SOCIALACTION

Briefing
No. 17. June 2017

www.saction.org

THE PETROLEUM INDUSTRY GOVERNANCE BILL (PIGB), 2017: IMPLICATIONS FOR THE ENVIRONMENT AND LOCAL COMMUNITIES

Main Points

Background

In May 2017, the Nigerian Senate passed the Petroleum Industry Governance Bill (PIGB), which is a version of the original Petroleum Industry Bill (PIB) that was presented to the National Assembly by the Yar'adua administration in 2008. While the PIB is a comprehensive bill that addressed all aspects of petroleum sector governance, the PIGB focuses almost exclusively on the creation of new commercial entities to manage national petroleum assets.

The PIGB as passed by the Senate does not provide for health, safety and environment (HSE) concerns. There is no provision for an end to gas flaring. There is a lack of independence for regulators and a glaring neglect of host communities' interest in the proposed new institutions.

The PIGB removed all powers of the Federal Ministry of Environment (and its agencies) over environmental regulation and enforcement in the petroleum sector.

1. Introduction

In a dynamic and fast-growing oil and gas industry, it is an aberration for the primary regulatory instrument to be a 1968 military decree that was enacted under uneasy circumstances of a civil war. Since the inception of the Fourth Republic, which commenced in 1999 with the restoration of civil rule, there has been a growing call for legislative reform in the petroleum industry.

Specifically, industry stakeholders have been advocating for a new legal regime for exploration and production of oil and gas in Nigeria. In this connection, the primary focus of government has been to secure a more favourable petroleum industry regulatory framework that would attract maximum foreign direct investment. Other interest groups, including host communities, also see a change of the legal regime as an opportunity to address other issues of serious concern, especially the environment question. Among the many environmental problems, there is the need to put an end to gas flaring which contributes enormous greenhouse gas to the atmosphere and causes climate change, apart from causing severe air, water and land pollution. The understanding among Nigerians is that the new legislation to govern the oil and gas sector needs to address issues like environmental protection, transparency, fiscal accountability/responsibility, and resource ownership and control. This is so because the industry is currently blighted by massive corruption, severe environmental management challenge, and host community discontents.

Against this background, the Petroleum Industry Bill (PIB) began its long walk in 2008 under President Umaru Musa Yar'Adua. The intention of the Yar'Adua administration was to bring all petroleum industry related laws into a single legislation. In order to address resource control agitations from the Niger Delta, Yar'adua hinted the nation about government's intention of providing ten per cent equity for the host communities in the petroleum industry. It was on that premise that the Petroleum Industry Bill (PIB) was introduced by the executive arm of government in 2008, and reintroduced in 2012 by President Goodluck Jonathan. With the failure of the PIB to be passed into law during the administrations of Presidents Yar'adua and Jonathan; the Muhammadu Buhari government presented a revised version of the bill, rechristened Petroleum Industry Governance Bill (PIGB) to the National Assembly following general elections in 2015.

In May 2017, the Senate passed the PIGB. However, the Federal House of Representatives is still working on the bill. The PIGB passed by the Senate has 93 sections divided into eight parts and five schedules. Part 1 states the objective of the bill; Part 2 provides for the functions and powers of the Minister in charge of petroleum resources; Part 3 dwells on the creation and essence of the Nigeria Petroleum Regulatory Commission; Part 4 is on the establishment, essence and functions of a Petroleum Equalisation Fund; Another Part 5 is on the incorporation of commercial entities such as Ministry of Petroleum Incorporated; In Part 6 the Nigeria Petroleum Assets Management Company and the National Petroleum Company are established with their powers and functions provided; Part 7 dwells on the incorporation, shareholding and eventual sale of the National Petroleum Company and the establishment of Nigeria Petroleum Liability Management Company; and Part 8 addresses issues of repeals, transitional and saving provisions.

A careful examination of the PIGB as passed by the Senate shows that it is seriously flawed. It does not provide for health, safety and environment (HSE) concerns. There is no provision for an end to gas flaring. There is a lack of independence for regulators and a glaring neglect of host communities' interest in the proposed new institutions. Moreover, the powers and functions of the new institutions like the Petroleum Regulatory Commission created under the Bill do not reflect current global best practices.

2. Objective of the Bill

The Objectives of the bill as provided in Section 1 are:
(a) create efficient and effective governing institutions with clear and separate roles for the petroleum industry;
(b) establish a framework for the creation of commercially oriented and profit driven petroleum entities to ensure value addition and internationalization of the petroleum industry;
(c) promote transparency and accountability in the administration of the petroleum resources of Nigeria; and
(d) foster a conducive business environment for petroleum industry operations.

3. Powers of the Minister

Part 2 of the Bill provides for the powers of the Minister who now look like a mere figurehead. He needs to exercise his powers on the advice of the Nigeria Petroleum Regulatory Commission on most issues relating to the operations of the petroleum industry. The power of the Minister in relation to granting,

suspension and renewal of petroleum licences has been taken away completely and transferred to The Commission. While there is the need to reduce the discretionary powers of the Minister in relation to petroleum licences, it appears that The Commission as noted below is being given too many powers and functions. This may create a new cabal in the petroleum industry.

4. Governance Institutions Created under the Bill

The Bill as passed by the Senate seeks to create the following governance institutions:

a. ***Nigeria Petroleum Regulatory Commission***
The Nigeria Petroleum Regulatory Commission is to take over and perform roles currently played by the Petroleum Inspectorate, the Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency (See Section 4). The Commission is saddled with functions that are at cross purpose with each other. For example, section 5(f) mandates the Commission to "promote an enabling environment for investments in the petroleum industry" and in doing so "ensure that regulations are fair and balanced for all classes of lessees, licensees, permit holders, consumers and other stakeholders" in Section 5(g). A Commission with such mandate cannot by itself turn around to "ensure strict implementation of environmental policies, laws, regulations and standards as pertains to oil and gas operations" as expected by Section 5(h).

Sadly, a look at the initial version of the PIGB sent to the Senate and the version finally passed by the Senate shows that the upper house rejected and deleted all provisions that may give room for the Ministry of Environment to demand environmental compliance in the petroleum industry. The Senate has by legislation ousted the powers of the Federal Ministry of Environment over environmental issues in the petroleum industry in Nigeria. This is an aberration and should be resisted.

The Commission is to have a special investigation unit to investigate and arrest suspects/culprits and prosecution of offences under the Bill and any other law relating to petroleum operations.

b. ***Petroleum Equalisation Fund***
Petroleum Equalisation Fund to be funded primarily by way of a fuel levy in respect of all fuel sold and distributed within the Federation. This shall be charged subject to the approval of the Minister. It takes over assets and liabilities of the existing Petroleum Equalisation Fund. Monies in the Fund are to be given to petroleum marketers for any losses in maintaining uniform price for petroleum products across Nigeria. See Sections 36, 37 and 56 of the enacted bill.

The provision for a Petroleum Equalisation Fund does not provide a mechanism for dealing with the massive corruption that has attended the management of such funds in the past. It is our view that the Nigerian government should ensure fair pricing of petroleum products to protect national energy security, including the guarantying access

to energy services. The provisions of the PIGB as passed by the Senate do not demonstrate an understanding of the need to guarantee energy access as a right of citizens.

c. ***Ministry of Petroleum Incorporated***

By Section 76(3) "the Ministry of Petroleum Incorporated shall hold on behalf of the Government shares in the successor commercial entities incorporated pursuant to the provisions of this Act."

The relationship between this and the Federal Ministry of Petroleum Resources is not clearly provided for. Section 76(2) where the Ministry of Petroleum Resources is mentioned does not explain the relationship.

d. ***Nigeria Petroleum Assets Management Company***

Nigeria Petroleum Assets Management Company to be incorporated as a limited liability company under the Companies and Allied Matters Act and is to be "responsible for the management of assets currently held by the Nigeria National Petroleum Corporation (NNPC) under the Production Sharing Contracts and Back-in Right assets". See Section 77(1) and (2)(a). The Shareholding is not provided for.

e. ***The National Petroleum Company***

The National Petroleum Company to be incorporated as a limited liability company under the Companies and Allied Matters Act and is to "be responsible for the management of all other assets held by NNPC except the Production Sharing Contract and Back-in Right assets currently held by the NNPC. See Section 77(1) and (2)(b).

"At the time of its incorporation, the initial shares of the National Petroleum Assets Management Company shall be held in the ratio of 20% by the Bureau for Public Enterprises, 40% by the Ministry of Finance Incorporated and 40% by the Ministry of Petroleum Incorporated on behalf of the Government." See Sections 78 and 101

5. Power to Accept Gifts and Transparency

The institutions created by the PIGB are authorized to accept gifts. For instance, under Section 27(1), the Nigeria Petroleum Regulatory Commission is encouraged to be funded through acceptance of gifts of money and other property upon such terms and conditions to be determined and specified by the donor person or organisation provided such gifts are not inconsistent with the objectives and functions of the Commission under the Act.

It is widely known that he who pays the piper dictates the tune. It is a disaster for the petroleum industry if the regulators of the industry seek for and get gifts from individuals and organisations. Whether such persons or organisation is not doing business with the particular institution is immaterial as such individual or organisation can offer the gift on behalf of someone else or company doing business with the regulator.

The proviso under Section 27(2) which bars members from receiving gifts for their personal use is neither here nor there. Similar provision on power to accept grants/gifts in relation to the Petroleum Equalisation Fund is found in Section 57.

The types of assets to be transferred to the various regulatory institutions created under the bill are not clearly stated. See for example Section 81(1) which provides that "the Minister shall, within twelve months of incorporation of the Management Company, by an order as provided in subsection (2) of section 38, require the NNPC to transfer **SOME** employees, assets, liabilities, rights and obligations of the NNPC to the Management Company, as specified in the order." The problem is how to identify what is covered by "some" at this stage of the passage of the bill. Should the Senate pass a bill of this nature when the actual implications are not made clear?

Section 106 of the Bill passed by the Senate is on divestment of shares of the National Petroleum Company and its subsidiaries. It provides that (1) "Notwithstanding the provisions of section 61 of this Act, the Government shall within five years from the date of incorporation of the National Petroleum Company, divest, in a transparent manner not less than 10 per cent of the shares of the National Petroleum Company and within ten years from the date of incorporation divest not less than an additional 30 per cent of the shares of the National Petroleum Company to the public in a transparent manner" Unfortunately, what process would amount to "a transparent manner" is not provided for. Moreover, the implication is that in five years they can divest 70 per cent and in ten years divest additional 30 per cent to make it 100 per cent privately owned. This is because the Bill provides for only the minimum percentage of divestment without putting a ceiling on it. The manner of privatization and divestment is unfair to host communities and oil producing states.

6. Public Hearing and NGO Participation

The participation of citizens groups in the processes is not clearly stated throughout the PIGB. However, under Section 8(2) the Commission in making regulations is mandated to conduct public hearings as a condition precedent to having a valid regulation. Ordinarily, this will be an avenue for civil society organisations (CSOs) to engage the Commission. Unfortunately, the Commission may still make regulations without a public hearing where it deems it necessary to do so. See section 8(5) which provides:

> "Notwithstanding the provision of subsection (2) of this section, the Commission may, due to the exigency of the circumstances, make any regulation without conducting a public hearing, where it deems it necessary to do so."

This creates an opening for abuse of the process meant to encourage transparency.
Section 8(7) creates a technical route to enable the Commission bypass the public as and when they so wish. It provides that for the purpose of Section 8 "a public hearing may take the form of an electronic consultation". Though Section 10 of the bill passed by the Senate creates an opportunity for public participation, the wordings of the section is not mandatory and firm enough to guarantee compliance.

7. Community Issues and Host Community Equity

The bill as it stands has no concern for community issues. In an apparent departure from the preceding PIB, the PIGB does not even pretend to remember or consider oil bearing land and water owning communities. Sadly, even when ownership of incorporated

National Oil Company is transferred to private individual and entities, the Bill does not make any provision for host communities to have any stake in the ownership of the privatized National Oil Company.

8. Environmental Protection

The bill in its original form, and as passed by the Senate does not have any part or section dealing with environmental protection. The only mention of environmental issues is a mere reference to the powers of the Commission in Section 6(5) relating to its responsibility for environmental matters in the petroleum industry.

The 2015 version of the Petroleum Industry Governance and Institutional Framework Bill (PIGIF Bill) had a better conflict prevention provision in this regard when it was made clear that the Federal Ministry of Environment shall have overriding authority in environmental matters. Section 6(7) of PIGIF Bill provided thus:

> "Notwithstanding the provisions of any other law or regulation, no government agency shall exercise any powers and functions in relation to the petroleum industry in conflict with the powers and functions of the Commission except for environment matters where the Federal Ministry of Environment shall have overriding authority."

The present bill takes us back to the dark days. The PIGB 2017 as passed by the Senate provides in section 6(5) as follows:

> "(a) The Commission shall have responsibility over all aspects of health, safety and environmental matters in respect of the petroleum industry.
>
> (b)In exercising its functions in subsection (5)(a) of this section, the Commission may in conjunction with the Federal Ministry of Environment establish a joint committee to facilitate collaboration."

If the Commission has full powers, why will it collaborate with the Federal Ministry of Environment? We note that even without such provisions, the Directorate of Petroleum Resources has never been willing to allow the Federal Ministry of Environment to regulate and monitor environmental aspects of the petroleum industry.

Instead of seizing the opportunity of a new legislation to correct lapses in our regulation of the environmental aspects of the petroleum sector, the Senate chose to deepen the crisis of environmental regulation in the petroleum industry and encourage conflicts. The DPR which the Commission is to succeed have for decades failed in protecting the environment. Because the DPR was handling environmental issues before the advent of the Ministry of Environment, it is finding it difficult to submit to the Federal Ministry of Environment that should prevail over all ministries and departments and agencies of government on matters of the environment.

In 2017, with a Federal Ministry of Environment in place and with all the awareness now available about environmental issues, it is sad that that the PIGB fails to change the environmental management regulations of the oil industry for the better. As it is, the Senate bill has deleted all provisions vesting the Federal Ministry of Environment with regulatory powers on environmental matters in the petroleum industry.

9. Exemption from Certain Laws

Section 102 provides that "The National Petroleum Company shall not be subject to the provisions of the Fiscal Responsibility Act 2007 and the Public Procurement Act 2007." This is a clear signal of the sole focus of this PIG Bill-sale of Nigeria National Petroleum Corporation (NNPC) after being re-christened via incorporation as National Petroleum Company. For instance, the Fiscal Responsibility Act of 2007 establishes a Fiscal Responsibility Commission with power under Section 2 to compel any person or government institution to disclose information relating to public revenues and expenditure. The Act is primarily focused on the nation's resources and government fiscal policy matters and as such it cannot be made applicable to the National Petroleum Company which the government intends to sell off. Moreover, those at the corridor of power always prefer oil revenue and related matters to be handled with secrecy. Beyond the intention to sell off the National Petroleum Company, the provision may have been inserted to sustain the status quo of corruption in the Petroleum industry.

10. Restriction on Suits against the Proposed Institutions

One of the tools for making environmental polluters accountable for their actions is litigation. In such cases, the typical claimants are individuals, families and communities where oil and gas multinational corporations operate that may have been affected by the activities. The expectation is that a law like the PIGB that seeks to create a new governance structure for the petroleum industry should support or expand the opportunity for people to use the legal process as a means of making companies, government institutions and agencies accountable for environmental pollution. Rather sadly, sections 31 and 61 of the PIGB as currently drafted places restrictions on the exercise of the enforcement of civil rights as the limitation of action is shorter than the time provided for civil action under the Statutes of Limitation. The PIGB provides a maximum of twelve months period for suits against the institutions and agencies created under the PIGB, a member of the governing boards or an employee in respect of their functions and powers under the Act to be instituted against them. After twelve months such cause of action would lapse.

Claimants in oil and gas pollution are known to have difficulties with collating evidence, raising money to fund their case and other structural problems with litigation against oil companies. Therefore, the 12 months limitation of cause of action in this respect is not in the interest of the poor people who are most times the victims of the oil politics in Nigeria. It is suggested that the general laws of limitation be application to the oil industry.

11. General Comments

The provisions of the PIG Bill as passed by the Senate are not in line with the current international trend in the regulation of petroleum and natural resource extraction and management. Below are some examples.

Institutional Framework

The idea of creating regulatory agencies like the Commission with so many different responsibilities is against the current trend in the oil and gas industry. For instance, in the United States, immediately after the Deepwater Horizon incident on 20 April 2010, the U.S. government renamed the Minerals Management Service (MMS) to Bureau

of Ocean Energy Management, Regulation and Enforcement (BOEMRE).[1]

The BOEMRE was also divided into three independent entities within the Department of Interior.
1) the Bureau of Ocean Energy Management (BOEM) promotes development of offshore energy sources, including oil and gas;
2) the Bureau of Safety and Environmental Enforcement (BSEE) is responsible for ensuring comprehensive oversight, safety, and environmental protection in all offshore energy activities; and
3) the Office of Natural Resources Revenue is responsible for royalty collections, auditing and related tasks. The reorganization did not happen by statute, but internally through a "reorganization order" issued by the U.S. Secretary of the Interior.

In Nigeria, we experienced a serious accident in the petroleum industry in the same period. The Bonga spill of 20 December 2011[2] and the Chevron gas explosion involving K. S. Endeavor at Funiwa Well offshore Bayelsa State on 16 January 2012.[3] The sea was on fire for over 45 days. This was a drilling that was commenced without an approved Environmental Impact Assessment (EIA) report by the Federal Ministry of Environment. The DPR as the regulators watched them commence operations without EIA contrary to the Environmental Impact Assessment EIA Act.[4] The same DPR has been shielding Chevron for responsibility for the damage done to the marine environment.[5] This has happened because the DPR has acted as all in all in the regulation of the petroleum industry, even when environment issues are involved. This is not the present global trend.

Under the PIGB passed by the Senate, the Commission is to do the work of not only the DPR but also those of the existing Petroleum Products Pricing Regulatory Agency. This is a recipe for ineffective regulation and inadequate monitoring and ultimately continued environmental degradation.

See paragraph 20 of the preamble to the 2013 EU Directive on Safety of Offshore Operations which provides that:

> "The independence and objectivity of the competent authority should be ensured. In this regard, experience gained from major accidents shows clearly that the organisation of administrative competences within a Member State can prevent conflicts of interest by a clear separation between regulatory functions and associated decisions relating to offshore safety and the environment, and to the regulatory functions relating to the economic development of offshore natural resources including licensing and revenues management. Such conflicts of interest are best prevented by a complete separation of the competent authority from the functions relating to the economic development of offshore natural resources."

Ownership of Petroleum Resources

For justice and equity in the privatisation of the National Oil Company, government must also reconsider ownership of land and natural resources in Nigeria. To this end,

[1]Secretary of the Interior Order No. 3299, available at http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=32475
[2]Bonga Oil Spill: Niger Delta Communities Raise the Alarm over Shell's Crude Tactics. http://www.thisdaylive.com/index.php/2016/07/11/bonga-oil-spill-niger-delta-communities-raise-the-alarm-over-shells-crude-tactics/
[3]Available on line at, http://platformlondon.org/2012/01/18/chevron-oil-rig-explodes-off-coast-of-nigeria-2-killed/
[4]See Sections 2 and 13 of Environmental Impact Assessment Act, Chapter E12, Laws of the Federation of Nigeria , 2004
[5]Applications made to the DPR for documentation indicating compliance with extant petroleum industry regulations; especially with regard to a valid environmental impact assessment report for the project was declined by the DPR.

the Land Use Act and the Petroleum Act, especially the sections that vest ownership of petroleum on the Federal government should be repealed. The national assets of oil and gas are products of property that naturally belong communities in Nigeria. The right to land and Nature should be restored to communities. It is doubtful if the petroleum industry will know peace if petroleum and related assets taken away from original land owners are handed over to some individuals in the guise of privatization of the National Oil Company.

Moreover, as we change the governance and ownership structure of our petroleum assets, we must also have a change of the regulatory powers between the Federal and state governments. For example, in May 2011 the United States Congressional Research Service published a report that provides an unambiguous description of the legal framework governing petroleum development in U.S. offshore areas. According to the report, U.S. state laws apply to petroleum development up to three nautical miles off their recognized coasts, and the U.S. federal government regulates development from the boundary of state jurisdiction to at least 200 nautical miles offshore.[6]

Public Participation

The provisions on public participation are inadequate. Current trends can be seen in the 2013 EU Directive on Safety of Offshore Operations as provided in paragraph 15 of the preamble thus:

> "It is important to ensure that the public is given early and effective opportunity to participate in the decision- making relating to operations that can potentially have significant effects on the environment in the Union. This policy is in line with the Union's international commitments, such as the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (3) (the Aarhus Convention). Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not listed there which may have a significant effect on the environment. Article 7 of the Aarhus Convention requires public participation concerning plans and programmes relating to the environment."[7]

12. Community Protection Under the PIGB And the Nigerian Minerals And Mining Act, 2007: Still One Country, Different Regimes

In the PIGB passed by the Senate, the powers given to the Nigeria Petroleum Regulatory Commission (The Commission) by section 6(1)(s) to issue petroleum licences are unqualified. It means the old order of disregard for lives and property of landowners and communities in oil-bearing areas will subsist after the enactment of the PIGB into law. This is an important issue that must be addressed by any law relating to the petroleum industry. The old order where oil licence or lease can be granted without regard as to whether the said field would be very close to communities or not should cease. This is necessary because under the Minerals and Mining Act, lives of communities and individuals are held sacred. Section 3(1)(c) the Mining Act provides that

> "no mineral title granted under

[6]See "Offshore Oil and Gas Development: Legal Framework". Available at http://www.fas.org/sgp/crs/misc/RL33404.pdf

[7]EU Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on Safety of Offshore Oil and Gas Operations and amending Directive 2004/35/EC

this Act shall authorize exploration or exploitation of mineral resources on, or, in, or the erection of beacons on or the occupation of any land – occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or sited within fifty meters for a railway, or which is the site of, or within fifty meters of, any government or public building, reservoir, dam or public road;".

Furthermore, unlike the PIGB where decisions of the Minister is solely on the recommendation of the Commission, the Mining Act provides for consultation with land owners even before the grant of mining title to a mining company. Also, where community land is to be affected, the government must obtain the consent of the community or private owner of land before mining title would be granted. Where such consent is absent, the private land will be excluded.

In further recognition of the right of the owner of property to determine its rent, the Mining Act clearly gives the landowner the exercise of that right as can be seen in section 102 which provides:

(1) The lessee of the mining lease shall pay rent, in advance without demand being made of it, at such rate per annum as shall be determined by the Minister for all lands occupied or used by it in connection with its mining operations.

(2) The Minister shall, before granting a mining lease on any private or any state land –
(a) cause the owner or occupier of the land to be informed of the intention of the Minister to grant the lease; and
(b) required the owner or occupier of the land to state in writing within the period specified by the Regulations made under this Act, the rate of annual surface rent which the owner desires should be paid to him by the lessee for the land occupied or used by it for or in connection with its mining operations.
(3) If within the time specified pursuant to subsection (2) of this section, the owner or occupier states the rate of the rent he desires should be paid, and the Minster is satisfied that the rent is fair and reasonable, the surface rent payable in respect of the land of the owner or occupier shall be the amount specified and the rent shall be notified to the lessee as soon as possible...
(4) The rate of the surface rent, whether fixed by the owner, occupier or by the Minister, shall be subject to revision by the Minister at intervals of five years.
(5) In fixing the surface rent payable, the Minister shall take into consideration the damage which may be done to the surface of the land by the mining or other operations of the lessee, for which compensation is payable.
Apart from the land rent, communities and individual land owners are still entitled to compensation for disturbance of surface rights. See section 107 of the Mining Act;
A holder of the Mineral title may, in addition to any other amounts payable under the provision of this Act and subject to valuation report by a Government licensed valuer, pay to the occupier of the land held under a State lease or the subject of right of occupancy-
(a) reasonable compensation for any disturbance of the surface rights of the owner or occupier and any damage done to the surface of the land on which the exploration or mining, is being or has been carried; and
(b) in addition pay to the owner of any crop, economic tree, building or work damaged, removed or destroyed by the holder of the mining title or by any of its agents servants, compensation for the damage, removal or destruction of the crop, economic tree, Building or work.
108. The Amount of the compensation payable under the provisions of this part

of this chapter shall be determined by the Mining Cadastre Office after consultation with the State Minerals Resources and Environmental Management Committee and a Government licensed Valuer.
The above provision for compensation under the Mining Act creates certainty on how the amount of compensation would be arrived as opposed to the obscure situation presented by the PIGB.

Also, by Section 19 of the Mining Act a committee to be known as Mineral Resources and Environmental Management Committee established for each state of the Federation is to among others, consider issues affecting compensation and make necessary recommendations to the Minister; discuss, consider and advise the Minister on the matters affecting pollution and degradation of any land which may, from time to time, refer to the Committee and advise the Local Government Areas and Communities on the implementation of programs for environmental protection and sustainable management of Mineral resources. There is so such committee created under the PIGB.

On community development, the Mining Act provides in section 71 (1) (c) that the holder of a mining lease shall not commence any development work or extraction of Mineral Resources on the Mining Lease Area until after –... (c) The conclusion of a Community Development Agreement approved by the Mines Environment Compliance Department

Furthermore, section 121 of the Mining Act provides for the establishment of an Environmental Protection and Rehabilitation Fund for the purpose of guaranteeing the environmental obligation of mining companies. This Fund ensures the restoration of any damaged environment in the cause of mining activities. There is no equivalent in the PIGB.

13. Conclusion

The PIG Bill in its present state is not comprehensive enough and lacks clarity of intention. The PIGB, as passed by the Senate is vague about the future direction of the petroleum industry. The bill needs to be reworked to reintroduce important and serious issues like host community equity/interest and environmental issues like the banning of gas flaring.

The right investment environment can be created through a thorough legal review that addresses the right fiscal regime, human security, land rights and environmental protection.

There is no doubt that the 1968 Petroleum Act and associated legislations and regulations relating to the petroleum industry are moribund and that the industry is overdue for a complete regulatory overhaul. However, restructuring in the oil and gas industry must not only be to serve the commercial interest of multinational oil companies and a few local businesses but the general interest of the country and her people. The version of the PIGB as passed by the Senate is an unconscionable attempt to legalize the appropriation of national oil and gas assets to some powerful private interests.

A transparent return to the initial comprehensive Petroleum Industry Bill (PIB) of 2008 and 2012 is more

desirable. But if the government seeks to have the reforms in separate bills, then the anticipated reform in the petroleum industry should not be a hide and seek game.

A comprehensive package of the intended new legal regime for the Nigerian petroleum industry should be tabled before the National Assembly and other stakeholders for consideration simultaneously. That will show transparency on the part of government and give opportunity for relevant experts, civil society groups, environmentalist and sustainable development advocates to do proper analysis of the proposals to ascertain its relevance to issues of environmental protection, termination of gas flares, fiscal accountability and transparency, easy access to justice and host community development and equity. Anything less may not be good for the petroleum industry, stakeholders, and the Nigerian populace.

SOCIALACTION
SOCIAL DEVELOPMENT INTEGRATED CENTRE

Published by ***Social Development Integrated Centre (Social Action)***, June 2017

Head Office:
33, Oromineke Layout, D-Line
Port Harcourt, Nigeria
Tel: +234 (0)84 360 903
www.saction.org

National Advocacy Centre:
20 Yalinga Street (House 1)
Wuse 2, Abuja, FCT
ISBN: 978-978-086-024

Author: Simon Amaduobogha, KSJI, ACIArb, Ph.D

Editor: Isaac 'Asume' Osuoka

This briefing is produced in the frame of Social Action's project, *Community Advocacy for Resource Justice in Nigeria*, which is supported by **Development and Peace – Caritas Canada**.