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Nigeria's New Oil Community Development Funds

Four steps needed to ensure positive impact

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About this briefing

In this brief, we review section 257 (2) of Nigeria's Petroleum Industry Act 2021, highlighting critical issues that could entrench injustices in oil Host Communities if steps are not taken by relevant actors.

Context

The Nigerian government signed the Petroleum Industry Act (PIA) into law in July 2021. The bill aims to address the massive lack of development in the Niger delta. It requires oil operators to contribute 3% of their operating expenses toward Host Community Development Funds established in the region where extraction takes place. A Board of Trustees will be established to manage the Funds. The Funds and Boards are due to be established by July 2022.

Section 257 (2) of the PIA states:

Policy recommendations

For the Boards of Trustees of the Host Community Development Funds:

- Do not redeem the cost of repairs for acts of vandalism, sabotage or other civil unrest from Community Development Funds
- Do not use resources from Community Development Funds to deal with damage caused by oil extraction and other negative consequences of the extraction process itself
- Use 'needs assessments' to fully explore the reasons why some individuals and groups object to the extraction, and consider using Development Funds to mitigate these

For the Nigerian Federal Government:

- Ensure the legitimacy and integrity of the JIV process, by making it fair, transparent and increasing meaningful participation of local communities

"Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the extent of the costs of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year: Provided the interruption is not caused by technical or natural cause." (section 257 (2) of Nigeria's Petroleum Industry Act, 2021)

Key points

1. Collective punishments are morally hazardous and ineffective

When an entire community is forced to forfeit their entitlements for acts of vandalism, sabotage (pipeline vandalization) or unrest, they are being collectively punished for acts that may be caused by very few people, or even a single individual.

Punishing innocent parties for the actions of others is unjustifiable. Collective punishments have been generally outlawed (with reference to conflict) since the Hague Regulations of 1899.

Additionally, the Niger delta communities have had a very bad relationship with the federal government historically, and collective punishments could further entrench community hatred towards the federal government.

2. Constraints on citizenship

The requirement that the Host Communities forfeit their Funds if civil unrest impacts oil production has significant implications for citizenship and activism. Historically in the Niger delta, protests and activism have been used to challenge unjust laws and policies. The Federal Government has been accused of repressing protests in oil communities and describing them as undermining peace and security even when they are peaceful.

Based on this history, section 257 (2) could provide a window of opportunity for the Federal Government to characterise any act of local resistance to the oil industry as civil unrest.

Concerns that any protests - even when legitimate - could result in the withholding of Host Community Funds may discourage all anti-government protests, effectively stripping citizens of their rights to peacefully express their views.

3. The process of establishing the cause of oil spills may be deeply flawed

When an oil spill occurs in the Niger delta, a 'Joint Investigation Visit' (JIV) is carried out by a team comprising representatives of the oil companies, regulatory agencies, and community representatives to establish the cause of the spill.

Further information

This briefing is based on PhD research by the authors. For more information see publications listed on personal pages here:

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While all parties should take steps to ensure transparency and accountability within the JIV process, faith in the reliability of the process and veracity of findings remains low among Host Community populations. In many cases, the oil companies provide the equipment and logistics for the JIV, giving them undue influence over the outcome of the JIV.

This has resulted in local communities accusing oil companies of using their influence to misattribute the cause of the majority of oil spills to sabotage, which absolves them of paying compensation to the Host Communities.

Since the process of establishing the cause of oil spills is flawed, the attribution of oil spills is necessarily in doubt.

Section 257 (2) of the PIA is likely to provide further incentive for inaccuracies in the JIV process to continue. The JIV's decision regarding the cause of the oil spill will determine whether the costs of repairing damage will come from the oil companies' profits, or redirected from Host Community Development Funds.

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