



The Petroleum Host and Impacted Communities Development Bill

Summary

This policy brief assesses the current draft of the Petroleum Host and Impacted Communities Development Bill (HCB). The purpose of the HCB is to determine how communities which host oil sector operations ('host communities') in Nigeria's oil-producing Niger Delta are compensated for the impact the industry may have on their lives. This is important, as the perception that host communities suffer from the environmental and other effects of the sector, while not sharing in its benefits, is an underlying factor in the insecurity prevalent in the area. With longstanding tension in community-oil company relations, getting the HCB right will be crucial to long-term peace, stability and development in the Niger Delta. However, as it stands, the HCB vests too much power in industry, in particular in terms of deciding how development projects are determined and implemented, as well as deciding who benefits. This risks further alienating communities, who already consider themselves cut out of decision-making. SDN stands ready to engage on future drafts of this Bill.

Policy recommendations

SDN's recommendations for lawmakers to address the shortcomings in the HCB are as follows:

- 1.** Provide a timeframe for disputes, in the instance of their not being resolved by the NPRC, to be referred to and dealt with by the Federal High Court. This should avoid lengthy legal processes that lead to frustration for all parties.
- 2.** Provide a timeframe, and penalties for non-compliance, on the actual implementation of projects themselves, not just the establishment of the Trust to do this.
- 3.** Clarify how Trusts will be constituted in the event of there being multiple settlors present in a single community. A single Trust with multiple contributions might be the most efficient method of organisation, if communities are the determinants of how the money is spent. On the other hand, if each settlor incorporated its own Trust, this could incentivise settlors to operate as responsibly possible, as doing so would increase their social licence to operate, and hence long-term acceptance by communities, vis-à-vis other settlors.
- 4.** Ensure clear guidelines on what specific assets and infrastructure, and political, environmental and geographical considerations constitute a Host Community, in line with relevant international best practice. This is fundamental to the purpose of this legislation, and settlors should not be given discretionary decision-making power in this regard.
- 5.** Stipulate a clear mechanism for representatives of communities to influence decision-making regarding all aspects of projects intended for their benefit. This includes the need for meaningful community representation on the BoT, which as currently proposed will be a vehicle almost solely for settlor interests. Only with an open and democratic engagement will the Bill encourage real community-led development outcomes, and establish a framework for viable long-term engagement with host communities.
- 6.** Stipulate a minimal level of investment or projects to be implemented in any one designated host community, in line with the stated objectives of the Bill.

Introduction

The Nigerian National Assembly is drafting key legislation that will reform the Nigerian oil and gas industry. The reforms are the culmination of more than a decade of political debate, and are central to plans for long-term peace, prosperity and stability in Nigeria. They are intended in part to address the range of complex, connected challenges the Niger Delta faces, including armed criminal and political violence, a lack of socio-economic development, and serious environmental degradation.

The environmental challenges, in particular, are acute. Decades of pollution of agricultural land and water have ruined livelihoods, and had a potentially disturbing impact on health indices in the region. For example, a [2017 study](#) found that the neonatal mortality doubles in areas near to an oil spill. These problems are core grievances for many, and the perception that these issues have not been adequately addressed by either the government or those who pollute has contributed to the instability and violence of the Niger Delta.

A key factor in this is the relationship between oil companies and local communities. Many communities consider that while suffering the worst of the environmental impact, they see little to no infrastructure development or other benefits from industry presence. The Petroleum Host and Impacted Communities Development Bill (HCB) aims to address this by providing a framework for investment in local communities.

The Petroleum Host and Impacted Communities Development Bill (HCB): summary analysis

The HCB aims to support specific communities impacted by the petroleum industry. Its purpose is to:

- Provide host communities with direct social and economic benefits from petroleum operations in their area.
- Enhance peaceful coexistence between oil companies and host communities.

For this to happen, the HCB provides for the incorporation of a trust fund by each oil company, or 'settlor', to disburse monies to development projects in each community. These objectives are sound, although they should not be seen as a replacement for the government's responsibility to provide basic services and infrastructure, plan and implement other local development initiatives, and enforce socially responsible business practices. This does not mean there is no merit in establishing a framework for a functional company-community engagement mechanism to structure how industry can support communities. Indeed, this is the logic of the HCB. However, this framework, as outlined in the current draft of the Bill, is flawed in a number of ways.

1. Minimising the role of government.

The HCB as it stands downplays the necessary role of government in the development of host communities. Instead, it places responsibility for community development and environmental accountability on the oil companies, with the only role for the government that of the Nigerian Petroleum Regulatory Commission (NPRC). The NPRC's role is to mediate in disputes, with recourse to litigation should this not be achieved, with the proviso that the decision of the NPRC remains valid until such a time as overturned by the Federal High Court. However, historical cases of such litigation have tended to take years, if they are resolved at all, and so it is likely that the NPRC decision will last. History suggests that the likely outcome in any such dispute will be favourable to industry. So the effect of this could be to create a perception – or reality – of the abdication by government of its duty to ensure the development of state and society for all.

2. Lack of clear timeframes.

The Bill does not provide sufficient clarity on timeframes. While the Bill does stipulate deadlines for the incorporation of a Trust in each community, and penalties for failing to do so, it does not provide a timeline for the actual implementation of projects. This is a major oversight, and means that settlers could fulfil their legal obligations without actually fulfilling the purpose of the Bill and supporting community development.

3. Geography sidelined

The Bill does not consider key questions of geographical administration adequately, in two ways:

- It is already practice for companies to sign a Memorandum of Understanding (MoU), sometimes known as a Global Memorandum of Understanding (GMOU), when establishing operations in communities. These agreements are intended to deliver infrastructure and social benefits to communities. The HCB effectively duplicates this process, risking unnecessary legal and political complexity.
- There may also exist multiple settlors in a single community. There should be clarity on whether multiple settlors can register a single Trust with separate annual contributions, or if each settlor will need to incorporate their own trust, and how to deal with the challenges relating to this.

4. Industry in charge of key criteria

Related to geographical administration, the Bill makes settlors the sole authority for determining areas of operation. In effect, this is the power to determine which communities are impacted by the petroleum industry and as such benefit from the Trust. This does not allow for the fact that there may be many communities which suffer environmental damage associated with the petroleum industry, but which, if not designated as a host community, will not be able to receive funds or bring complaints to the relevant authorities. This runs the risk of settlors being able to fulfil their obligations in a way that suits their needs rather than communities'.

5. Inadequate community representation

The Bill provides for the establishment of a Board of Trustees (BoT) for the management of each Trust and its projects. But although the purported purpose of the Bill is to empower host communities to take charge of their own development needs, it gives settlors the sole power to appoint and determine the composition of the BoT, cutting communities out of the decision-making process. A potential source of conflict between communities and settlors is the provision that settlors can appoint persons who are not indigenous to the host communities as a member of the board. There is also no clarity on the parameters that will determine the financial and other benefits communities are

actually entitled to. The implication of this is that 'legacy conflicts' – current or historical disputes between and within communities, and between communities and oil companies – could play a role in the distribution of benefits and projects implemented, with settlors able to 'punish' communities with which they have previously been in conflict, or to favour one community over another in the scenario where the area covered by a trust includes several communities. This is highly undesirable for a Bill that aims to build trust and deal with such issues for the long term.

6. Funding concerns

The key source of funding of the Trust for designated host communities is 2.5 per cent of the value of the settlor's operating expenditure in a community. The implication is that the size of the operation will determine the funds available for development interventions in any one designated host community. This is worrisome, as the Bill provides for the administrative cost of running the BoT to be included in the total contributions to the Trust. So where the cost of running the fund is more than 2.5% of the operating expenditure in a community (likely in areas with smaller scale operations), the fund may only be able to cover itself, and not any actual contributions to infrastructure development. Without knowing the administrative costs of a given fund, it is difficult to know if this is a substantial concern. However, its implications should be addressed to ensure it cannot become one.

Conclusion

Key provisions in the HCB as it stands are troubling. These principally relate to the power vested in settlors to determine key parameters related to how funding will be allocated. This includes, for example, the critical role of designating what constitutes a host community in the first place, and of determining the constitution of the Board of Trustees intended to manage the trust fund for each community. There are also issues regarding the lack of an enforceable timeframe for project implementation. The net effect of the asymmetry of power inherent in the proposed changes will likely institutionalise the perception among communities that their concerns are marginal to those of industry, a core grievance for many. As such, the HCB as it stands will not help resolve the tensions between settlors and communities in the Niger Delta, and could make them worse.

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