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### Nigeria's Petroleum Industry Bill: A Missed Opportunity to Prepare for the Zero-Carbon Future

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# Nigeria's Petroleum Industry Bill:

## A Missed Opportunity to Prepare for the Zero-Carbon Future

With Nigeria's [National Assembly](#) debating the proposed Petroleum Industry Bill (PIB) in the first quarter of 2021—after nearly two decades of attempted reform of the country's petroleum sector—Nigeria has a unique opportunity to rethink the role of the oil and gas industry in Nigeria's economy and build out the country's energy sector and economic capacity for the long term. [CCSI's report \*Equipping the Nigerian National Petroleum Corporation \(NNPC\) for the Low-Carbon Transition\*](#), released before the PIB was publicized, advances suggestions on how to do so.

The PIB takes notable steps toward much-needed reform of NNPC's governance structure and addresses particular environmental and social concerns. However, it ultimately fails to account for climate change, the energy transition, and the necessary overhaul of Nigeria's petroleum industry.

Complementing CCSI's recent NNPC report, this blog provides a brief analysis of Nigeria's PIB. It highlights the PIB's laudable steps while identifying gaps and outlining recommendations for Nigeria to prepare for and seize the opportunity of the energy transition.

### Nigeria's Petroleum Predicament

Nigeria sits on the largest oil and gas reserve in Sub-Saharan Africa, with crude oil accounting for 90% of its export earnings.<sup>1</sup> Due to the NNPC's enormous revenues—which can represent more than five times Nigeria's health expenditure, around seven times its foreign aid receipts, and more than fifteen times the value of country's sovereign wealth fund<sup>2</sup>—the government's major budgetary decisions tend toward the oil sector as opposed to renewables or associated public goods.<sup>3</sup>

Yet in the wake of the oil, climate, and COVID-19 crises as well as the Paris Agreement on Climate Change and global commitments to transition to low-carbon energy, the oil industry currently stands as one of the worst-performing sectors on the S&P 500 index.<sup>4</sup> Forecasts are pessimistic about a return to previous price and demand levels.<sup>5</sup>

Nigeria's reliance on oil and gas therefore puts the country in a vulnerable and increasingly unsustainable position, particularly in the face of heightened economic challenges due to COVID-19. Given the downturn in oil and Nigeria's uncompetitive production costs, above-average carbon intensity of oil production, and inefficient refineries, the country cannot rely on oil revenues to finance immediate stimulus packages, nor should it bank on them for the future. The fact that Nigeria's public and private debt is indexed on oil prices further threatens Nigeria's already downgraded sovereign debt rating and puts the country in a compromised position to borrow money to remediate pressing economic, environmental, and health crises.<sup>6</sup>

1 David Thomas, "What you need to know about Nigeria's Petroleum Industry Bill," *African Business*, October 2, 2020, <https://africanbusinessmagazine.com/sectors/energy/what-you-need-to-know-about-nigerias-petroleum-industry-bill>.

2 Perrine Toledano, Martin Dietrich Brauch, Tehtena Mebratu-Tsegaye, and Francisco Javier Pardinás Favela, *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition: How Are Other National Oil Companies Adapting?* (Columbia Center on Sustainable Investment, September 2020), p. 4, <http://ccsi.columbia.edu/files/2020/09/CCSI-NNPC-Nigerian-National-Petroleum-Corporation-Low-Carbon-Transition-rev.pdf>.

3 Toledano et al., *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition*, p. 4.

4 Toledano et al., *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition*, p. 7.

5 Toledano et al., *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition*, p. 4.

6 Toledano et al., *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition*, p. 4.



### Alternative Paths for a Better Way Forward

National oil companies (NOCs) must embrace the low-carbon transition to equip themselves for the future. With demand for oil on the decline, NOCs are in a unique position to help accelerate the realization of the needed transition, as we point out in our [report](#).

Five NOCs in particular—Algeria's Sonatrach, Brazil's Petrobras, Malaysia's Petronas, Norway's Equinor, and Saudi Arabia's Saudi Aramco—have seized the opportunity to adapt for a better way forward. Each of them adopts a unique approach, including tactics such as putting the transition at the center of their business strategies; undergoing corporate governance reforms; and supporting their national government's commitment to the Paris Agreement via reducing carbon emissions and increasing investment and research in renewables, green hydrogen, carbon capture, storage technology, and utilization.

### Analysis of the Current Draft of the PIB: Is Nigeria Seizing this Transition Opportunity?

Nigeria has initiated steps to diversify away from oil,<sup>7</sup> and the PIB calls for governance reforms that position the government to better participate in the energy transition. However, the bill does not adequately address climate change, the Paris Agreement, or the energy transition. Further action is needed for Nigeria to capitalize on the transition as a business and sustainable development opportunity.

Using available policy guidance, and looking toward the other NOCs that are leading the path forward, Nigeria too can adapt to turn the current crises into an opportunity. But this requires critical reforms, and the draft PIB has far to go to adequately prepare Nigeria for a successful future.

### *The PIB Proposes Some Much-Needed Reform on Governance*

Nigeria's petroleum law is long overdue for reform, and certain propositions in the PIB come as much welcomed improvements to the sector. The bill aims to improve the efficiency and strengthen the commercial roles of the state-owned NNPC by transitioning it into a limited liability company, NNPC Limited. According to the bill, NNPC Limited would be constituted within six months of enactment, opening it up to private capital, and making for a more transparent system given the requirement to publish annual reports and audited accounts.<sup>8</sup>

The bill also seeks to limit the power of the Minister of Petroleum Resources—a role currently held by Nigeria's President—by revoking the Minister's power to grant, amend, revoke or renew licenses, and removing the Minister's seat on the board of NNPC Limited. Two proposed regulators, the Nigerian Upstream Regulatory Commission (the 'Commission') and the Midstream and Downstream Petroleum Regulatory Authority (the 'Authority') would replace the multitude of regulating bodies (the DPR, Petroleum Inspectorate, the Petroleum Products Pricing Regulatory Agency, the Petroleum Equalisation Fund, among others) and must consult each other on new regulations or amendments.<sup>9</sup> Such structural reforms create a clear separation between NNPC Limited's operations as a commercial entity and the regulatory roles to be exercised by the regulatory authorities, allowing for more transparent oversight.

### *Environmental and Social Provisions*

Recent media coverage has commended the PIB for its "strong environmental and social component as it proposes encouragement for environmental clean-ups and other green initiatives."<sup>10</sup> However, these improvements are not particularly strong. For instance, the PIB would establish environmental remediation funds,<sup>11</sup> require an environmental management plan for any project

7 Toledano et al., *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition*, p. 4.

8 Wood Mackenzie, *Nigeria's Petroleum Industry Bill Scales New Heights of Fiscal Complexity* (November 2020), [https://www.woodmac.com/news/opinion/nigeria-petroleum-industry-bill/?utm\\_source=pardot&utm\\_medium=email&utm\\_content=petroleum-nigeria-bill-report](https://www.woodmac.com/news/opinion/nigeria-petroleum-industry-bill/?utm_source=pardot&utm_medium=email&utm_content=petroleum-nigeria-bill-report).

9 Wood Mackenzie, *Nigeria's Petroleum Industry Bill Scales New Heights of Fiscal Complexity*.

10 Thomas Hedley, "Nigeria's Petroleum Industry Bill Awaiting Green Light," *Africa Oil & Power*, August 27, 2020, <https://www.africaoilandpower.com/2020/08/27/nigerias-petroleum-industry-bill-awaiting-green-light>.

11 Federal Republic of Nigeria (National Assembly), 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, September 30, 2020 [PIB], Art. 103, <https://www.nassnig.org/documents/billdownload/11011.pdf>.

requiring an environmental impact assessment,<sup>12</sup> and prohibit the use of chemicals in upstream operations unless a permit is granted by the Commission.<sup>13</sup> While welcome, these improvements are long overdue steps to catch Nigeria's petroleum industry up to speed with environmental standards for the sector.

The PIB would also amend flaring regulations: it would prohibit flaring of gas and require the installation of metering equipment; flaring or venting except for in the case of an emergency, pursuant to an exemption by the Commission, or as an acceptable safety practice, would result in a fine that is not eligible for cost recovery and not tax deductible.<sup>14</sup> The bill would also require gas producing licensees or lessees to submit an elimination and monetization plan for the associated gas within one year of the effective date of the law.<sup>15</sup>

The PIB also includes notable social considerations such as a chapter on Host Communities Development, which includes the establishment of host communities development trusts that would act as funds for environmental, social, and infrastructure projects.<sup>16</sup>

### *Fiscal Stabilization*

Within the Financial Stabilization Article is the PIB's only mention of climate change:<sup>17</sup>

Fiscal stabilization clauses contained in any Production Sharing Contract or other contract entered into after the commencement of this Act shall not be applicable to certain fiscal provisions, regardless of whether these changes affect the contractor favorably or unfavorably, if changes are being made in a manner that is not discriminatory to the petroleum industry or the contractor, with respect to...

(c) new taxes, levies or duties to implement Nigeria's commitments with respect to climate change under the United Nations Framework Convention on Climate Change and other related international agreements.

Based on the draft article, if Nigeria enacts generally applicable "taxes, levies or duties" to implement its international climate change obligations, these fiscal provisions would not be covered by stabilization clauses included in petroleum contracts concluded after the PIB enters into force. Accordingly, even if a new petroleum contract included a clause to freeze the fiscal regime for the benefit of the investor, this clause would not block the application of a new carbon tax, for example, that Nigeria might enact to achieve its climate goals.

However, the benefit of this draft article is limited by the details of its language. Should Nigeria choose to adopt a carbon tax specific to the petroleum industry—rather than one applicable to all economic sectors—the new petroleum-specific tax would still be covered by fiscal stabilization and would therefore not affect NNPC Limited's contractors. The language of the draft article thus puts a burden on the Nigerian government to design taxation measures that are not "discriminatory to the petroleum industry" for the stabilization clause in the new contracts not to apply. This requirement prevents Nigeria from using fiscal measures specifically targeted at oil companies to mitigate climate change, despite their larger share of responsibility for carbon emissions.

Finally, the draft article also fails to invalidate fiscal stabilization clauses in existing petroleum contracts, or at least create an obligation on NNPC Limited to attempt to renegotiate existing contracts so that stabilization clauses would not apply to climate-related fiscal measures. Fiscal stabilization clauses contained in existing contracts would likely hinder Nigeria's use of new fiscal instruments to achieve its climate change goals.

12 PIB Art. 102.

13 PIB Art. 103(7).

14 PIB Art. 104.

15 PIB Art. 104–108.

16 PIB Art. 234–257.

17 PIB Art. 305.

### *A Small Step When Nigeria Needs a Leap*

Despite the positive aspects highlighted, the PIB ultimately fails to account for climate change, acknowledge the Paris Agreement, and address the need for diversification to adequately prepare Nigeria for the energy transition that is already underway.

The PIB threatens to exacerbate Nigeria's stranded asset risk<sup>18</sup> by regulating the operation of pipelines and the building of new ones while failing to account for the stranding risk. Rather than locking more capital into projects and infrastructure that will soon be obsolete, Nigeria should be promoting the stewardship of assets that propel the energy transition forward, not those that will be left behind.

What is more, the new environmental requirements are articulated with no explicit connection to the climate emergency. For instance, the establishment of environmental remediation funds mandates licensees or lessees to “pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the licence or lease.”<sup>19</sup> However, climate change might affect the cost of remediation when the time comes; therefore this financial contribution should be regularly updated based on a climate risk assessment.

### **Parliamentary Debate of the PIB: The Opportunity Can Still Be Seized**

The compounding impacts of the oil, COVID-19, and climate crises on Nigeria's public finances heighten the importance of public debate about the PIB by Nigeria's National Assembly. The legislators will hold a public hearing to discuss it—January 25–26, 2021 in the Senate, and January 27–28, 2021 in the [House of Representatives](#)—and consider the bill clause by clause afterwards.

The National Assembly should use this period to make the PIB debate process as democratic and comprehensive as possible. In addition to the laudable step of holding public hearings, it will be important for the legislators to invite academics and energy experts to comment on the bill, and to remain open-minded about the changes needed to make it work for and not against the low-carbon energy transition.

### **Looking Forward: Recommendations**

As the PIB is debated, there is still time for the Nigerian government and parliament to heed warning and change course. Diversifying away from oil, investing in clean energy sources, and improving governance are essential steps for Nigeria to effectively break free from its oil dependence and seize the business opportunity. Looking toward the five trailblazing NOCs analyzed in the [CCSI report](#) and using available policy guidance, Nigeria has the opportunity to build out the PIB to situate the country as a main player in accelerating the energy transition.

Specific next steps that Nigeria could take to equip for the energy transition include:<sup>20</sup>

- Hire experts to develop an energy transition plan that accounts for the risk of asset-stranding and analyzes the renewable energy deployment needed to meet the country's energy needs.
- Include climate change governance principles in the NNPC reform agenda.
- Establish a separate strategic division within NNPC or an independent entity focused on developing clear target metrics and performance results around low-carbon energy responsibilities such as reducing carbon emissions, planning how to limit future oil and gas projects, and developing new business in renewable energy.

18 “Stranded Assets.” *Carbon Tracker Initiative*, August 23, 2017, <https://carbontracker.org/terms/stranded-assets>.

19 PIB Art. 103.

20 All recommendations are taken from Toledano et al., *Equipping the Nigerian National Petroleum Corporation for the Low-Carbon Transition*, pp. 28–29.