oil company superintended Global Memorandum of Understandings as the most effective. They cited the fact that the GMOUs provide them the opportunity to participate in the governance and deployment of development projects. At the least, this is a participatory and trust building strategy that should be emphasized and structured into the PIB.

Defining 'Host Communities' and Matters Arising

Section 235 of the PIB fails to adequately define a host community. Sub sections 2 and 3 seem to leave the responsibility of the definition with the company. The section does not provide any framework for the participation of any level of the Nigerian government or the communities in making this determination. This is a possible conflict trigger arising generally from the commonality of extractive sector impacts across several communities, including those without active oil wells. It is therefore important for the PIB to carefully define the frameworks for determining a host community, as well as accord a role for the government in this regard.

Conduct of Needs Assessment

Section 251 of the PIB states that after being granted a license or lease, the oil company must conduct a Host Community Needs Assessment, taking into consideration social, environmental, and economic perspectives, and develop a host community development plan containing the specific needs of each affected host community, the effect the proposed petroleum operations might have on the host community and provide a strategy for addressing the needs and effects identified. While the Bill requires that critical members of the community are consulted and engaged in producing the assessments, the provision nonetheless fails to identify clear roles for the government or communities in this regard. According to the PIB, the responsibility for producing a development plan for the community lies with the settlor.

Similarly, the provision does not take into consideration the fact that majority of oil producing communities already have detailed development plans, some of which have been in existence for decades. The limited role the PIB gives other actors especially members of the host communities in conducting needs assessment could create opportunity for pitching communities against oil companies.

Failure to Incorporate Host Communities Trust

Section 238 of the PIB provides for penalties should a settlor fail to incorporate a host communities development trust. According to it, *'failure by any holder of a license or lease governed by this Act to comply with its obligations under this Chapter may be grounds for revocation of the applicable license or lease.'* Clearly, the provisions for penalty in respect of failure to comply with the provisions of the Bill for setting up the host communities development trusts are weak and imprecise. The use of the word 'may' creates openings that could affect the enforcement of penalties.

Absence of Dispute Resolution Frameworks

One key limitation which often leads to the escalation of conflicts between oil companies and host communities is the absence of adequate and trusted dispute resolution mechanisms. Again, findings from the 2019 Natural Resource Benchmarking Exercise indicates that there are no clearly defined and established government superintended structures for dispute resolution for affected communities within the context of resource project. The conflict potential of this absence is reinforced by the fact that communities have little confidence in the ability, impartiality and willingness of regular judicial processes in Nigeria to efficiently resolve dispute between them and oil companies. It is the distrust of these local judicial processes that has led to an increasing number of local communities filing cases against oil companies abroad where they believe there are better chances at justice. Unfortunately, the PIB does not fix this gap, and makes no provisions for dispute resolution structures and modalities.

Community Responsibility for Protection of Oil Facilities

A key source of contention in the PIB, at least from the point of view of host communities, is the fact that it places the responsibility for the protection of pipeline and other oil infrastructures on host communities. According to the Bill, the host community advisory *committee should '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'.*

Previous researches conducted by **We the People** reveals that oil theft which is the major reason for puncturing oil pipelines, is carried out mainly by armed cartels (who are largely not from the community), working in close collaboration with oil company officials and the military. Placing the responsibility of protecting oil installations from armed gang on unarmed communities is simply an unrealistic expectation. If this provision is followed keenly, it could result in consistent denial of benefits which could in turn engender conflicts.

Section 257 (2) Deduction of payment for petroleum host community development

“Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host community, the community shall forfeit its entitlement to the extent of the cost of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year”.

What Happens to Global Memorandum of Understandings?

An important issue which requires clarifying is the status of oil company established Global Memorandum of Understanding. In several oil producing communities, GMOUs have been established by oil companies as their own mechanism for transferring corporate social responsibility benefits to their host communities. Typically, the GMOUs function as frameworks where the communities set up leadership structures, carry out needs assessments, develop budgets and deploy an amount of money provided by the company to selected local development projects. While the GMOUs are voluntary and have no legal status, they have been judged effective in meeting community needs and forging a sense of participation. Analysts have offered the opinion that the host communities section of the PIB is an attempt to formalize the GMOUs and make corporate social responsibility legally enforceable. Since the Host Communities Trust framework closely resembles existing GMOU frameworks, it is doubtful if oil companies will have the capacity or be willing to support both structures separately. This issue needs clarity, otherwise, it could result in unmet expectations and conflict.



Oil Companies have been flaring gas since the 1950s

The PIB and Gas Flaring

Section 104 of the PIB makes the flaring of gas illegal. According to the Bill, a licensee, lessee or operator that flares or vents natural gas has committed an offence under the Act '*and shall be liable to a fine as prescribed by the Commission in regulations under this Act*'. It goes further in sub sections 2 and 3 to state that such fines will be paid through the same manner and procedures royalties are paid, and will not be eligible for cost recovery or be tax deductible.

Section 105 again reiterates the prohibition of flaring or venting of natural gas and says offenders will pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations.

Despite what seems like strong frameworks to end gas flaring, the Bill creates a series of exemptions which basically ensures that the same gas flare regime continues literally unchecked. Under section 104, the Bill identifies instances where gas flaring may be permitted. These include:

- (a) in the case of an emergency;
- (b) pursuant to an exemption granted by the Commission; or
- © as an acceptable safety practice under established regulations.

In section 107, the Bill goes further to clarify that the Authority or Commission may grant a permit to a Licensee or Lessee to allow the flaring or venting of natural gas for a specific period -

- (a) where it is required for facility start-up; or
- (b) for strategic operational reasons, including testing.

The section however does not provide an explanation of what '*strategic operational reasons*' are beyond testing. It also does not state the timeframe allowed for flaring in the case of facility start up or for strategic operational reasons. These provisions could be easily abused and turned into a license for unchecked environmental and health damage to communities.



Gas flaring continues to poison countless people in the Niger Delta

Also, while Section 104(2) provides that “A fine due under this section shall be paid in the same manner and be subject to the same procedure for the payment of royalties to the Government by companies engaged in the production of petroleum,’ it is silent on the utilization of such payments, which has been a subject of concern for host communities. Currently the actual penalties paid into government coffers are shared as part of nationally generated revenues, without any special consideration for the communities who suffer the impact of gas flaring. Evidently, the PIB considers gas flaring a waste of economic resources which should be paid for, and not as a practice which is impacting the health and livelihoods of communities which should be mitigated and compensated for.

Section 104 gives the Commission discretionary powers to determine how much is paid as penalty for gas flaring. The section does not state the minimum or maximum penalties or how those penalties will be calculated.

It is also important to note that Gas flaring has been illegal in Nigeria since 1984. In 2005, a Federal High Court in Nigeria reaffirmed the illegality of the practice and held that gas flaring amounted to a violation of the constitutional right to life and dignity of the people.

Since the 1970s, the Nigerian government has put in places several deadlines to end gas flaring. The last flare out date was 2020 which was again shifted in favor of a 2030 deadline. As routine practice, deadlines to end gas flaring are shifted as the targets approach. The PIB does not place any definite flare out date, presenting the impression that the practice will continue indefinitely to the detriment of host communities who continue to bear the dangerous consequences.

Suggested Amendments to the PIB 2020

On Governance of the Host Communities Development Trust

- It is recommended that the composition of the Board of Trustees should include members of the host communities who should be at least 50% of the members. Provision should also be made for the mandatory inclusion of women and youths in the various governance structures.
- It is recommended that the Bill should be adjusted to ensure that members of host communities are appointed into the management committees. More specifically, it is recommended that at least 70% of the membership of the management committees be from the respective host communities.

Because most petroleum host communities already have well established Community Development Committees which oversee non-government development efforts in those communities, and interface with companies operating in their areas, establishing new advisory committees in those areas could amount to duplication of roles and may result in conflict.

- It is recommended that the third tier of governance of the host communities development trust be assigned to existing community development structures in each petroleum host community.

On Defining Petroleum Host Communities

While not explicitly stating it, it seems Section 235 of the Bill leaves the responsibility of defining a host community to the settlor, without any defined role for the state, federal government or even the communities in determining this. This has been rated as a possible conflict trigger. Related to this is the ambiguity and possible conflict that could arise from the definition of a host community, especially with reference to the commonality of extractive sector impacts across several communities, including those without active oil wells.

- It is recommended that government at the federal and state levels be made to play leading role in defining host communities. Communities should also be allowed a role in determining this.
- It is also recommended that in defining host communities, adequate consideration should be given to communities that host oil installations, those that are affected by the often-negative impacts of extraction and those whose land, rivers and creeks provide access for oil facilities.

On Conduct of Needs Assessment

Section 251 of the PIB 2020 makes it the responsibility of the Settlor to spearhead needs assessment for the communities. While the Bill requires that critical members of the community are consulted in carrying out these assessments, the actual role of communities is passive. It is also important to note that a good number of oil producing communities already have well-crafted development plans, reflecting an ability to conduct their own needs assessment.

- It is recommended that provisions for needs assessment should be adjusted to include the active participation of communities as well as the government.

On Failure to Incorporate Host Communities Trust

Provisions for penalty in respect of failure to comply with the provisions of the Bill for setting up the Host Communities Development Trusts as contained in Section 238 of the PIB are weak and imprecise. The use of the word 'may' create openings that could affect the enforcement of penalties.

- It is recommended that the language in section 238 be changed to ensure definite penalty if a Settlor fails to follow the provisions of Chapter 3 of the Bill.

Absence of Dispute Resolution Frameworks

The regularity of conflicts between oil companies and host communities is partly on account of the absence of adequate and trusted dispute resolution mechanisms. Unfortunately, the PIB does not take this into consideration and makes no provisions for dispute resolution structures and modalities.

- It is recommended that the Bill creates an additional section that establishes frameworks for dispute resolution.

Community Responsibility for Protection of Oil Facilities

Section 257 places the responsibility of protecting oil installations on petroleum host communities. It states further that in communities where acts of vandalism, sabotage or other civil unrest occurs and this leads to damage or disruption of production, such communities will forfeit their entitlement as established in the Bill, to the extent of the cost of repairs of the damage resulting from the activity.

- It is recommended that section 257 be completely expunged from the Bill.

On Gas Flaring

- We recommend the introduction of a new sub section under Section 104 to read: *“All fines for gas flares under this Section shall be utilized in the following manner: 50% paid into the Environmental Remediation Fund provided for in this Act while the remaining 50% is to be paid into the Host Community Trust Fund of the community from where such flares occurred.”*
- It is recommended that the discretionary powers given to the Commission in Section 104 to determine how much is paid as penalty for gas flaring be removed. The regulations should clearly state the fines for violation and how they should be calculated.
- It is recommended that the PIB places a definite date to end gas flaring, and provide a framework to review each company milestone towards achieving the flare out target; as well as establish definite 'non fines' sanctions for violations of milestones.
- It is recommended that grounds for exemption on gas flaring should be made more explicit, including for such reasons as 'strategic operational reasons'. Timeframes for such exemptions should also be appropriately stated.



Oil spills are regular occurrences and have destroyed many farmlands

About We the People

We the People (registered as Centre for Social Studies and Development) provides spaces for people, especially those at vulnerable ends of government and private sector policies, to protect their social, political and economic rights. We the People supports communities of citizens with tools, skills and networks to project their voices and interests. We work to identify best practices and alternatives that respect people's rights, protect their livelihoods, conserves their environment and promotes their existence.

We the People was founded as a rights platform aimed at mobilizing and organizing citizens to demand their social contract from government institutions and their officials. Our goal is to create an open and free society founded on a modern-day social contract, envisioning the attainment of a just society founded on the principles of a citizen driven and government protected social contract.

We the People is structured around an experienced and carefully selected 5-person Board of Trustees, committed staff members, passionate volunteers and professional advisors. To ensure that we tap from our vast network of partners and supporters, an Expert Advisory Committee is established to support the organization in its different areas of intervention.

Based in the Niger Delta cities of Port Harcourt and Calabar, We the People is engaged in important campaigns around human rights, natural resource governance, climate change and public accountability. Our approach comes from a well-reasoned strategy focused on strengthening the capacity of passionate local people to lead interventions that result in addressing their own issues. We the People believes that the best results come from strengthening the voice of all citizens to demand their social contract from those who govern them and their agents. In this way, non-governmental organizations do not replace the role of informed and active citizens but act to energizes and strengthen that voice to make it more potent.