# The Petroleum Industry Governance Bill


## Summary

This policy brief assesses environmental and other aspects of the Petroleum Industry Governance Bill (PIGB). The PIGB was passed by the Nigerian Senate in May 2017, and House of Representatives in January 2018, as part of a package of legislative reform for the oil and gas sector. However, it was subsequently rejected by the President and is now being discussed again.

The purpose of the Bill is to make the oil and gas sector more transparent and commercially viable. However, as it stands, it does not adequately provide for the protection of the environment of the Niger Delta from the impact of oil production and transportation. It continues to combine the functions of revenue generation and environmental protection in a single agency, and therefore only recreates the existing conflict of interest at the heart of the regulatory framework. As such, it will do little to improve environmental standards. Separating the regulatory functions would be a major step towards this goal and that is the major recommendation of this brief.


## Policy recommendations

The PIGB has been under consideration for more than 15 years, and there remains a narrow window of opportunity for reform. Given this, SDN's key recommendations do not relate to specific clauses of the Bill, but rather to the two overarching principles which must guide its overall development. Regardless of the detail, if these principles are adhered to, the PIGB should deliver progress on the status quo.

1. **Separate regulation from revenue**
   The Department of Petroleum Resources is currently responsible for increasing production to raise revenue, as well as enforcing regulatory standards. This is a major conflict of interest. The ability to stop bad practice is severely inhibited if the regulator is also responsible for maximising industry profit.

2. **Place regulatory powers under NOSDRA, within the Ministryof the Environment**
   The specific agency to which environmental regulatory powers should be granted is the existing National Oil Spill Detection and Response Agency (NOSDRA), which must be fully empowered to regulate all environmental aspects of the oil and gas industry, under the remit of the Ministry of the Environment. The Ministry of Environment is currently responsible for environmental regulation across Nigerian industry – but only responds to oil spills, rather than preventing and ensuring compliance to operations standards. This is untenable.

## The PIGB in the context of the NOSDRA Bill

As well as the overall jurisdiction, NOSDRA must have the specific tools to do its work. A helpful Bill strengthening NOSDRA has passed in the National Assembly. But as the independent oil spill environmental regulator, it must be able to apply the ultimate sanction of refusing an operator a licence to operate, shutting down any facility deemed inadequate or imposing fines, and bringing criminal charges against operators. These functions are currently exercised by the Minister of Petroleum and the Department of Petroleum Resources, although they are contained in the NOSDRA Amendment Bill 2018 as passed by the National Assembly and will be exercised by NOSDRA if this Bill is assented to by the President.

## The Petroleum Industry Governance Bill (PIGB): overview and analysis

The Nigerian oil industry is the mainstay of the Nigerian economy. However, it is opaque in its dealings and is widely seen as a source of corruption in government circles. Fortunately, there is agreement among government officials, oil company employees and civil society representatives that the oil and gas sector in Nigeria needs reform.

In particular, this arises from the fact that the current structures are convoluted and impede effective regulation. Overlapping regulatory functions exercised by multiple agencies breed dysfunction.

The long-term consequence of this has been a significant deterioration in the environment of the Niger Delta as a result of oil spills and gas flaring, impacting on the health of the local people, the loss of agricultural land, and the pollution of its creeks and surrounding seas.

The PIGB offers an opportunity to restructure the regulation of the oil and gas industry that would help address these issues. Its key objectives are to:

- Create effective governing institutions with clear and separate roles for the petroleum industry.
- Establish a framework for the creation of commercially oriented and profit driven petroleum entities.
- Promote transparency and accountability in the administration of petroleum resources of Nigeria.
- Foster a conducive business environment for petroleum industry operations.

**Major proposed changes provided for by the PIGB include:**

**1. The introduction of a new regulator**

The PIGB will establish the Nigerian Petroleum Regulatory Commission (NPRC) to serve as the industry's supervisory body. The NPRC will replace and carry out the functions of the DPR, and the Petroleum Products Price Regulatory Agency (PPPRA). This regulator will assume the assets and liabilities of the existing agencies.

**2. The establishment of new commercial entities**

The PIGB will establish three new entities to replace the Nigerian National Petroleum Corporation (NNPC). These are the Nigeria Petroleum Liability Management Company, the Nigerian Petroleum Assets Management Company Limited, and the National Petroleum Company (NPC).

The Nigerian Petroleum Assets Management Company will hold and manage assets under Production Sharing Contracts (PSCs) on behalf of the Government, while the NPC will be responsible for all other assets currently held by NNPC. Under PSCs, the operator undertakes the initial exploration risks and where oil is discovered and extracted, the operator is allocated a portion of the oil produced sufficient enough to cover production costs and the remainder is shared based on the agreed contractual percentages between the operator and the Nigerian government.

## The imperative for change

As things stand, the Department of Petroleum Resources (DPR) regulates the environmental standards demanded for the oil and gas sectors. However, the primary objective of this agency is to maximise production and revenue from the sector. Its environmental protection function is neither its expertise nor its focus, and constitutes a conflict of interest whenever the implementation of environmental standards might be deemed to affect profitability.

However, the overall regulator to be established by the Bill, the Nigerian Petroleum Regulatory Commission (NPRC), will inherit both these functions. The PIGB therefore reinforces the present conflict of interest. It is also contrary to international best practice, which is for environmental regulation and revenue generation to be separated. The fundamental change which the Bill must effect is therefore to remove the powers to enforce environmental standards from the Ministry of Petroleum Resources, and vest them instead in NOSDRA, ultimately under the remit of the Ministry of Environment. The glaring conflict of interest at the heart of the Nigerian oil industry must not be allowed to continue.

This is even more the case as the NOSDRA Bill passed earlier this year by the Nigerian Senate increases the funding and capacity of NOSDRA to manage oil spills in the petroleum industry. Matching this on the legal side by granting it the powers it needs to enforce spill management procedures would constitute a significant structural reform, and fulfil the potential of this legislative opportunity to protect the environment of the Niger Delta.

## The President's view

The President formally wrote to the National Assembly in July 2018 stating the reasons why he refused to assent to the PIGB draft as presented to him. The President gave four reasons (in bold). See following for SDN's commentary on each.

1. **The provision in section 28(2)(f) to retain 10% of revenue generated unduly increases the funds available to the NPRC to the detriment of the funds available to the Federal, State, Local governments and Federal Capital Territory.**

   SDN agrees that such large revenues could contribute to the creation of a regulatory behemoth with enormous authority over the industry. The availability of such funds to a government agency and the powers prescribed in the draft bill could have political implications that would impede the efficiency of the sector and raise wider governance issues. It is suggested that this amount be reduced to around 2.5% as for other regulators in the sector.

2. **The inclusion of Part IV of the bill appears to introduce and expand the scope of the Petroleum Equalization Fund (PEF), which contains some important points of divergence from the policy of the President's Administration.**

   While the president did not explicitly mention the specific policies referred to here, it is also our opinion that this amounts to legislative duplication of responsibilities within a seemingly all-powerful regulator (NPRC).

3. **The creation of a single regulator for the entire industry (upstream, midstream and downstream) endows the NPRC with enormous powers which may be abused and potentially lead to inefficiency and bureaucracy.**

   A single regulator for the oil and gas sector does not cohere with international best practice of in the oil and gas sector and is also divergent from current practices in frontier oil and gas countries. This was an issue raised in a position paper which SDN presented during the public hearing of the PIGB in May 2018. International best practice is for a demarcation in regulatory powers between revenue generation and environmental compliance in the operations of the industry. Where there is a single regulator, there will emerge a conflict of interest as the government's efforts to increase revenue may lead to less willingness to enforce environmental compliance and sustainability. Environmental regulatory powers should be vested in a separate agency as is the practice elsewhere.

4. **The existence of a number of drafting issues in the bill that may affect the interpretation of the bill in its current form.**

   SDN also agrees with this point as there are several interpretational and conflicting provisions that conflict with extant as well as draft bills under consideration at the National Assembly.

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