Frequently Asked Questions about the Petroleum Industry Bill

- A handbook of concise answers to frequently asked questions (FAQs) about the Petroleum Industry Bill (PIB)

SPACES FOR CHANGE

www.spacesforchange.org
Spaces for Change (S4C) is a non-profit organization working to infuse human rights into social and economic governance processes in Nigeria. Through research, policy analysis, advocacy, youth engagement, public interest litigation and community action, the organization aims to increase the participation of Nigerian youth, women and marginalized constituencies in social and economic development, and also help public authorities and corporate entities to put a human rights approach at the heart of their decision-making.

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**Spaces for Youth Development and Social Change (Spaces for Change)**

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This handbook contains concise answers to frequently asked questions (FAQs) about the Petroleum Industry Bill (PIB). A three-hour web conference, *The PIB & YOU*, held on Saturday, July 14, 2012 involving over 1,500 online participants across the globe generated an array of questions answered in this booklet. That first-of-its-kind online engagement led by five industry experts - comprising an extractive industries expert, Jeremy Weate; a petroleum geoscientist, Samuel Diminas (Chevron); a labour leader, Peter Esele (President, Trade Union Congress, Nigeria); an environmental justice advocate, Ledum Mittee; and an oil policy analyst, Opeyemi Agbaje - further unpacked varied social, economic, environmental and transparency concerns in the latest draft of the Bill.

Since its introduction over 4 years ago, the PIB continues to face persistent setbacks to its passage despite its enormous prospects for improving the technical, operational and regulatory efficiency in Nigeria’s oil industry operations. If passed into law, the PIB would obligate the government to make its oil deals and revenue earnings more transparent and accountable, ending decades of corruption that has diverted billions of dollars of oil revenue that could have been used to clean up oil-devastated poor communities and create employment for restive youths. Among several reasons, the setback to its passage resulted mainly from the lack of adequate information on the basis of which lawmakers, citizens and industry stakeholders can make informed legislative decisions. The scant citizen engagement and public consultation also fuelled popular resistance, foiling a major 2009 legislative attempt to have the oil bill passed.

To depart from the false starts that stalled the passage of the Bill in 2009, SPACES FOR CHANGE is offering this easy-to-read handbook, written in non-technical language, to promote public awareness of the PIB. Consistent with its mandate to increase citizen participation in public decision-making, we hope this FAQ will provide useful information to keep citizens well informed, and also improve the quality of legislative debates and engagement among key stakeholders in the Bill passage architecture.

This document was prepared under the auspices of the organization’s *Information Equity for Citizen Participation Project* that campaigns for oil sector transparency and environmental justice in Nigeria.
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### Acronyms

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<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CDB</td>
<td>Community Development Board</td>
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<td>DPR</td>
<td>Department of Petroleum Resources</td>
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<tr>
<td>DPRA</td>
<td>Downstream Petroleum Regulatory Agency</td>
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<td>FAQ's</td>
<td>Frequently Asked Questions</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GEITI</td>
<td>Global Extractive Industries Transparency Initiative</td>
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<td>IOC</td>
<td>International Oil Companies</td>
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<td>NOC</td>
<td>National Oil Company</td>
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<td>NAMC</td>
<td>National Asset Management Corporation</td>
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<td>NEITI</td>
<td>Nigerian Extractive Industries Transparency Initiative</td>
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<td>NAC</td>
<td>Non-Associated Gas</td>
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<td>NNPC</td>
<td>Nigerian National Petroleum Corporation</td>
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<td>OPEC</td>
<td>Organization of Petroleum Exporting Countries</td>
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<td>OGIC</td>
<td>Oil and Gas Reforms Implementation Committee</td>
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<td>PPPRA</td>
<td>Petroleum Products Pricing and Regulatory Agency</td>
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<td>PHC</td>
<td>Petroleum Host Community</td>
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<td>PTDF</td>
<td>Petroleum Trust Development Fund</td>
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<td>PRSTF</td>
<td>Petroleum Revenue Special Task Force</td>
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PIB  Petroleum Industry Bill
S4C  Spaces for Change
SPDC  Shell Petroleum Development Company
UPI  Upstream Petroleum Inspectorate
**PART 1**

**Historical Background and Policy Objectives**

1.1 What is the Petroleum Industry Bill (PIB) all about?

Nigeria is ranked Africa’s number one and the twelfth globally among oil-producing countries.¹ Oil revenues account for about 96 percent of the country’s foreign earnings, rendering it the fifth largest oil producer in the Organization of Petroleum Exporting Countries (OPEC). Despite being among the world’s top oil producers, Nigeria’s oil and gas industry has been plagued by institutionalized corruption, corporate impunity, and grave environmental and humanitarian devastations. Decades of mismanagement of oil revenue have also deprived Nigerians of social and economic benefits from the sector, just as vested interests continue to block and stall important reforms.

At the root of the rot in Nigeria’s oil industry is the absence of a coherent legal and policy framework for holding operators accountable and for addressing serious violations of environmental standards, forcing aggrieved persons and communities to resort to extra-legical and violent confrontations. Further compounding the situation is the lack of political will to enforce the potpourri of legislations governing the industry operations. Legal standards and operational procedures put in place at the initial stages of oil discovery and production in the 60s and 70s – such as Petroleum Act (1969), the Associated Gas Re-injection Act, Nigerian National Petroleum Corporation (NNPC) Act (1977) – had become out of tune with contemporary global business realities, necessitating a comprehensive legislative overhaul.

The Petroleum Industry Bill (PIB) provides a legal, fiscal and regulatory framework that will define and shape the future of Nigeria’s oil and gas industry. First drafted in April 2000 by the Rilwanu Lukman-led Oil and Gas Reforms Implementation Committee, OGIC, the PIB represents an ambitious governmental effort to introduce sweeping reforms in the oil and gas industry, with a view to making the sector less corruption prone, more transparent and accountable, and environmentally safe. The Bill was first presented to the sixth assembly in 2009, but efforts to pass it were then hampered by vested interests, intense political intrigues, and inadequate stakeholder consultation and engagement.

A Technical Committee led by Senator Udo Udona was set up on January 17, 2012 to review the 2009 version of the Bill after an unprecedented uprising in January 2012 forced high-level probes into the administration of fuel subsidies, including massive shake-ups in national oil and gas institutions. The resulting draft repealed about 16 pieces of petroleum legislation in Nigeria and then aggregated all the laws into a single piece of comprehensive legislation.

The Petroleum Industry Bill (PIB) 2012 was forwarded to the National Assembly on July 18, 2012 for consideration and passage into law.

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¹According to 2011 statistics by the United States Energy Information Administration
1.2 What are the objectives of the Bill?

Among several objectives, the current draft of the Bill seeks to open up the oil industry to privatization, address host community concerns, promote local content and optimize domestic gas supplies. It seeks to establish a fiscal framework that encourages investment and increases revenue inflow to the government, through the creation of new regulatory institutions and profit-driven oil and gas entities that will drive the industry operations. In addition to attracting the much-needed investment into natural gas, which will in turn, bolster energy security, the Bill’s passage is expected to bring an end to licensing rounds, contract renewals and investment that have been put on hold for five years, causing massive revenue losses to the country.

Of specific significance is the Bill’s objective to infuse commercial orientation in all the relevant aspects of the industry mainly by moving the control of the downstream oil and gas sector from government-controlled monopoly to private participation. Under that banner, the state-owned Nigerian National Petroleum Corporation (NNPC) will be unbundled and privatized in order to transform it into a viable, commercial oil company. Such a structural overhaul will also enable NNPC transmute from its current form as a cost centre to a profit centre such as Saudi’s Aramco, Malaysia’s Petronas and Brazil’s Petrobras.

The PIB, when passed into law, requires serious political will to enforce the new regulations. The goal is to ensure the Bill contains iron-clad transparency provisions that would make clear what is going on, institutionalize accountability and prevent constraints to optimal operations.

1.3 Stratification of oil industry operations

Oil industry operations are stratified into upstream and downstream petroleum sectors. Upstream operation is exclusively limited to crude oil and gas exploration and production. S. 362 defines upstream as “all activities entered into for the purpose of finding and developing petroleum and includes all activities involved in exploration and in all stages through, up to the production and transportation of petroleum from the area of production to the fiscal sales point or transfer to the downstream sector”. The Upstream Petroleum Inspectorate (UPI) will regulate technical operations and commercial activities of the upstream sector, and take over assets and liabilities relating to the upstream petroleum sector, which were hitherto vested in the Department of Petroleum Resources (DPR).

All other activities are categorized as downstream including the construction and operation of gas processing facilities, oil and gas transportation, natural gas transmission, natural gas transmission, product pipelines, tank farms and stations for the distribution, marketing and retailing of petroleum products, oil refining and so on. All these activities will be regulated by the Downstream Petroleum Regulatory Agency (DPRA), and will be vested with the functions, assets and liabilities of the DPR relating to the downstream petroleum sector as well as the functions of the Petroleum Products Pricing and Regulatory Agency (PPPRA).
PART TWO

Governance and Institutional Framework

2.1. What are the functions of the Minister of Petroleum Resources?

The Minister of Petroleum Resources is the regulatory and operational head of the oil industry. S/he is responsible for coordinating all activities; exercising general supervision over all institutions and operations in the petroleum industry, and advises the government, including the Federal Executive Council on all matters pertaining to the petroleum industry (Section 6). The minister also formulates and monitors government petroleum policy, and is empowered to make regulations necessary to give proper effect to the PIB provisions (Section 8).

In addition, the Minister advises the President on the appointments of the chief executives of the Upstream Petroleum Inspectorate, Downstream Petroleum Regulatory Agency, the National Oil Company, the Asset Management Corporation and all government agencies or corporate entities established or to be established after the Bill has been passed into law.

The Bill criminalizes interference or any form of obstruction to the minister’s duties. It is a punishable offence for any person to interfere with, or obstruct the Minister or his servants and agents in the exercise of ministerial duties and powers. Offenders are liable on conviction to a fine not exceeding N 5,000,000 (Five Million Naira) or to imprisonment for a period not exceeding two years, or to both. (Section 7 (4))

2.2. Does the PIB give excessive powers to the petroleum minister?

By section 6 of the PIB, the Minister has the power to grant and revoke licenses; make regulations and decisions; and participate actively in all boards and corporate bodies created under the Bill. Apart from having supervisory oversights over the UPI and DPRA, the Minister will also be the one to nominate individuals to the boards of the various newly-created entities. The Minister will determine the administrative structure of the Petroleum Host Community Fund (PHC) and also serve as the chairman of the boards of the Petroleum Trust Development Fund (PTDF) and the Petroleum Equalization Fund (PEF). The minister is also empowered to make regulation regarding major fiscal terms such as fees/bonuses, royalties and the terms of Production Sharing Contracts (PSCs).

The current framework arrogates too much responsibility to the person of the minister rather than to independent institutions and this can easily give room to abuse of power, patronage and political interference. Uncontrolled decision-making power is often prone to misuse and abuse, mainly because it is impossible to see into how decisions are arrived at and accountability is obfuscated. At an E-conference on the PIB hosted by Spaces for
Change on July 14, 2012, stakeholders expressed deep concern regarding the powers of the minister, and urged that it be reviewed.

2.3 What are the new entities that will be created after the Bill is passed?

The PIB provides for the establishment of nine agencies that will be answerable to the Minister of Petroleum Resources. Of the nine, there will be two regulatory agencies – Upstream Petroleum Inspectorate (UPI) and Downstream Petroleum Regulatory Agency (DPRA); three major funds – Petroleum Technology Development Fund, Petroleum Equalization Fund, Petroleum Host Community Fund; three companies that will operate under commercial terms – National Oil Company; National Gas Company Plc and National Petroleum Assets Management Company; and a technical and support bureau – Petroleum Technical Bureau.

The UPI will take over or replace the current regulator, the Directorate for Petroleum Resources (DPR) that is generally perceived as inefficient, corrupt and powerless. In addition to inheriting the assets and liabilities of the DPR, its main functions include regulating all technical aspects and commercial activities of the upstream sector and promoting the efficient, safe, effective and sustainable infrastructural development of the upstream sector.

The Downstream Petroleum Regulatory Agency shall be in charge of assets and liabilities relating to the downstream petroleum industry, and assume the functions of both the DPR and the Petroleum Products Pricing Regulatory Agency (PPPRA). The agency shall, among others, enforce compliance with the terms and conditions of all licences, permits and authorisations issued in respect of downstream petroleum operations.

2.4 Will the new regulatory bodies be independent?

In line with industry best practice, the PIB established two standalone regulatory bodies: the UPI and the DPRA to regulate activities in the petroleum sector. As independent entities, they may enter into contracts and incur obligations; (b) acquire and dispense movable and immobile property, and do all such things as are necessary to the carrying out of their functions and duties. The UPI also has the power to institute legal proceedings against any licensee, lessee or permit holder for failure to comply with licence, lease or permit conditions or other requirements. (Section 13 (2) and 43)

However, it seems the institutional framework is not strong enough to ensure the independence of the regulatory agencies. Apart from having supervisory oversights over the UPI and DPRA, the Minister of Petroleum Resources will also be the one to nominate

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2 The E-Conference lead discussants were: Jeremy Weate (Extractive Industries Expert), Samuel Diminas (Chevron Corporation), Opeyemi Agbaje (policy analyst), Peter Esele (national labour leader) and Ledum Mittee (environmental justice advocate).
individuals to their boards. The current regulator, the Department of Petroleum Resources (DPR) is widely perceived to be unduly distracted by government interference in its activities, which continues to fuel doubts about the agency’s partiality and the independence of its operations. The Minister’s apparent overbearing influence on the UPI is likely to foster a repeat of the DPR hitch, which may result in the laxness of regulation.

2.5 What will happen to the Nigerian National Petroleum Corporation (NNPC) after it is unbundled?

When the Bill is passed, the NNPC will be unbundled into three independent commercial entities. This means that capitalized corporate entities with solely commercial purposes will be created as against the former arrangement where the NNPC served both commercial and regulatory purposes. The new commercial structure may eliminate the perennial joint venture cash-call/funding inabilities of the NNPC.

This transmutation into a listed corporate entity will reverse the current order whereby NNPC is "answerable to no one". For instance, the board of directors of the newly-created (National Oil Company) NOC will be accountable to a wider membership of shareholders who typically hold voting rights at general meetings, and will elect all or some of the directors.

- **National Oil Company**: By section 148 of the Bill, the Minister shall incorporate the National Oil Company as a public company limited by shares, not later than three months after the Bill is passed. The NOC shall be vested with certain assets and liabilities of the NNPC.

The Federal Government is required to divest 30 per cent of its shareholding in the NOC and list the shares on the Nigerian Stock Exchange (NSE), to sell to the Nigerian public. The involvement of the public in the ownership and management of the proposed NOC, would not only promote private participation, but also significantly help to reduce corruption, inefficiency and the lack of productivity plaguing the sector.

Anyone can become a member of the National Oil Company (NOC) by acquiring shares in the company. Shares may be acquired through outright purchase, except where the company's articles specify that certain people are automatically entitled to receive one or more shares.

- **National Asset Management Corporation (NAMC)**: Section 120 provides for the establishment of the National Petroleum Assets Management Corporation; another
commercial enterprise responsible for acquiring and managing investments of the Government in the Nigerian upstream petroleum industry. The Corporation shall maintain a fund (‘the Fund’) for the purpose of funding the subsidiaries of the Corporation.

- **National Gas Company (NGC):** Not later than three months after the Bill is passed, the Minister is obligated to incorporate the National Gas Company as a company limited by shares. Just like the NOC, certain assets and liabilities of NNPC shall be vested on the NGC. *(Section 159)*

### 2.6 What does the Petroleum Technical Bureau do?

Section 9 of the PIB establishes the Petroleum Technical Bureau as a special unit in the office of the Minister of Petroleum Resources. The Bureau, consisting of professionals with expertise in the upstream and downstream sectors of the petroleum industry, will assume the functions of the former Frontier Exploration Services of the NNPC.

The Bureau’s functions include working in conjunction with other departments of the Ministry to provide technical and professional support to the Minister on matters relating to the petroleum industry and assisting the Minister in the formulation and development of strategies to implement government policy on the petroleum industry. It also assists the Minister in monitoring the implementation of government policy, increasing information about the petroleum resources base within all frontier acreages in Nigeria.

The Bureau will also develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages in Nigeria; undertake studies, analyse and evaluate all unassigned frontier acreages in Nigeria; and undertake activities to stimulate the interest of local and international oil and gas companies in exploration of the frontier basins of Nigeria to increase Nigeria's petroleum resources.
PART 3

Licenses, Leases, Private Participation in the Oil and Gas Industry

3.1 What is the difference between a petroleum exploration license and a petroleum prospecting license?

A petroleum exploration licence (PEL) grants the holder non-exclusive right to carry out geological, geophysical and geochemical exploration for petroleum within the area of its licence and to drill holes not deeper than one hundred and fifty (150) meters using only percussion drilling techniques. This license does NOT include any right or option to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the said licence area.

On the other hand, a petroleum prospecting licence (PPL) grants the holder exclusive right to carry out petroleum exploration operations within the area of its licence, and includes the right to carry away and dispose of crude oil, natural gas or bitumen won during prospecting operations as a result of production tests.

The PPL is granted by the Upstream Petroleum Inspectorate, and is valid for three years while the PEL is granted for a period of five years, consisting of an initial exploration period of three years and a renewal period of two years with respect to onshore and shallow water areas. But in the case of deep water areas and frontier acreage, PEL is granted for a period of eight years, consisting of an initial exploration period of five years and a renewal period of three years. (Sections 175, 176 and 177)

3.2 Who grants prospecting and exploration licences?

Section 6 (g) empowers the minister of petroleum resources to grant, amend, renew, extend or revoke upstream petroleum licences and leases upon the advice of the Inspectorate.

3.3 Who is entitled to the grant of a license?

The Minister may grant a licence or lease only to a company incorporated in Nigeria under the Companies and Allied Matters Act or any corresponding law. (Section 172(5))

A petroleum exploration licence may be granted to any qualifying company over any area, excluding areas that are the subject of petroleum prospecting licences or petroleum mining leases. The only condition however is that the recipient of any petroleum exploration licence, petroleum prospecting licence and petroleum mining lease shall at all times be a company that qualifies as an operator of the upstream petroleum operations.
The Bill prohibits the inclusion of confidentiality clauses in licences, leases, agreements or contracts for upstream petroleum operations that are for the purpose of preventing access to information and documents by third parties in respect of any payments of royalties, fees and bonuses of whatever nature, and taxes. (S. 174)

The Bill prohibits the inclusion of confidentiality clauses in licences, leases, agreements or contracts for upstream petroleum operations that are for the purpose of preventing access to information and documents by third parties in respect of any payments of royalties, fees and bonuses of whatever nature, and taxes. (S. 174). This clause is necessary to facilitate transparent oil dealings between government-owned commercial entities and oil operators.

A company granted a license or lease under subsection 172 (1) of the Act shall be empowered to enter into any contract for the exploration, prospecting, production and development of oil or gas, or both, upon such terms and conditions as the licensees or lessees may determine, and with any company qualified under conditions prescribed by the Bill.

Take note that the power to enter into contracts does not confer the right to assign an interest in any licence or lease without the prior written consent of the Minister.

### 3.4 Can a licensee assign his interest in a lease, license?

By section 194, where a licensee, lessee or production sharing or service contractor is taken over by another company or merges, or is acquired by another company, he may assign any part of its interest in the parent lease or license through a written application to the Minister of Petroleum Resources. The Minister may grant such application after s/he is satisfied that the proposed assignee is of good reputation, and has sufficient technical knowledge, experience or financial resources to enable it effectively carry out the responsibilities under the licence, lease or contract which is to be assigned.

### 3.5 Can the president use his discretion to award licenses or oil blocks?

Contrary to s. 190 (3) of the Bill that provides for transparent open bidding processes, S.191 vests absolute powers on the president to grant discretionary prospecting licenses in special circumstances. The special circumstances in which such discretionary awards may be made were not stipulated.

While Section 190 of the PIB makes it compulsory for all bids received, pertaining to petroleum prospecting licences or petroleum mining leases to be monitored by Nigeria Extractive Industries Transparency Initiative (NEITI), and to be processed in accordance with NEITI’s published guidelines, the president’s power to use his discretion to award licenses is not subject to such independent supervision.

The absoluteness of the president’s power diminishes the transparency objectives of the Bill, in that it precludes both independent and public scrutiny of the character of such
awards and their beneficiaries, thereby rendering oil and gas licensing prone to political patronage.

3.6 Under what circumstances will a lease be revoked?

Section 195 lays down a long list of conditions that will warrant a license or lease to be revoked. Among other reasons, a lease will be revoked if in the opinion of the Inspectorate, the licensee or lessee is not conducting operations in accordance with good oil field practice; fails to pay fees or its rent or royalties as they fall due, whether or not they have been demanded by the Inspectorate; or has failed to furnish any statutory reports on its operations; has assigned or otherwise transferred its interest in the licence or lease to any person or company without the prior written consent of the Minister as is required by section 194; or in the opinion of the Inspectorate, is not implementing its environmental management plan in accordance with good oil field practice.

Furthermore, a licensee has an obligation to declare commercial discovery of gas within the geographical area of his license (Section 178). Where the licensee fails to make a declaration of a commercial discovery within one year of the invitation of the Inspectorate, the petroleum prospecting license shall be revoked.

Under S. 198 and 199, licensed oil operators are directed to refrain from damaging or destroying commercial trees, images or objects venerated by the people and communities living in areas where petroleum prospecting or mining take place. Communities are entitled to “fair and adequate compensation” for any damage or destruction of commercial trees and valuable objects resulting from such operations. Compensation shall also be paid where economic trees are damaged as a result of negligence on the licensee’s part, or where oil leaks cause spillage or pollution which destroys crops, trees and other means of livelihood. In event of failure to pay compensation, defaulting licensees may have their licenses suspended or revoked.

3.7 Does the PIB promote public participation in the oil and gas industry?

Citizens will have an opportunity to become shareholders in the National Oil Company. When the Bill is passed into law, the Federal Government will be required to divest 30 per cent of its shareholding in the National Oil Company (NOC) and list the shares on the Nigerian Stock Exchange (NSE), to sell to the Nigerian public. Section 148 of the Bill authorises the Minister of Petroleum Resources to incorporate the NOC as a public company limited by shares. The idea behind unbundling the NNPC into commercial companies is to give the populace opportunity to buy and own shares in the companies. Such public participation is necessary to check government’s monopoly and interference.

Licensed oil marketing companies, bulk consumers of petroleum products or independent refineries are also empowered to construct and operate independent pipelines, depots or jetties for their exclusive use.
PART 4

Host Communities

4.1 What is the purpose of the Petroleum Host Community (PHC) Fund?

The introduction of the Petroleum Host Communities Fund (PHC-Fund) is widely perceived as a positive development, and a new high in addressing the persisting agitations and concerns of oil-bearing communities.

Under Section 118 of the bill, every company that is involved in oil and gas exploration and production is required to remit into the fund on a monthly basis, 10 per cent of its net profit, calculated by the adjusted profit minus the Nigerian hydrocarbon tax and minus the companies’ income tax. In addition to the benefits of involving the oil-producing communities in the management of oil and gas resources, the Fund will be utilized for the development of the economic and social infrastructure in oil-producing areas.

This Fund is set aside for any community in any part of the country where oil is extracted and produced. As an initiative that is not limited by geographic location, the PHC Fund represents an intergenerational mechanism for addressing the environmental damage and infrastructure deficit in areas where oil is found.

4.2 What is a “host community”?

Although several provisions of the Petroleum Industry Bill (PIB) make reference to host communities, especially 116 – 118, establishing the Petroleum Host Community Fund (PHC) Fund, there is a gap in the definition of the term, “host community”. However the interpretative section of the Bill (S. 362) provides little or no real guidance on the definition of “host communities”, nor does it indicate which groups or settlements qualify for this status and the criteria for that selection.

Generally speaking, the term “oil producing community” is used to describe an area which oil is extracted from. It refers to areas where petroleum extraction activities are mainly carried out which involves seismic testing, drilling sediment cores, and testing wells in order to locate potential oil and gas deposits, drilling and extraction of oil and gas from known reserves. Therefore, communities where oil pipelines merely pass through, without any oil production taking place there, are not likely to benefit from the Host Community Fund.

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4.3 Who is the legitimate person in the community to receive the PHC Fund?

The Bill is silent on how the fund will be administered. It does not say how and who will collate, receive and manage the monies paid into the Fund for the benefit of the communities. Community clashes in the region are often linked to funds given to communities by oil companies. As such, in the absence of an effective administrative framework, the PHC Fund portends a further source of conflict and division with oil-bearing host communities.

However, section 116(6) empowers the petroleum minister to make regulations on entitlement, governance and management structure with respect to the Fund. That means that the Minister enjoys the discretion to administer the Fund subject to the provisions of the Bill.

The National Assembly has been urged to consider the creation of a community-based fund management structure, called the Community Development Board (CDB), to manage the PHC Fund. The proposed CDB will serve as an independent body, without prescriptive interference from government agencies, state governors and traditional institutions, whose members are appointed for a fixed tenure by different interest groups – women, youth, traditional rulers, elders' council - within oil producing communities.

4.4 Will host communities receive compensation for oil spills and environmental damage resulting from vandalism or sabotage?

Section 118 (5) of the Bill stipulates that cost of repair of petroleum facilities damaged by acts of vandalism, sabotage within a host community shall be paid from PHC Fund entitlement unless it is established that no member of the community is responsible. When read together, S. 118 (5) and S. 293 (5) suggests that facility or environmental damage resulting from sabotage would borne by either the local and state governments, or would be deducted from the PHC if it is established that a member(s) of an oil producing community is/are responsible.

While it is true that some oil spills could be attributed to sabotage, experience has shown that oil companies greatly exaggerate the frequency of sabotage to avoid compensation payments for damage caused by spills resulting from corrosion or other preventable causes. Court actions in Nigeria such as Shell v. Isaiah (1997) have reached similar conclusions. By section 204, disputes regarding the causative factors of environmental damage shall be referred to the Agency for a determination and the determination of the Agency shall be “final”.

Demand by leaders of 6 oil producing communities in Ogoni, Rivers State at a meeting held on February 26, 2013
The discovery of oil also brought with it, substantial environmental damage in the oil-rich Niger Delta region in particular. Plants, animals, the ecosystem have been greatly affected by poorly-regulated oil exploratory and production activities, causing a lot of tension between operating companies and community inhabitants. The environmental atrocities persist mainly because of oil companies are taking advantage of weak laws and the laxness in regulatory enforcement. In response to the decades of environmental devastation and violence ravaging oil-bearing communities, the new reform bill lays out basic provisions to check unsafe operations, ensure land remediation and compensation to oil producing communities affected by oil industry operations.

Under S. 198 and 199, licensed oil operators are directed to refrain from damaging or destroying commercial trees, images or objects venerated by the people and communities living in areas where petroleum prospecting or mining take place. Communities are entitled to “fair and adequate compensation” for any damage or destruction of commercial trees and valuable objects resulting from such operations.
Section 200 obligates licensees, oil companies involved in upstream petroleum operations to adhere to sound oil field practices, protect the environment, and promote sustainable development. Every licensee or lessee engaged in upstream petroleum operations shall within three months after having been granted the license or lease, submit an environmental management plan to the Inspectorate for approval.

As a condition for the grant of the licence or lease and prior to the approval of the environmental management plan by the Inspectorate, all licensees or oil companies are required to pay the prescribed financial contribution to an environmental remediation fund established by the Inspectorate for the rehabilitation or management of negative environmental impacts with respect to the license or lease.

By Sections 290 and 291, it is compulsory for all licensed oil and gas operators to comply with all national environmental health laws, respect human rights and comply with internationally acceptable principles of sustainable development.

Communities must be empowered to understand the PIB provisions related to the environment and use them to demand legal protection. Local people need a lot of information, on the basis of which they can take action against oil companies and their partners that destroy their crops, objects of veneration and economic trees.

The Bill imposes the following obligations on licensees and lessees with regard to the environment:

- To carry out its operations in accordance with internationally acceptable principles of sustainable development and in accordance with best field practices. (Section 295)
- To support a preventive approach to environmental challenges and encourage the development and use of environmentally friendly technologies for exploration and development in Nigeria. (Section 296)
- To comply with the relevant requirements of environmental guidelines and standards approved for the petroleum industry in Nigeria. (Section 290)
- To as far as it is reasonably practicable, rehabilitate the environment affected by exploration and production operations, whenever environmental impacts occur as a result of its activities to its natural or pre-existing state. (Section 293)
- To pay 10% of its stipulated profit into the Petroleum Host Community Trust Fund of which shall be used to repair facilities where there is an act of vandalism, sabotage or other civil unrest within a host community, except it is established that no member of the community is responsible. (Section 116).
• To pay an agreed financial contribution before commencement of its operations, to an Environmental Remediation Fund this would be used for the rehabilitation or management of negative environmental impacts. (Section 293)
• To pay fair and adequate compensation when in the course of its operation, injures or destroys any tree or object of commercial value or object of veneration to the people resident within the extracting area, after due consultation by Inspectorate with designated persons. Failure to pay compensation will amount to suspension of the license and subsequent revocation where the operator fails to meet the terms. (Section 118 & 119)
• To pay reasonable compensation for the disturbance of the surface of the land or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands. (Section 296).
• Not to use chemicals except as permitted by the Inspectorate. (Section 200(8)).
• To carry out abandonment and decommissioning in line with rules set out by the Inspectorate. This must meet relevant environmental, technical and commercial regulations and standard. (Section 204).

5.2 What is gas flaring? What are the effects of gas flaring?

When crude is extracted from the ground, natural gases are released. The easiest way to separate the crude oil from the associated natural gas released is to burn the gas by way of flaring. This flaring activity has been going on since 1960 when oil production began in Nigeria. Beginning from 1968, attempts to end gas flaring through various ministerial directives and guidelines have been perceived as barks from a toothless bulldog.

Although Nigeria is the holder of the world’s seventh largest natural gas reserves, it is considered to be among the second highest gas flaring nation in the world, after Russia. Gas flaring not only wastes a potentially valuable source of energy (natural gas), but also adds significant carbon emissions to the atmosphere, emitting substantial amounts of soot and carbon monoxide, contributing to air pollution. Residents living near gas flares complain of respiratory problems, skin rashes and eye irritations, constant noise, heat and light which can degenerate into systemic insomnia. In the long term, the heart and lungs can be affected leading to bronchitis, silicosis, sulphur poisoning of the blood, and cardiac complications, as well as damage to agriculture due to acid rain.

In the celebrated case of Gbemre V. Shell Petroleum Development Co., the plaintiff, on behalf of the Iwherekan Community in Delta State, brought a suit against Shell Petroleum Development (SPDC) on the grounds that Shell’s gas-flare practices violated the fundamental rights of the people. Issuing an injunction stopping Shell and other oil companies from engaging in gas flaring activities, the High Court found that the gas-flaring laws were unconstitutional and void and thereby instructed the Attorney General as well as the Federal Executive Council to create new gas-flaring regulations that would pass constitutional muster.

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5 (2005) AHRLR 151

FAQs about the Petroleum Industry Bill | SPACES FOR CHANGE
5.3 Do anti–gas flaring provisions shift the goal post on flare end-date?

Section 275 prohibits gas from being flared - in any oil and gas production operation, block or field, onshore or offshore, or gas facility such as, processing or treatment plant - after a date ('the flare-out date') to be prescribed by the Minister, except where the Minister permits.

The provisions relating to gas flares seem to give by one hand and take from the other hand. After banning gas flaring, it creates room for exceptions to be granted by the minister. That is not effectively different from what is happening under the current regime. It turns gas flaring into discretionary permit-granting. Environmental justice advocates believe that the gas ban should be absolute. It is recommended that operating companies should not only be made to get insurance covers to cover cases of environmental disasters arising from their operations and this should be a condition precedent to the operation of any license.

5.4 Is it possible to make anti–gas flaring provisions stiffer and enforceable?

Gas flaring constitutes irresponsible environmental behaviour and should be deterred in the interest of environmental safety of endangered individuals and communities. Attempts to end gas flaring continue to be impeded by the dearth of adequate infrastructure such as storage and processing facilities for conversion of gas to cashable use. Not only that, oil companies and private firms are prohibited from undertaking in commercial energy production. To bring gas flaring to an end, facilities for gathering, storing and processing gas must be built, and the end products properly harnessed for onward distribution to consumers.

Furthermore, it is not just enough to require oil companies to install measurement equipment for measuring the amount of gas being flared as contained in Section 201. This must be matched with a corresponding capacity of regulatory agencies to independently verify, track and measure gas volumes produced and flared. The findings of the Nuhu Ribadu-led Petroleum Revenue Special Task Force (PRSTF) show that the agency responsible for collecting gas flare penalties, the Department of Petroleum Resources (DPR), is currently unable to independently track and measure gas volumes produced and flared. It depends largely on the information provided by the operators. The PRSTF also found that none of the oil companies operating in Nigeria have paid any gas penalty fee in 2012, resulting in massive revenue losses.

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6 Ledum Mittee, ex-president, Movement for the Survival of Ogoni People (MOSOP) statement made at E-Conference, PIB & YOU hosted by Spaces for Change on July 14, 2012
5.5 Who is entitled to compensation for environmental damage?

By section 296 of the PIB, “any person” in lawful occupation of licensed lands is entitled to compensation for any loss or disturbance of the surface of the land. In this connection, “any person” includes anyone or entity living or located within or near wellheads, oil prospecting and production sites, and oil installation facilities that has suffered loss or damage - to their houses, crops, farmlands, fishing equipment, boats, venerated objects, water sources and installations, trees, domestic animals or any other property or activity that takes places “on the surface of the land” - will be recompensed for property and economic losses resulting from oil operations’ disturbances. Claimants may be private individuals, communities, companies or public bodies (including federal and local government authorities and agencies).

5.6 What does disturbance mean?

The use of the word “disturbance” merits a broad interpretation. Naturally, it encompasses all quantifiable disablements, total destruction and partial damages to property not limited to the costs of cleaning or replacing contaminated or destroyed fishing gears, mariculture installations, agricultural produce, crops, natural vegetation, and industrial water intakes. Compensation is also payable for economic losses resulting from inability to farm, contamination of ponds, and other economic activities prevented by the disturbance in question.\(^7\)

A unique aspect of this section is that it did not set time limits for pursing compensation claims, ostensibly taking into account the time lag between when an incident occurs and it coming to the notice of the appropriate authority.

6.1 What happens to fuel subsidies? Is fuel subsidy retained under the Bill?

Section 100 provides for the establishment of the Petroleum Equalisation Fund, set aside for the reimbursement of petroleum products marketing companies who incur losses solely and exclusively as a result of selling petroleum products at uniform benchmark prices set by the Agency. In simpler terms, the fund operates as a subsidy, to be used to subsidize the sum of petroleum product as would enable the purchase of petroleum products at a uniform price at any point and place within the country. Maintaining this subsidy invariably provides an avenue to sustain the status quo and the level of corruption that have been going on for decades.

The retention of the PEF undermines the Bill’s objective to deregulate the downstream sector. Sections Section 221 (a) to (d) provide that the pricing of petroleum products in the downstream product sector is deregulated to ensure “(a) a market-related pricing (b) adequate supply of petroleum products (c) removal of economic distortions and (d) creation of fair market value for petroleum products in the Nigerian economy”. Cushioning oil differentials to ensure uniform benchmark prices of fuel throughout the country, is uneconomically feasible, as it is a natural market phenomenon for goods to cost less based on distance to production. But the markets on their own could address it through construction of pipelines, new refineries across the country, especially in the northern part of the country where anxiety is growing as a result of anticipated fuel prices hike post-PIB.

6.2 Does the PIB conflict with other national legislations?

Yes, there is an apparent conflict between PIB provisions and other national legislations such as the Nigerian Extractive Industry Transparency Initiative (NEITI) Act. NEITI is an agency set up to, among other things; develop a framework for transparency and accountability in Nigeria’s extractive industries, and to ensure conformity with the principles of Global Extractive Industries Transparency Initiative (GEITI). Its overarching objective is to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies.

Section 3 (F) of the NEITI Act empowers it to “monitor and ensure that all payments due to the Federal Government from all extractive industry companies, including taxes, royalties, dividends, bonuses, penalties, levies are duly made.” Similarly, Section 15 of the PIB saddles the Upstream Petroleum Inspectorate with the responsibility to compute, assess and ensure payment of royalties, rentals, fees and other charges for petroleum upstream operations. When read together, the two legislations (NEITI Act and the PIB) grant the two agencies statutory powers to perform similar functions.
It is however, important to note that Section 4 of the PIB requires all agencies and companies established under the Act to be bound by the Nigerian Extractive Industries Transparency Initiative Act in the performance of their functions and achieving their objectives.

6.3 **Does the revised bill protect the interest of oil multinationals?**

Oil majors such as the Shell Petroleum Development Company (SPDC) have in the past, expressed deep concerns about the fiscal regimes for onshore, shallow water and deepwater production, increased royalty payments, including the revised provisions regarding the acreage management, community relationships, revocation and relinquishment of licenses and leases. Even more recently, oil majors have further contended that the fiscal terms are uncompetitive and harsh, considering increasing social risks and high costs of doing business due to insecurity and bunkering. The fiscal regime was also accused of being extremely complex, lacking clarity and portending enormous investment uncertainty which would render many oil-field projects non-viable.

Reacting to the above IOC concerns, Nigerian oil ministry officials have explained that the new ‘fiscal terms are fair to all irrespective of terrain; self adjusting based on the prevailing price of crude at the international market’. A balance must be struck between overriding national interests on the one hand, and the need to make the oil industry attractive to foreign investments on the other hand. In a recent statement, the Petroleum Minister, Diezani Allison Madueke, stated that the “PIB would usher in new fiscal regime to address all issues of equity among stakeholders in the sector. It will also put in place a new acreage allocation system that will be fair to both the big and small players”. Among other numerous benefits attached to the new proposals in terms of production and pricing, the new fiscal terms will enable operators to continue to make fair returns during field decline; lower rates proposed for condensate for Non-Associated Gas, NAG fields and lower rates also proposed for frontier and ultra deepwater basins.

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8 Statement made by the former Royal Dutch Shell’s Regional Executive Vice-President, Exploration and Production, Africa, Ann Pickard at the 2010 Nigerian Oil and Gas conference in Abuja held on February 24, 2010.

9 The then proposed acreage management was not acceptable to them. They kicked against gas tax increasing from 30 per cent to 80 per cent and royalties increasing from 7 per cent to 12.5 per cent for big producers.

10 IOC objections to the original version of the PIB submitted to the National Assembly by the late President Umaru Musa Yar’Adua in 2008

11 Mr. Abiye Membere, Group Executive Director, Exploration and Production, at the Nigerian National Petroleum Corporation (NNPC), reported by Clara Nwachukwu, in March 26, 2013 Vanguard: *PIB fiscal regime still very competitive – Committee*

12 Speaking at the Africa Energy Summit session during the Cambridge Energy Research Association (CERAWEek 2013) in Houston, Texas, United States. The minister was represented by the Group Executive Director, Exploration and Production, at the Nigerian National Petroleum Corporation (NNPC), Mr. Abiye Membere,

13 Mr. Abiye Membere, Group Executive Director, Exploration and Production, at the Nigerian National Petroleum Corporation (NNPC), reported in Vanguard (ibid)
6.4 What must Nigerians do to ensure that the PIB is passed?

Nigeria is ranked Africa’s number one and the twelfth globally among oil-producing countries.¹⁴ Oil revenues account for about 96 percent of the country’s foreign earnings, rendering it the fifth largest oil producer in the Organization of Petroleum Exporting Countries (OPEC). Every Nigerian is therefore, directly or indirectly affected by outcomes of the petroleum industry, considering the sector’s significant contributions to national economy, and the Gross Domestic Product (GDP). Therefore, the laws regulating the oil and gas sector must be such that reflects the interests and welfare of all Nigerian citizens.

This is the time for lawmakers to meaningfully engage their constituencies, and all critical stakeholders working in all sectors of the Nigerian economy, including oil-bearing communities who bear the brunt of oil industry operations. Every interest group – from the market women to the oil companies to the artisan by the road side - needs to get a copy of the Petroleum Industry Bill, and analyze it from their viewpoints to ensure their interests and priorities are adequately captured and reflected in the Bill. The Niger Delta communities and their leaders must seize this opportunity to engage the legislative processes, participate in all the hearings, and see to it that very strong environmental protection provisions are included in the Bill.

The full thread of the E-Conference, PIB & YOU, can be viewed via the following link:

https://www.facebook.com/groups/spacesforchange/permalink/334310543317384/?comment_id=334359289979176&offset=0&total_comments=275

¹⁴According to 2011 statistics by the United States Energy Information Administration