

Nigeria's Petroleum Industry Bill: Improving sector performance through strong transparency and accountability provisions

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If the final Petroleum Industry Bill (PIB) contains strong transparency and accountability provisions, Nigeria's oil sector performance has real opportunity to improve. Transparency encourages competition, discourages illicit behavior and attracts investment. Accountable institutions reassure investors, improve regulation and revenue collection and result in higher production and earnings. Given oil's prominent role in the economy, Nigeria will struggle to break in to the top 20 economies without such reforms.

Nigeria's National Oil and Gas Policy—implemented by the PIB—prioritizes “increasing transparency and accountability” as one of its goals. While most of the debate has addressed fiscal terms and institutional restructuring, we instead focus on the transparency and accountability agenda and argue that the PIB must fulfill at least **six basic objectives** in this area.

Past drafts of the bill contain strong language serving these objectives that now need protection. In this policy brief, we examine and underline provisions in the original 2008 Presidency submission (HB 159); the final 2010 submission by the federal Inter-Agency Team (IAT); and the much-weakened 2011 Senate version (SB 236). Laws from other countries and international standards provide added guidance.

Objective 1. Open, competitive and transparent upstream awards

Oil production licenses and contracts are some of Nigeria's most valuable assets. To maximize returns, government should allocate them through open and competitive processes to well-qualified companies. In the past, contracting and licensing have suffered from deep abuses of secrecy and discretion. Irregularities marred all major bid rounds held in the 2000s, bringing about lawsuits, indictments, sackings, cancelled or revoked awards, and legislative probes. Many of the promised signature bonuses went unpaid, deals fell through, and awarded blocks remain undeveloped.

The final PIB should require:

- “Competitive, open and transparent” upstream awards processes. The Presidency, Senate, and IAT drafts all establish this and expressly state that “no discretionary awards shall be given

Objective 1.

Open, competitive and transparent upstream awards

Objective 2.

Strong rules for lifting, midstream and downstream licenses

Objective 3.

Defined processes for selling shares in NNPC and joint venture operations

Objective 4.

Increased access to information

Objective 5.

Clarity on revenue flows

Objective 6.

Better NNPC oversight and corporate governance

under any circumstances” (HB 270; SB 212; IAT 189). An even stronger PIB could follow Angola's example, which only allows no-bid awards when no other applications are received or all other bids are unsatisfactory (Angola Petroleum Activities Law 44(3)).

- *License awards that follow detailed prequalification guidelines and bid parameters created by the regulator.* In line with Angola or Timor-Leste's best practices, the Presidency and IAT drafts require that licenses and contracts only go to companies showing adequate technical and financial capacity, and that regulations spell out further procedures and standards for pre-qualification (HB 270(4); IAT 171). The IAT draft also lists factors for developing bid parameters, including signature bonus, royalty percentages and work commitments (IAT 189(2)). The last two factors are especially crucial for securing the best value from licenses, yet only the IAT draft mandates “the ‘drill or drop’ standards” that are becoming industry best practice (IAT 177-9, 191).
- *Strong transparency.* Language requiring tenders, bid rounds and details of bids to be published online and in print should be retained (HB 270(3); SB 214(7); IAT 189(4), 189(6)). Publishing awards criteria would further constrain discretion and secrecy, as in Sierra Leone (Sierra Leone Petroleum Policy 8(v)). Finally, adding language forcing bidders to disclose their beneficial owners would help curb corruption (see Natural Resource Charter Precept 4).

Objective 2. Strong rules for awarding lifting, midstream and downstream licenses

Government awards licenses for lifting crude oil, and for midstream and downstream activities. In a major oversight, no PIB draft guards against manipulation of such award processes. These too are high-value transactions: in 2008, crude sales through lifting contracts earned over \$40 billion, or 69% of total government oil revenues. However, each year elite-controlled “briefcase companies” snatch up discounted licenses to lift government crude. Current licensing procedures in the downstream allow the capture of valuable state subsidies. Former President Yar'Adua described the country's fuel import business as “the greatest institutional corruption in the history of the nation.”

In the final PIB, downstream licensing provisions should mimic the upstream by requiring:

- *Competitive, open and transparent award processes.* No draft secures this for any lifting, midstream or downstream license.
- *Detailed regulations for qualifying applicants, along with a stipulation that all awards be qualification-based.* The relevant provisions of past drafts (HB 292, 327; SB 230, 265; IAT 211, 244) are equally silent here.
- *Transparency provisions.* All drafts effectively require license seekers to post notice of their applications and any awards in at least two Nigerian newspapers and grant the public the opportunity to comment (HB 291(1), 325; 229(1), SB 264; IAT 210(1), 243). The Inspectorate—successor to the current Department of Petroleum Resources (DPR)—would also have to provide copies of licenses through an open registry system (HB 301-306, 340-44; SB 301, 302, 306, 333-38; IAT 221-223, 258-260). These provisions should remain intact, along with fresh language requiring advance public notice of licensing opportunities and award criteria and disclosure of applicants' beneficial ownership.

About the Author

Aaron Sayne is the Principal of 104 Consulting and a consultant for the Revenue Watch Institute.

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Objective 3. Defined processes for selling shares in NNPC and joint venture operations

The PIB drafts announce potentially huge sales of public assets without saying how to conduct them. The Presidency and IAT drafts allow the sale of shares in the newly incorporated Nigerian National Petroleum Corporation (NNPC) after a two year period (HB 136(5); IAT 78(6)). They also force the six existing joint ventures to incorporate, and only the IAT bars the NNPC from selling down its JV equity afterwards (HB 246, IAT 162(2)). NNPC and JV incorporations are potentially welcome steps towards commercializing the sector and ending chronic funding woes. If left to chance, however, they could leave young, vital institutions corrupted and un-bankable.

If the PIB ultimately allows NNPC and/or JV equity sales, it should establish:

- *Basic structures for any potential deals.* Only the Presidency draft provides any guidance here, requiring that NNPC shares be sold “on the Nigerian Stock Exchange” (HB 136(5)); no draft spells out how JV transfers might look. Nigerian SEC rules would help govern shares sales in the NNPC and JVs. Listing simultaneously on an international exchange could boost oversight and bankability—consider Statoil and Pemex’s prior listings with the NYSE. Otherwise, the Public Enterprises Act prescribes steps for privatizing bodies like the NNPC or JVs. The final PIB cannot delve into details, but should clarify basic structural choices.
- *Which entity would hold government’s stake in an incorporated NNPC.* All three drafts name “the Federal Government of Nigeria” as initial owner in both the NNPC and the proposed incorporated JVs (HB 136(4); SB 117(3); IAT 78(4)). Typically Ministry of Finance Inc. holds equity for government, though portions slated for sale could be transferred to the Bureau of Public Enterprises. The final bill should clarify.
- *Guidelines for which exact agencies would decide to sell and set prices.* The Presidency and IAT drafts state that only “the government...may decide” to sell its shares in the NNPC (HB 136; IAT 78). Elsewhere they list “guiding major plans of action” and “overseeing divestitures” as two powers of the NNPC board, but without granting the board specific decision-making powers for equity sales (HB 146, IAT 88). No draft contains guidelines for IJV sales.
- *Rules for which agencies would receive and spend sale proceeds.* No draft currently has these. Established federal practice may offer some guidelines—for example, privatization proceeds are paid in to a special Central Bank of Nigeria account for forward to the Federation Account. But the PIB should not leave these details open.

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Objective 4. Increased access to information

Nigeria has shown great enthusiasm for oil sector transparency programs. The Nigerian Extractive Industries Transparency Initiative (NEITI) set an early “gold standard” for the global EITI movement with its comprehensive reports. President Jonathan has further advanced transparency by signing the Freedom of Information Act.

Neither NEITI nor the FOI Act replaces the need for regular disclosures by oil sector participants. By opening more kinds of documents and data to public scrutiny, the PIB would improve incentives for performance, attract investment and financing, and protect against illicit practices.

The final version of the PIB should:

- Expressly declare that operations of the various oil sector institutions “shall be guided by principles of the Nigerian Extractive Industries Transparency Initiative Act” (HB 5; IAT 5).

- Void contract confidentiality clauses for information on upstream tax, royalties, fees and bonus payments (IAT 173). A stronger provision would uphold confidentiality only for business secrets or other narrowly defined proprietary information.
- Require the Inspectorate to publish texts of industry licenses and contracts online. The IAT draft requires this wherever NNPC is a party (IAT 174(6)), but Nigeria should extend the language to cover all contracts awarding oil exploration or production rights between any public body and a private company. This practice is emerging as the norm globally (IFC Policy on Social and Environmental Sustainability; Natural Resource Charter precept 4) and in Africa (Niger Constitution 150; Sierra Leone Petroleum Policy 5; DRC Decree No. 11/26). Ghana recently released its oil contracts with the full cooperation of operators.
- Publish the approved budgets of JVs and production sharing contracts. The IAT draft requires the Inspectorate to post these on its website (IAT 173(9); 362(1)). This would help guard against costly company practices like cost-inflation and transfer pricing.
- Require publication of other important information. Under the IAT draft, “all geological, geophysical, geochemical and other technical petroleum data obtained during petroleum operations” is made non-confidential (174(8)). The Inspectorate must also post online figures for “production, lifting or exported crude” and products, “shipping agents or companies involved in lifting crude” and products, “quantity and value” of oil lifted, a “schedule of licenses or leases granted” and associated payments (IAT 173(9); 362). Nigeria should also take a cue from Peruvian law, which opens a wealth of technical and financial information to the public eye (Peru Organic Hydrocarbons Law 37).

Objective 5. Clarity on revenue flows

As revealed in NEITI audits, Nigeria's laws and practices for capturing oil revenues show widespread weaknesses that reduce government earnings. Oil companies pay taxes and royalties through “unregulated self-assessment.” NNPC calculates its crude sale revenues with little oversight and keeps a share without clear rules. Signature bonuses are underpaid and enter a maze of bank accounts. Annual reports by the Auditor-General of the Federation find significant oil revenues missing or mislaid. A PIB that tackles these problems would help net Nigeria billions in extra development revenues.

For each of the main revenue streams (taxes, royalties, fees, bonuses, dividends and crude sales), the PIB should establish:

- Which agency calculates and assesses payments. Drafts specify this for rents, royalties, fees and “other charges” (HB 39(n); SB 29(m); IAT 39(2)(e)). “Other charges” likely excludes big-ticket items like taxes, crude sales and bonuses.
- Which agency collects. No draft designates a collecting agency for any revenue stream.
- Which accounts house the revenues, and how they make their way to the Federation Account. The IAT draft states that rents, royalties and signature bonuses must be paid to the Federation Account, but charts no path for getting them there (IAT 333(7), 335(7), 396(3)). The other drafts are mute.
- An exclusive list of which revenues avoid the Federation Account and appropriations process, along with special rules and responsibilities for collecting them. Drafts thus far allow institutions to withhold a hodgepodge of revenues, including the 2% of fiscalized crude the Minister would unilaterally receive and manage (HB 165(1); IAT 13(c), 396(3)). Criteria are murky and likely unconstitutional.

A Petroleum Industry Bill that tackles current revenue collection problems would help net Nigeria billions in extra development revenues.

Objective 6. Better NNPC oversight and corporate governance

Nigeria's oil sector will not reach its full potential without a new corporate culture for the NNPC. Greater oversight of the firm's operations and financials will encourage a more commercial orientation. Added transparency will also help plug leaks while sending good signals to partners, lenders and investors.

At a minimum, the final PIB should contain:

- **Strong annual reporting requirements.** Only the Senate draft requires the NNPC to report to the President and National Assembly on annual and mid-year bases (SB 139(1)). The NNPC must also post a summary of the annual report on its website (SB 139(2)). The full report should be publicly available, however, and the various NNPC subsidiaries should have to follow suit.
- **Requirements for an annual financial audit.** In line with best practices, the Presidency and IAT drafts require an annual audit of the NNPC "prepared and disclosed in accordance with high quality international standards" by "an independent, competent, experienced and qualified auditor" (HB 147; IAT 49). This is most welcome, though Nigeria should follow other national companies like Pemex, KazMunayGas, and Statoil by requiring the audited financials of the NNPC and *its subsidiaries* be published. Disclosures should include supporting information like income statements, balance sheets, debt profiles, and exploration and production cost figures. Listing on an international exchange would further raise audit standards.
- **Provision for an NNPC shareholders agreement, with listing of some key terms.** Shareholders agreements are negotiated, not legislated, documents. Still, the final PIB should require the creation of a shareholders agreement and set out how an incorporated NNPC would (1) transfer profits to the Federal Government or (2) otherwise answer to its owners. No draft has yet mentioned a shareholders agreement, nor explained how government will profit from NNPC operations. Drafts do grant NNPC shareholders access to information on topics like "financial and operating results," "objectives," "share ownership and voting rights," "remuneration policies," "transactions," and "governance structures and policies" (HB 147(1); SB 134(1); 89(1)). Yet it is unclear who could exercise these rights, and again specifics should be negotiated. The Jonathan administration needs to produce a draft shareholders agreement—or an indicative term sheet, at least—before the PIB becomes law.

An appendix containing all of the referenced Nigerian and international provisions is available at www.revenuewatch.org/nigeriaPIB.

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FOSTER seeks to strengthen transparency and accountability throughout the Nigerian oil and gas sector through engagement with government and civil society partners. Funded by DFID, the program is implemented by Oxford Policy Management, the Revenue Watch Institute and the Centre for the Study of Economics in Africa.

