



# COMMUNITIES and the PETROLEUM INDUSTRY BILL (PIB)

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## REPORT OF COMMUNITIES AND CIVIL SOCIETY CONSULTATION FORUM ON THE PETROLEUM INDUSTRY BILL 2009

Organised by Social Development Integrated Centre (Social Action),  
Stakeholder Democracy Network (SDN) in collaboration with the Bayelsa State  
NGO Forum (BANGOF), Yenagoa, Bayelsa State,  
27-28 November, 2009



*Social Action*

Social Development Integrated Centre

STAKEHOLDER  
DEMOCRACY  
NETWORK



# ABOUT SOCIAL ACTION

Social Development Integrated Centre (Social Action) is a Nigerian organisation dedicated to education, mobilisation and solidarity for communities and activists working for environmental justice, democracy and social change in Nigeria and the Gulf of Guinea. The organisation is promoting increased citizens' participation in addressing policy and practices in energy and mining, trade and investments.

Social Action works primarily in Nigeria while collaborating with other citizens groups in the ECOWAS zone and the Gulf of Guinea. Through active participation with national and regional networks, the organisation is connected to the global movement for social justice.

## PROGRAMMES:

### 1. Energy and Climate

As global reliance on oil and gas for energy puts pressure on oil-bearing countries to expand production and exports, Nigeria and other countries in the Gulf of Guinea are experiencing rapid expansion in exploration and production of oil and gas, including the construction of trans-border pipelines. This poses some challenges, as oil and gas production, transportation and trading have often resulted in negative social and environmental impacts.

*Social Action* supports community and citizens' actions to redress the negative impacts of oil and gas investments and promotes recognition of the primacy of development needs of communities such as education, healthcare, water, income generation, human rights, security, grassroots democracy etc.

Social Action is supporting citizens' activities that will encourage acceleration of measures to eliminate routine gas flaring in Nigeria, including leading a platform of civil society organisations working to support progressive legislation against associated gas flaring and in support of using associated gas for local energy generation.

### 2. Political Economy

Popular Education: Social Action's Chima Ubani Centre (for Political Education and Paralegal Resources) in Port Harcourt organises programmes that aim at restoring alternative education, solidarity building and political action for citizens' rights activists, students and youth groups, NGOs and other organisations in civil society in Nigeria with a focus on connecting local issues and activists with the national and international contexts and emerging regional and international networks.

Social Action supported Community Resource Centres in Bori (Ogoni, Rivers State) and Brass (Bayelsa State) are centres of learning, community exchanges and solidarity.

Social Action collaborates with local groups, workers organisations and unions, academics and pro-democracy organisations to develop and coordinate popular education *Study Centres* in Port Harcourt, Calabar, Benin City, Lagos and Abuja.

Debt: Nigeria has expended huge amounts from "excess" revenues from crude oil to service and repay a large proportion of its foreign debts. Most of the debts were originally incurred by military regimes and have mostly been stolen by public officials. Though, over the years, more money had been paid to the creditors than what was originally borrowed, the debts continued to rise. However, many Nigerian citizens have not participated actively in the discussions on the management of foreign debts. Social Action organises research and promote citizens debate on public debts. The organisation works with other citizens groups to campaign for a moratorium on new foreign loans by the government and people of Nigeria.

### 3. Niger Delta Citizens and Budget Platform

Social Action coordinates the Niger Delta Citizens and Budget Platform (NDCBP), a collaboration of civil society actors and community groups and leaders working in concert against corruption in the management of state and local government revenues in the Niger Delta, and Nigeria. The platform is working to promote a new deal in democratic accountability in the Niger Delta region of Nigeria by improving participation and dialogue among communities, civil society and governments to ensure that government budgets and revenues from natural resources work for the people.

### 4. Gulf of Guinea Citizens Network

Social Action is working with other organisations from the countries of the Gulf of Guinea to coordinate a network of citizens' organisations in the region. The aim is to support communities and promote citizens' solidarity in addressing regional environmental, human rights, poverty and security issues arising from increasing reliance on the region for global oil and gas supplies.

*The Gulf of Guinea Citizens Network (GGCN)* brings together a diverse group of civil society organizations and actors working to protect community and citizens' rights and the national interest in resource extraction, trade and governance in the Gulf of Guinea Commission countries Angola, Cameroon, Congo-Brazzaville, Congo-Kinshasa, Equatorial Guinea, Gabon, Nigeria, and *Sao Tome e Principe*. GGCN is coordinated by Social Action in Port Harcourt, Nigeria, and the Citizens' Governance Initiatives (CGI) in Yaoundé, Cameroon. Website: <http://www.ggcn-rcgg.org/>

## RECENT PUBLICATIONS BY SOCIAL ACTION:

- a. Flames of Hell: Gas Flaring in the Niger Delta.
- b. Fuelling Discord: Oil and Conflict in Three Niger Delta Communities
- c. "Carry Go": 2008 Citizens Report on State and Local Governments in the Niger Delta
- d. Social Action Briefing - Overcoming Nigeria's Energy Crisis: Towards Effective Utilisation of Associated Gas and Renewable Energy Resources in the Niger Delta
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27-28 November, 2009



Social Development Integrated Centre



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## ACRONYMS

CDA	Community Development Agreement
FWW	First World War
PIB	Petroleum Industry Bill
MOSOP	Movement for the Survival of Ogoni People
NDDC	Niger Delta Development Commission
NPF	National Petroleum Fund
NPI	National Petroleum Inspectorate
NPRC	National Petroleum Research Centre
TAA	Technical Assistance Agreement

# COMMUNITIES and the PETROLEUM INDUSTRY BILL (PIB)

## ACKNOWLEDGEMENTS

This booklet contains the presentations, discussions and conclusions from the Communities and Civil Society Consultation Meeting on the Petroleum Industry Bill, which held on 27 and 28 November 2009 at the Creek Motel, Yenagoa, Bayelsa State. The meeting was organised by Social Development Integrated Centre (Social Action) and Stakeholder Democracy Network (SDN).

Isaac 'Asume' Osuoka, Celestine AkpoBari (Social Action), Tare Kakandar and Gaia Sprocati(SDN) were responsible for the planning of the consultation meeting. Tonye Nria-Dappa, Ireju Olowu and Mercy Ejibendu were among the staff of Social Action and SDN that worked tirelessly to ensure a successful meeting.

The organisers appreciate the support of individuals and organisations that contributed to the success of the meeting, in particular the Bayelsa NGO Forum (BANGOF), Reverend Nnimmo Bassey, Inemo Samiama (Country Director-SDN), Bamidele Aturu, Philip Slaboh, Patterson Ogon, Morris Alagoa, Esueme Dan Kikile, Dr. Sofiri Peterside and Che Ibegwura

Social Action would like to thank Stakeholder Democracy Network (SDN), Ford Foundation and Open Society Justice Initiative for supporting its work to support communities affected by petroleum exploitation and to promote natural resource accountability in Nigeria.

This booklet has been edited by Fidelis Allen.

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## SUMMARY

On the 27 and 28 of November, 2009, Social Development Integrated Centre (Social Action) and the Stakeholder Democracy Network (SDN) facilitated a consultation meeting on the Petroleum Industry Bill 2009 in Nigeria. The meeting which held at the Creek Motel in Yenagoa, Bayelsa State was attended by leaders of the civil society, representatives of oil-producing communities, traditional rulers, youth associations, women groups, the academia and the media. This report lays out the presentations and discussions upon which a communiqué and this material have been prepared for a post-consultation engagement with power on the Petroleum Industry Bill currently before the National Assembly in Nigeria. The aim is to provide a platform for engagement with the bill by communities and the civil society who were totally excluded from the drafting processes. Social Action and SDN note the systemic character of an important bill such as the PIB and deemed it necessary to arrange a process in which those whom the bill will ultimately affect make relevant contributions towards its passage into law. The intention is also to provide useful analyses of the proposed bill in order to provide an opportunity for necessary insertions and corrections by the National Assembly based on informed decisions and democratic rights of communities and the civil society in matters of governance and policy.

The meeting which was chaired by Reverend Nnimmo Bassey, Executive Director of Environmental Rights Action and Chair of Friends of the Earth International, was attended by representatives of oil-producing communities, leaders of the civil society, traditional rulers, the academia and the media in the Niger Delta was organised to systematically study the Petroleum Industry Bill (PIB) which has been presented to the National Assembly by the government of Umaru Yar'Adua. The consultation meeting reflected on the PIB in the light of widely acknowledged impact of the oil industry on the environment, development and conflict in the Niger Delta. Specifically, the consultation meeting sought to achieve the following objectives:

1. To provide oil-producing communities and the civil society with a platform for engagement with power on the provisions of the PIB in relation to the environment, development and management of the petroleum sector in Nigeria;
2. To offer expert analyses of the PIB from the perspectives of oil-producing communities and the civil society;
3. To identify and explain the strength and weaknesses of the PIB;
4. To make recommendations on the way forward for the improvement of the PIB before its passage into law;
5. To provide an opportunity for leaders of communities and the civil society in the Niger Delta to study and participate in informed discussions on the PIB and ensure that the outcome of the reform process reflects the interest of local communities in the region.

Social Action and Stakeholder Democracy Network recognise a gap created by the exclusion of communities and the civil society from the processes of formulating the bill. They fear that the National Assembly could repeat the mistake by hurriedly passing the bill into law without needed consultation with the communities affected by petroleum exploitation and leaders of the civil society in the Niger Delta area. It was therefore a well-received idea that the meeting would help close the gap by the opportunity it creates for concerned groups to make contributions to the PIB before it is passed into law.



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## RECOMMENDATIONS

The Forum notes that despite enormous returns from exploration and production of oil and gas in the Niger Delta only little has been put back for the development and fixing of the social, environmental and economic costs of the oil business to local communities in the region. So far, these communities are bearing the huge burden on the environment and livelihoods. There has been inadequate attention by the government, which remains a key complaint and explanation for the crisis in the region.

The countless annihilation of the environment and livelihood of the Niger Delta people as a result of the irresponsible way in which multinational oil companies work and the near complete absence of basic infrastructure in the region has caused friction between oil companies and the government on the one hand and the communities on the other hand in the region. Not only is the Forum worried by the role that the oil plays in this conflict, it is equally troubled by the fact that the oil is likely to remain strategic and significant for the political class in Nigeria and the international community for a fairly long time. This portends more dangers for the communities where the oil is extracted. In fact, the exclusion of these communities from the current law making process regarding the PIB does raise age-long critical issues of violation of economic, democratic, environmental, cultural and social rights of these communities as articulated, for example by the Ogoni people in their Ogoni Bill of Rights and the Kaima Declaration of the Ijaw.

Bothered that policy makers appear incapable of independently deciding what line of action to take in addressing issues bordering on the environment and community needs and having observed that discussions so far have addressed only production and commercial aspects of the PIB - leaving out issues of immediate concern to oil bearing communities such as resource control and environmental management, participants at the forum made the following recommendations:

The National Assembly suspends debate on the Petroleum Industry Bill until adequate time has been created for consultation with community people and the civil society;

Section 1 of the proposed bill be deleted and replaced with the following:

“Property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the exclusive economic zone and extended continental shelf shall vest in the oil producing communities.” In other words, the control and management of natural resources including petroleum should be vested in the oil-producing communities who should pay taxes to the Federal Government of Nigeria;

Community Development Agreements should be incorporated into the PIB to ensure development of the oil-producing communities. This should be a prerequisite for the issuance of licenses as obtained in the Mineral and Mining Act of 2007;

The aspirations of the various ethnic nationalities as contained in their Bill of Rights and Declarations such as the Ogoni Bill of Rights (1990), The Charter of Demands of the Ogbia People (1992), Kaiama Declaration (1998), The Resolutions of the First Urhobo Economic Summit (1998); The Akalaka Declaration (1999); The Warri Accord (1999); The Ikwerre Rescue Charter (1999); The First Niger Delta Indigenous Conference (1999); Oron Bill of Rights (1999) and the Niger Delta Peoples' Compact (2008) be addressed in the PIB;

That the role of the civil society and communities in matters concerning granting of licenses for oil prospecting and production be clearly spelt out in the PIB;

The PIB should properly stipulate penalties for environmental violations by operators of the oil industry in Nigeria and expunge section 286 which requires States and Local Governments to pay 1% and 0.5% of their annual derivation allocations into a Remediation Fund under the custody of the Inspectorate for the purpose of restoring the environment in cases of damage caused to the environment as a result of sabotage;

That the Land Use Act be repealed in line with provisions of the PIB.

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## PRESENTATIONS

In an introductory speech, Celestine Akpobari, who represented the Executive Director of Social Action, explained that the Petroleum Industry Bill (PIB) sprang from a review of the oil sector which started with the Olusegun Obasanjo administration (1999-2007). This was also the result of widespread chorus of disapproval of the performance of the sector over the years. The Yar'Adua administration might have only picked-up from where Obasanjo stopped. Social Action and SDN note that the debate on the petroleum sector has focused on the business aspect without inclusion of the social character of the industry, especially as it addresses critical issues of impact of the sector on the environment, development and social relations. One important reason advanced by Akpobari for the forum was the need to give leaders of oil producing communities and leaders of the civil society an opportunity to study and participate in informed discussion on the PIB in order to make sure that the outcome of the oil sector reform process captures the interest of the communities.

**Reverend Nnimmo Bassey**<sup>1</sup> spoke on the impact of the oil industry on human and *non-human* life in the Niger Delta. Bassey regrets that the government and oil companies in Nigeria have continued to despoil the environment since 1956. Besides, only little revenues from the oil have been utilised for the benefit of citizens, especially those in the Niger Delta. He then called for an end to environmentally damaging activities such as gas flaring and oil spillage by oil companies in Nigeria. For Bassey, the preferred approach to the problems associated with the petroleum sector in Nigeria is to leave the oil in the soil. This set the tone for the discussions that followed each presentation.

**Auwal Ibrahim Rafsanjani**, Executive Director of Abuja based Civil Society Legislative Advocacy Centre (CISLAC) addressed the state of the PIB at the National Assembly with the report that the bill is receiving legislative attention. The point however is that the National Assembly is not considering the value of consultation with communities and the civil society in the Niger Delta on the bill. This disposition clearly shows the lack of interest of the political elite (law-makers) in the critical issues around the conflict between the government and oil companies on the one hand and the communities in the Niger Delta arising from the operation of the oil sector.

**Phillip Slabor**<sup>2</sup> expressed gratitude to Social Action and the SDN for initiating a platform on which the civil society in Bayelsa State was participating to contribute to the reform process of the petroleum sector in Nigeria. Accordingly, he urged an active debate on the issues - some of which have remained very critical for the stability of the sector and peace in the Niger Delta - as this would help to include input from the communities and the civil society before the passage of the bill into law by the law-makers at the National Assembly.

**Dr. Sofiri Joab- Peterside**<sup>3</sup> examined the extent to which the PIB addresses the question of resource control as a key issue in the conflict between communities in the Niger Delta and the government in Nigeria. He identified the exclusionary character of petroleum regimes since oil was discovered in Nigeria. Since 1956, not only have successive regimes in Nigeria maintained this exclusionary character by the limited participation or total exclusion of the civil society and communities in the Niger Delta, they have reinforced the practice in all frontiers of public policy and governance matters. The present PIB wears the same character in specific ways. In any case, patterns of management of the oil, nature of the legal and legislative framework as well as corruption have prevented access by oil-producing communities to the oil resource. Ownership rights are defined by these regimes in specific mode that reveal the colonial governance systems, for their exclusionary nature and lack of development for the colonised. Clearly, Joab-Peterside explains that provisions of the constitution do not have the capacity to ease access to resource control by oil-producing

1. Reverend Nnimmo Bassey is the Executive Director of Environmental Rights Action/Friends of the Earth Nigeria.  
2. Slabor is the Chairman of the Bayelsa State Non-governmental Organisation Forum (BANGOF).  
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communities in the Niger Delta.

**Esueme Dan Kikile, Erebi Sami and Hope Ogunmwonyi** analysed the PIB from the perspective of the Niger Delta communities. They identify the failure of previous legislations on the petroleum laws in Nigeria to address issues of sustainable development of the oil-producing communities in the Niger Delta and failure of the judicial, regulatory and enforcement agencies to resolve conflicts arising from the industry between oil-producing communities (on the one hand) and oil companies and the government (on the other hand). Their paper aims to bring to light a number of these issues that the PIB raise with a view to understanding how its effectiveness in dealing with environmental pollution, dispute resolution and corporate accountability in the Niger Delta region.

Key elements of Kikile et al's presentation include a call for reflection of the interest of the oil-producing communities of the Niger Delta in the bill. Although the bill is comparatively comprehensive in nature, it fails to adequately accommodate specific issues bordering on the environmental, development and political interest of the communities in the oil rich Niger Delta. Given the level of damage done to the environment in the region and for the impact on depletion of the ozone layer by the activities of oil companies, Kikile et al prefer the option of leaving the oil in the soil. According to him, in 2008 alone, there were at least 2000 spill sites in the Niger Delta with devastating consequences on the health and livelihood of the people. In fact, pollution from the petroleum sector has caused life threatening damage to the environment with the consequences of trouncing livelihood for communities.

They condemn provisions of the bill that maintains central government's ownership of petroleum resources. This for them remain an obstacle to the provisions of participation of the oil-producing communities in the Niger Delta. They maintain that it is clear that the bill does not put local oil-producing communities at an advantaged position in the petroleum industry. As one of the recommendations, Community Development Agreement (CDA) should be inserted into the bill as a replacement for the informal and voluntary Memorandum of Understanding whose terms oil companies habitually fail to honour.

On pollution of the environment in the Niger Delta, Kikile et al argue that the main cause of protest, agitations and violent conflict in the Niger Delta is the degradation of the land and air by activities of the oil companies. Their assessment is that the PIB is yet to address this root cause of the conflict in the region.

The paper notes that the bill fails to make provision for corporate social responsibility and there is no suggestion regarding how oil companies can make to be accountable for any harm done to communities the Niger Delta. Left in this form, Kikile et al believe that it would be no different from previous and existing oil laws in Nigeria. The paper concludes by stating that the impact of oil and gas exploration on communities, lives and peoples of the oil-producing areas have created the basis for the proposed Petroleum Industry Bill now before the National Assembly.

**Bamidele Aturu**<sup>4</sup> analysed the critical issues arising from the PIB. He started by noting the decay in the oil sector and how the Nigerian government has consistently failed to tackle the problems facing the industry. By all appearances, as indicated in his paper, management of the oil sector in Nigeria has been faulty. Although this fact is not hidden from the public, the government seems either incapable or neglectful of the need to fix the oil industry by tackling the inefficiency, corruption, cartelism, mismanagement and so on that have afflicted the sector for so many years. The Petroleum Industry Bill now before the National Assembly seems to be an attempt to address these problems. Nevertheless, the bill is controversial. Allegations and counter allegations of underlying political and economic interests of key players in the process have been made. Aturu played down on these

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allegations in his paper. Instead, he explains the key policy issues around the bill with the mind that this will clarify issues that might help to improve the state of the bill.

Aturu commended the bill for its provisions of fundamental objectives and the decision to bring together all institutions. This must have been informed by the need to bring all laws and institutions related to the oil industry in Nigeria under a common document for reasons related to access. However, the document could have been less in size if certain administrative provisions relating to pensions, restrictions on suits, funds, power to accept gifts/or borrow, power to sue and be sued, disqualifications and so on were not repeated in the bill.

On the participation of oil-producing communities in the petroleum business, Aturu argues that the mode of this participation is yet not clear. The offer of 10 percent equity holding to oil-producing communities remains blurred in terms of the mode of operationalising the equity holding. His suggestion, which might be different from what communities may choose to do, is that they could establish an oil company. For instance, they could create an Oil Communities' Incorporated Trustees (OCIT) to utilise the equity on behalf of the entire Niger Delta communities. Members of the trustee could be nominated by communities in the region, may be on the basis of states without input from formal state structures government. Aturu argues that the merit of this arrangement may be wide-ranging as its article of articulation should certainly stipulate how profits accruing from the venture would be shared or utilised among the communities. It is also suggested that there is need for proper definition of what constitutes 10 percent equity. Is it 10 percent of equity held by the Nigeria National Petroleum Corporation (NNPC) or 10 percent of total equity holding of the joint ventures?

Aturu calls for an end to the Joint Venture arrangement to the management of the petroleum industry in Nigeria as the system has continued to undermine the interest of the Nigerian people. He states that by the arrangement government cannot be expected to effectively regulate the activities of its joint venture partners. The better approach, advocated by Aturu is the Technical Assistance Agreement (TAA).

The bill makes provision for commitment of oil companies to the environmental protection in the oil-producing communities. As Aturu notes, section 283 compel each company to submit three months after signing the bill into law, a comprehensive environmental programme or environmental quality management plans that takes care so matters pertaining their environmental objectives, commitment to compliance with environmental laws and regulations as well as remediation of degraded environment. Aturu sees this provision as rewarding. Apparently, this is also coming on the basis of known harmful impacts of the oil industry on the environment. However, the oil-producing communities are completely excluded from any role on how this aspect of provisions of the bill will be implemented. This section of the bill therefore needs to be interrogated and reworked to reflect the interest of communities in the oil-producing region of the Niger Delta.

Aturu concluded his presentation by restating some of the positive areas of the proposed bill along with the provisions that guarantee consumer protection, service to customers, competition and market regulation, encouragement of indigenous participation in the petroleum sector as well as Nigerian Content.

## **Key issues raised in presentations and discussions:**

- The intention to formulate a comprehensive Petroleum Industry Law in Nigeria through the PIB by the Federal Government is commendable although there are complex technical issues that

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- require intervention by concerned Nigerians;
- The oil industry has remained destructive to the environment in the oil-producing communities of the Niger Delta;
- The oil industry in Nigeria is indicted for its contribution climate change;
- The PIB provides an opportunity for the civil society to explore and address environmental and socio-economic problems of oil-producing communities in the region;
- The overbearing influence of oil companies on the PIB needs to be countered by civil society and the oil-producing communities in the Niger Delta;
- Issues of environmental protection, contract award needs addressing;
- The Language of the Bill is gender sensitive;
- The Bill has provisions for consumer protection; encouragement of indigenous participation in the petroleum sector as well as competition and market regulation;
- Nigerian state's ownership of the petroleum remain detrimental to any meaningful participation of oil-producing communities in the Niger Delta;
- The PIB does not guarantee control of the resources by oil-producing communities in the region;
- Reform in the petroleum sector is to a large extent the result of agitations, protests and conflict in the Niger Delta. How does the PIB help to resolve the issues informing the conflict?
- Improvement in access to the revenues from the sale of oil is required for more effective control of the oil;
- The PIB is another frontier of the struggle for good governance of the environment and quest for development in the Niger Delta;
- The PIB reflects much of the interest of the political elite and operators of the oil industry to the detriment of the communities and citizens in some areas;
- The process of law-making is a political process that requires political engagement by the civil society;
- The issue of the PIB provides a space for civil society struggles or engagement with power;
- The PIB does not expressly prescribe offences to violation of environmental rights;
- The PIB is not people-friendly in the sense that it lacks adequate provision for community participation at the stages of formulation and at the National Assembly;
- The Land Use Act needs to be repealed to correspond with provisions of the PIB as the issue of resource control cannot be discussed in the context of the Land Use Act;
- Issues of waste management should be contained in the advocacy that follows this forum;
- The issue of oil marginal field should be properly defined in the PIB. Such declared oil marginal fields should carry with them environmental responsibility on their operators;
- The role of the civil society and communities deserve to be included in matters related to granting licenses for oil prospecting and production by the Minister of Petroleum Resources;
- The issues of declarations made by various groups in the oil-producing communities should be addressed in the bill;
- The PIB in its present form will not promote development in the Niger Delta;
- The National Assembly should not be in a hurry to pass the PIB into law.

## CHAPTER 1

### BACKGROUND: PETROLEUM AND NIGERIA

By Fidelis Allen

It is critical that petroleum, as a key energy source, is the most internationally traded commodity since the 20<sup>th</sup> century. Industries and virtually every human activity seem to have depended on one form of energy or the other over time for which the oil has for long become the significant choice. The implications for oil-producing countries are multidimensional, varying at many levels both for the environment and development of these countries. In fact, this global interest in the commodity has meant a lot for the development of oil-producing countries especially at this time of crisis in the global capitalist system. Countries that depend substantially on the petroleum industry are already seeing drastic reduction in revenues. They have seen prices of export products falling to the bottom in more than four decades. This kind of situation speaks volume about mono-cultural economies like Nigeria and their vulnerability to external shocks. It follows that reforms in the petroleum sector that respond to these issues meaningfully will certainly be in the interest of Nigeria in both the short and the long run.

The oil industry in Nigeria is more than five decades old. By the way, petroleum laws had existed long before exploration and production activities even started. Initial legislation on the oil industry was in 1889 (Petroleum Ordinance). This was followed almost in quick succession by the Mineral Regulation of 1907. These laws formed the basic foundational framework for operating the petroleum sector at the time. Although by law only British oil companies were eligible to explore for oil at this time,<sup>7</sup> the first oil company to start exploration for oil was the German Bitumen Company around 1908 in the area of Nigeria nowadays known as Ondo State. However, the outbreak of the First World War (FWW) disorganised the company and worsened any chances of sustained effort at finding the oil. By 1938, Shell D'Arcy Petroleum Development Company had been granted concession by the British colonial state of Nigeria which gave the company license for exploration of oil throughout Nigeria. There was no competition, meaning that Shell D'Arcy would have to search for oil without competitors for some fairly long time. This lasted until 1959 when the monopoly was broken with the result that other companies such as Mobil, Chevron (then called Gulf), Agip, Elf (then called Safrap), Teneco and Amoseas being granted licenses were also to begin exploration activities in the country. A new petroleum law was formulated in 1969. This law replaced previous petroleum laws earlier mentioned. For many the Petroleum Act of 1969 remains the major framework for analysis and management of the petroleum sector in Nigeria, perhaps because of its attendant Petroleum Drilling and Production and Regulations component. The law became the foundation of the oil industry in Nigeria. The Act vested ownership and management of the oil in the Nigerian state. Most sections of the Act deal with issues of exploration and production licenses, leaving out matters of development of the oil-producing communities and damage to the environment in real substantive terms. There is a provision for compulsory effort on the part of oil companies not to pollute the environment.

Oil accounts for about 95 percent of foreign exchange earning for Nigeria. As the largest oil producer in Africa and fifth at the Organisation of Petroleum Exporting countries, Nigeria's oil dependence has made the country notorious for a typical mono-cultural economy. A proven reserve

6. Department of Political and Administrative Studies, University of Port Harcourt

7. Omorogbe, (2001). Oil and Gas Laws in Nigeria, Lagos: Malthouse Press Limited, p.19

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of the oil in Nigeria stands at 36.22 billion barrels.<sup>8</sup>

The ownership structure and nature of contract in the exploration and production of the oil tend to determine the extent of conflict associated with the oil industry in oil producing countries. Theoretically, there are three types of ownership structure of natural resources, namely, permanent sovereignty of state or international law, Dominial Law System and the United States Model.<sup>9</sup> Exploration and production was initially investor driven in the sense of a situation where companies assume ownership and control of the natural resources. Over time, there has been a shift from this approach in favour of states. This has been mostly the result of awareness on the part of countries emerging from colonialism or moving towards socialist kind of politics in which nationalisation of companies were also inspired by international law against violation of rights of people. The second model, Dominial Law System vests ownership rights of the oil in sovereign states. Incidentally, this has become the dominant approach in oil producing countries. This right is usually enshrined in the constitution and reflected in all other petroleum laws in such countries. In principle, the government of such countries assume ownership of the oil on behalf of and for the interest of the citizens of the country. For example, in Nigeria, the constitution of 1999 as well as past legislations such as the Petroleum Act of 1969 have clearly stated and vested ownership of the oil in the Nigerian state. The United States model obtains most in states of California and Indiana. It has two dimensions namely, limited ownership and absolute ownership rights. Conceptually, in the first, individual landowners may not have title to oil and gas found in their land except on collective basis since it is believed that by nature oil is capable of movement underground and could shift location. Oil at a particular location may have flown from land belonging to others in the neighbourhood. It follows that land owners around the site where the oil is mined should stand to benefit in terms of title, ownership and control. Absolute ownership of the oil by individuals is obtained in states like Texas, Arkansas and Pennsylvania where individual land owners have title to oil discovered in their land. However, an individual land owner loses the title when the oil migrates from his or her land to another landowner's land. It is interesting to note that the two aspects of the model produce similar effects as the land owner's rights to the oil and gas depend entirely on good oil and gas exploration and production practice. What the land owner has is practically the right to sink as many wells and to mine the oil and gas as much as possible and limited only by wrong industry practice.

An obvious reason for the present reforms in the petroleum sector is the nature of contracts entered between the government and the oil companies for exploration and production of the oil. Currently, four types of such contract or legal relationships characterise the Nigerian case, namely, the concession, the joint venture, the production sharing contract and the service contract. Under concession (also called oil-mining lease) the operating oil company bears the full weight of risks and cost of exploration, development and production and is duty bound to pay royalty and petroleum profit tax to the government. It is interesting to note that currently concessions are only awarded to indigenous oil firms. The joint venture explains the legal relationship that emerges from interests acquired by the government in the concessions. Participation Agreements, Operating Agreements as well as Memorandum of Understandings are key components of the joint venture.

Theoretically, the Technical Assistance Agreement (TAA) is seems to be the preferred model of contract for exploration, development and production of crude oil. The reason is that, for a country like Nigeria, where the need to develop indigenous capacity to operate the sector is urgent, the model of contract spells out provision that exclusively vest the financing of oil exploration, development and production in the government. Besides, the country owns all equipment, manage the entire process through a contractor oil company that is only expected to provide technical assistance for a negotiated fee. At the moment only Iran and Venezuela have this kind of contract for their petroleum industries.

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Despite the economic value of the oil for countries, the petroleum industry remains one of the greatest polluters of the environment. Its contribution to the depletion of the Ozone Layer and by extension global climate change is enormous. The effects of climate change are already being felt terribly around the world. Also, some oil-producing countries suffer heinous levels of corruption and misgovernance and poor utilisation of revenues from production of the oil for the benefit of citizens. This is in complete contrast to the case of countries like Venezuela where the oil has been more of a blessing than a curse. Recently, the Ambassador of that country to Nigeria, Enerique Fernando Arrundell,<sup>10</sup> made glowing remarks about the value of the oil for the citizens of his country.<sup>11</sup> He disclosed that the oil industry in his country is operated entirely for the benefit of citizens. This is to a large extent partly reflected in the meagre amount of money citizens part with in the purchase of petroleum products.

The experience in Nigeria has been disappointing. Oil was first discovered in commercial quantity in 1956 at Oloibiri (now in Bayelsa State). The impact of the oil industry on development and the environment in the Niger Delta<sup>12</sup> is enormous. Oil company activities have been highly detrimental to the environment in the communities where activities of the oil companies are undertaken. Already, the environment has been a key issue in the conflict between the oil-producing communities (on the one hand) and oil companies and the government (on the other hand). On the 30<sup>th</sup> of October, 1990, violence broke out at Umuechem -- an oil-producing village in present Rivers State -- between villagers and the Nigerian police on account of protest by the community against damage to the environment caused by activities of Shell in the area. This is significant because it was the first time that lives were lost due to protests against pollution of the environment by oil companies in the region. At least eight people died from the incidence. In addition, 495 houses were destroyed or defaced. Specifically, the villagers were peacefully demanding from Shell road, electricity, education and health infrastructure as well as compensation for the damage done to their environment by massive oil spillage. It was clear from the report of the Judicial Commission of Inquiry set up by the Rivers State government to inquire into the causes of the crisis that villagers in Umuechem embarked on peaceful protests and did deserve the kind of force and destruction that greeted them.<sup>13</sup>

The Movement for the Survival of Ogoni People (MOSSOP) was formed sometime in August 1990 as a mass movement struggling for environmental justice and the development of the Ogoni community under the leadership of the late Kenule Saro Wiwa. On the 4<sup>th</sup> of January, 1993, MOSSOP undertook a protest against Shell and the Nigerian state for the level of degradation and lack of development in Ogoni land despite the many years Shell and the Nigerian government had mined oil from the land. The Ogoni Bill of Rights which had earlier been presented to the Federal Military Government under the late President Sani Abacha contains details of the demands made by the Ogoni people during the protest.

No sooner than Ken Saro Wiwa and the nine others were murdered by the Abacha government in 1995 than armed groups began to emerge in other parts of the Niger Delta. Each of these groups began to speak the same language of denouncement of the damage to the environment by oil companies, resource control and development in the region. These armed groups have fought against state security operatives and destroyed oil facilities with the result of huge losses in revenue for the Federal Government and lives on all sides of parties to the conflict. It has since become clear that the oil industry requires reforms that will critically address these issues in meaningful way to take on the crisis even as existing and previous oil legislations as well as their institutions for dispute resolution and implementation have failed to resolve the crisis.

10. He advised the Nigerian government to be careful in its deregulation of the petroleum sector. See Punch Newspapers, 24 November, 2009.

11. African Independent Television (AIT) Sunday 29 November, 2009, at 4.12am

12. The meaning of the Niger Delta is controversial. It mainly has geographical, scientific and political definitions. We refer to its political meaning, as all oil-producing states of Nigeria, given by the Niger Delta Development Commission (NDDC).

13. See River State Government, Report of the Judicial commission of inquiry into the Umuechem Disturbances of 1990



## CHAPTER 2

### RESOURCE CONTROL AND THE PETROLEUM INDUSTRY BILL

BY Sofir Joab-Peterside

#### **Preliminary remarks**

To say that the question of control and management of resources is current and lively issue in the public sphere in the Niger Delta in particular and Nigeria in general is to understate the case. Resource control and management are today the most contentious issues in Nigeria, for they pose anew fundamental issues such as the national question, the operations of the federal system, problem of governance, the issue of corruption, intergroup conflicts and violence, and sustainability of democracy and development in the country. Understanding Nigeria's development dilemma is impossible without understanding the nature and dynamics of its resource management. This is fundamental, for it raises important questions about human survival, security and therefore, development. In addition, since the broad question of resources management spans issues of ownership, accessibility, control, and utilization, it is impossible to divorce these from political considerations. The Nigerian situation shows that decisions about management are political decisions, and they intensely affect peoples' lives. Resources not only produce values that help smoothen social existence; it is precisely in this effort that emerge the dynamics and processes of accessibility and control, laws legitimizing such frameworks, decisions about renewability, the environmental impact of resource management, as well as the social forces at work that determine and reproduce mechanisms of the inclusion/exclusion of individuals, groups, interests, and communities into or from it resources. The pattern and dynamics of management are however determined by the historical dynamics such as trajectories of the insertion of the country into the world capitalist economy and contemporary globalization; the nature and character of the State (operating political system-federalism, and the host of questions it raises such as the balance between the centre and the federating units, formulae for sharing revenue and power between constituent units) or the form of the State (democracy or authoritarianism); and the nature and diversity of society.

Since the discovery of oil in the 1950s, the sharing of the nation's wealth has constituted one of the most contentious political problems. The policies determining the control and management of resources were laid down by the colonialism. Beginning with the Colonial Mineral Ordinance (1914), the control and management of especially mineral resources was reposed in the colonial state. This policy had undergone several transformations, but such changes were heavily influenced by the emergent political arrangements that initially favoured strong regional governments. The attempts to fashion out constitutional arrangement from the Clifford Constitution (1922) through Richards (1946) to Macpherson (1954) to the Republican Constitution of 1960 not only reinforced state control over resources, it imposed a specific management regime. Indeed, the overall quest for state control over resources became even more entrenched with the growing incorporation of the country into the world capitalist economy and the resultant focus on oil as the single most important resource worth attention. Subsequent laws such as the Petroleum Act (1969) and the Land Use Act (1978) further reinforced this control. Historically, these factors have tended to influence the dominance of oil in the national economy, the impact of centralization of power at the federal level.

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Liberalization of the extractives sector has contributed to a more favourable investment climate and an unprecedented increase in foreign direct investment in the sector. The liberalization and institutional reforms in the sector have contributed to redefining the regulatory frameworks, the role of the State, the patterns of redistribution of resource wealth and the physical and economic environment of communities affected by extractives activities.

Unfortunately the exclusionary and unsustainable colonial mineral resources laws inherited from the colonial state continue (in some case strengthening the State's stranglehold) to govern the extractive sector (particularly the Oil industry). Reforms in the sector fail to take into account the multiple-exclusion suffered by local communities. Community participation, both at the policy level and at the practical grassroots level of access remains a far wish. Nigerians are familiar with the development state of the Niger Delta where abject poverty remains and has worsened since the discovery of Nigerian oil in 1957. In spite of \$22bn (\$300bn over last 25 years) income the Industry generated, the system<sup>14</sup> has failed to ensure basic living standards to those living in the region. This situation continues to provoke agitations for resource control by the people of the Niger Delta.

## **A. Components of Resource Control**

- Identification of the patterns of mobilization and effective management of Nigeria's crude oil resources.
- Identification of the Legal and Legislative frameworks guiding access to, and management of resources: Legal and Legislative frameworks are significant, because they structure and determine patterns of ownership of, access to, and control over resources. They specify the individuals or bodies in whom ownership is reposed. As such, they specify not only the nature of claims, the claimants, but also the framework for claims-settlement.
- Identification of the impact of corruption on Access to, and management of Resources: The role and impact of corruption on governance and our national life cannot be overemphasized. Many studies have shown how corruption in the oil sector has constituted a very serious stumbling block for national development. There appear to be interfaces between corruption on one hand and access to, and management of resources.
- Identification of the impact of access to, and management of resources on conflicts: Most of the conflicts and tensions in Nigeria has witnessed in the Niger Delta derive from the resource control question. At no time have these conflicts reached a crisis proportion than in the recent past.
- Identification of the impact of extractive firms on community development: Although the Federal Government extract resources from the Niger Delta supposedly for development, processes of extraction of these resources are increasingly becoming sources of concern to host communities. The activities of oil companies have serious damaging impact on the lives and environment of communities hence these issues ought to be considered as one dimension resource control. However, it is often not.
- Identification of the relationship between access to, and management of resources and social movements: Resource utilization and management has generated quite a lot of social and

14. This system has largely been based upon "trickle down" theory of economic development, which believes that profits accrued by the wealthy will eventually find their way through to poorer members of society through increased spending. Not only does this model of development appear not to alleviate poverty but it's failure to work during the past 50 years of global economic expansion has resulted in unprecedented increases of inequality both between and within countries. To correct this failure, throughout the 1990's poverty reduction plans, goals, papers began to emerge from within the International Financial Institutions (IFIs) e. g. Millennium Development Goals (MDGs).

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political effects. Increasingly, social and political claims are localized and are channeled through the new movements that frame claims and conflicts in terms of issues directly resulting from the activities of extractive firms.

## **B. The Impact of the Petroleum Industry Bill on Quest for Resource Control**

The major problem in analyzing the PIB is the existence and circulation of about three versions of the bill. Indeed at a recent retreat of the National Assembly joint committee on the Bill, the chairman of the Senate Committee on Upstream Petroleum alleged the circulation of a fake oil bill. This raises an immediate concern about what exactly is the substance of the bill being debated and refined at the various stakeholders meetings being held around the country. Yet this fear may be assuaged by reference to the current work by the National Assembly. A careful perusal of either the authentic or fake/cloned version testifies that the bill contains technical details in several respects. This implies that the National Assembly must not be in a hurry to pass the bill, rather must tread cautiously and be under proper guidance and Civil Society Organizations working on the Extractive Sector while considering the bill. There had been instances in the past when the legislature hastily passed bills into law, only for it to be presented, soon after, with a fresh bill for an amendment to the principal legislation.

The PIB is a product of 0 years of work done by the Oil and Gas Implementation Committee established by the Obasanjo's government. When the bill is finally enacted, 16 laws on the petroleum industry will give way to one omnibus law. The PIB is an ambitious piece of legislation that seeks to create new entities to manage and supervise various operations in the oil industry. Only a few months ago, governors of the oil bearing Niger Delta states announced their joint rejection of certain aspects of the PIB, because in their view the proposed law would not make any transformational difference in the lives of the people of their states.

Against this background, therefore emerges a clear and intriguing need to examine the extent to which the Petroleum Industry Bill accommodates Niger Delta ethnic nationalities' aspirations to control their resources.

## **D.1 Resource Control/Management**

1. The Bill vested ownership of oil on the federal government, in fact no effort was made to assuage the yearnings of the aspirations of the ethnic nationalities to control their resources. Part 1(1) on Fundamental Objectives of the Bill states “...property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the Exclusive Economic Zone and the extended continental shelf shall vest in the sovereign state of Nigeria and for and on behalf of the people of Nigeria”. Whereas what the people of the Niger Delta want as contained several declarations in this regard is to be allowed to take ownership of the resources located in their environment and to pay tax to the federal government. Denial of dividends of their natural resources has been at the heart of militancy which has only just recently quietened with the Federal Amnesty Programme. There is no guarantee that a new crop of militants will not seize upon the inadequacies of the envisaged Petroleum law to commence a fresh round of agitation.

2. Chapter v section 115, addressed the issue of royalties but fall short of stipulating the exact rates or how such rates should be calculated. Similarly section 279(2) should be rephrased to capture what percentages of such royalties shall be paid to oil bearing communities. This Section should capture the sharing formula of Royalties to communities, states, and Local Government Councils. The

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Nigerian national Petroleum Corporation (NNPC) will be run like a proper business concern. The Corporation has always operated like a secret cult and political party. It enjoys the kind of confidentiality that encourages corruption. The Bill seeks to remove the confidentiality so that all procedures, contracts and payment are made known to the public.

3. Sections 246, 249, 255 and 256 if allowed in their present form will no doubt sustain agitations from oil bearing communities' because of the failure to allow oil bearing communities access and voice in management of oil resources. These sections should be amended to (a) allow oil blocks to be allotted to communities (b) participate and bid for oil blocks in the Joint Ventures and (c) share from profits and dividend accruing therefrom. This is without prejudice to the provisions of the Bill on Corporate Social Responsibility, Royalties and rents. This recommendation derives from the community people's contention that every community having a pipeline criss-crossing it should have a participatory stake in the JVsLPSC.

4. Section 200 (chapter ix) dealing membership of Petroleum Equalization Fund management Board should be expanded to include representatives of oil bearing Communities/States and Civil Society Organizations working in the extractive sector.

## **D.2 Environmental Management**

The Niger Delta has been a site of violent confrontations between the communities and the oil companies on the one hand, and between the communities and state security forces over destruction of indigenous economies of the rural people. No one can deny the just need for compensation to communities affected by extractives activities form billions of dollars that have accrued to the companies and the State while wrecking the socio-economic viability of the communities. There are cases where ethnic nationality agitations explicitly rejected request for financial reparations, on the ground that no amount can cover the environmental damage.

5. Although Chapter X Section 283(1) is on Environmental Quality Management, the section failed to recommend penalty for offenders. We note that various sections of the Bill dealt with the issue of environmental management but there is need for dedicating a chapter of the bill to environmental management.

## **D.3. Transparency and Accountability in Resource Management**

6. There exists contradiction between Part 1, Section 5 of the bill which encapsulated the principles of the NEITI and Section 259 1, 2, 3, and 307(b) which dwells on "Confidentiality Clauses" because of its tendency to hamper transparency.

7. Section 26(2) (3), empowers the minister to approve budgetary variations without legislative approval, while Sections 31, 93(g), 132 and 167 also empowers the Minister of Finance to grant approval on borrowing "on such terms and conditions as the Minister may determine". This against existing legislation on borrowing threshold (see the Fiscal Responsibility Act). Sections 55(1), 54 (2), 92(1)(2)(3), 163, 192, 218, and 237(2) of the Bill empowers the Minister of Petroleum Resources to approve supplementary budget without recourse to the National Assembly whereas Section 55(1) empowers the National Assembly to legislate on the budget of the Nigerian Petroleum Inspectorate. These provide opportunities for corruption, therefore should be amended.

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8. Section 30(2) allows the Directorate to accept gift of money or other property. This provision provides opportunity for corruption. The same applies to Sections 56, 94, 131, 166, 193 and 238 of the PIB.

9. The issue of provision of infrastructure for host communities is a thorny one. It is awkward for government to legislate that oil companies should build schools and hospitals. Etc. that is actually the responsibility of government that is why government collects taxes and royalties. The oil companies will no doubt build schools and hospitals and other social infrastructure as a matter of corporate social responsibility. But it will be tantamount to abdication of responsibility for the government to pass the bulk to the oil companies. The bill also failed to define community rather it continued with the obnoxious and conflict escalation classification of “host Communities”.

10. The motivation to reform the management structures of the Corporation derives from the inability to publish accounts and, if at all, accounts consistent with international accounting standards which are independently or externally audited. Another fiscal proposal which is NNPC related is the incorporation of joint ventures so that they can run as proper businesses. Currently the NNPC's contributions to the existing five Joint ventures are financed through cash calls by the government. Under the PIB, NNPC can raise its own funds from the banks.

11. NNPC is responsible for production, transportation, refining and marketing of oil and petroleum products. In 1986, the Petroleum Inspectorate, responsible for regulation and policy formulation was detached from NNPC and given to the Department of Petroleum Resources (DPR). The Corporation became a commercial and autonomous entity in 1992, though it remains state owned. The present governance structure of NNPC is based on six Directorates namely Engineering and Technology Refineries and Petrochemicals; Commercial and Investments; Exploration and Production; Finance and Accounts; and Corporate and Legal Services. The above structure was perceived as impractical and legally anomalous in view of the legal requirements of limited liability companies. For example wholly owned subsidiary companies, headed by managing directors but operating without a board of directors, co-exist and are overseen by internal departments headed by general managers with bureaucratic and fiscal restrictions of the civil service. The operational implications of this include weak corporate governance<sup>15</sup> that continues to undermine the corporation's commercial capability, lack of transparency, accountability and commercial oversight.

12. The focus of the reform is therefore on the Nigerian National Petroleum Corporation (NNPC) and its various subsidiaries. The NNPC transforms to the National Oil Company (NOC) while the reform transferred most of the Corporation's functions to five new organizations, with a national energy council to oversee the whole sector.<sup>16</sup> It is hoped that the new structure will improve efficiency and enable the State to secure more of the benefits of the oil and gas industry. The NNPC was split into five agencies and a company while the Ministry of Energy was scrapped. Under the new arrangement the National Petroleum Directorate will replace the Ministry Of Energy. The Department of Petroleum Resources (DPR), which was earlier under the Ministry of Energy, has been replaced with an autonomous entity called Petroleum Inspectorate Commission (PIC) empowered to monitor the industry; the Pipeline Product marketing Company (PPMC) will now operate as Petroleum Product Distribution Authority (PDA). The fifth outfit created under the unbundling of NNPC is the National Oil Gas Assets Holding and Management Services Company (NOGAHC) which replaces the National Petroleum Investments Management Services (NAPIMS) will manage the assets that are currently under the NNPC.

15. An audit of the NNPC estimated losses at between US\$1 billion annually (World bank Group, NNPC Management Audit December 2000).

16. The decision was taken by the Federal Executive Council (FEC) which met on August 29, 2007. The FEC also raised a committee to implement the National Oil and Gas Policy. The Committee known as the national Energy Council is charged with the emergency implementation of the National Oil and Gas Policy for a period not exceeding six months. Members of the Council headed by the President-Umaru Yar Adua are the Vice President (vice chairman), Ministers for State for Energy (Petroleum, Gas and Power); Ministers of Finance and National Planning; Honorary Special Adviser on Energy, Dr. Rilwanu Lukman; Attorney-General and Minister of Justice, National Security Adviser (NAS); and four others to be appointed by the President and a secretary.

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## Conclusion

By existing laws the Nigerian state owns all mineral deposits in the country, including crude oil. This ownership is established through series of statutes that govern the petroleum industry dating back to the colonial era. The central government controls revenues from petroleum and sets up a formula for distributing them to other tiers of government namely, States and Local Governments. This has been a source of tension between the Federal Government and communities in the Niger Delta, as they often feel cheated in the distribution of revenue from petroleum. The feeling of deprivation has been increased by the Supreme Court judgment in April 2002 that gave control of offshore petroleum deposits to the Federal Government.<sup>17</sup> The PIB like previous legislations has reinforced rather than changed this situation. The oil and gas sector of the Nigerian economy is dominated by multinational companies who are in joint ventures with the Nigerian National Petroleum Corporations (NNPC), the state oil company. However, as part of government policy to increase indigenous participation in the industry, in 2003, 23 oil fields were awarded to marginal field operators with no oil bearing community benefitting from this process thereby increasing communities alienation. The implication this throws up is the intensification of the struggle for resource control and not to forget that the process of making a bill is a political struggle.

17. On April 9, 2001 the Federal government went to the Supreme Court seeking clarification of section 162(2) of the 1999 constitution requesting among other things a declaration that petroleum resources in Nigeria's territorial waters are federally derived. In April 2002, the Supreme Court agreed with the Federal government, thus further reducing the revenues of littoral oil producing states. A bill sponsored by President Obasanjo and passed by the National Assembly in October 2002 abolished the onshore-offshore distinction. However, the president later sought to an amendment of the bill over what constitutes Nigeria's offshore "contiguous zone" used in the President's draft bill or "continental shelf" inserted by the National Assembly.

## CHAPTER 3

### ANALYSIS OF PIB 2008 FROM THE PERSPECTIVE OF COMMUNITIES\*

By Esueme Dan Kikile, Erebi Sami and Hope Ogunmwoyoni

#### Introduction

The Oil Industry in Nigeria evolved in 1956 when oil was discovered in Oloibiri, in the Niger Delta area; since this discovery, it has formed the pivot of the Nigerian economy accounting for 98 per cent of its export Revenue, 85% of government Revenue, and about 52% of Gross domestic Product (GDP).<sup>18</sup> The bulk of Nigeria's proven oil reserves, currently estimated at 36.2 billion barrels, are located in the area.<sup>19</sup> The Oil Pipelines Act 1956, the Oil in Navigable Waters Act 1968, and the Petroleum Act 1969, regulated the exploration of oil in the Country. The provisions of these legislations vested absolute control of the oil resources on the Federal government of Nigeria. The concerns of the people situated in the regions where these resources are explored, who inevitably bear the consequences of these exploration activities on their social, economic and human rights were not accommodated in these previous legislations. This has resulted in disputes, agitations and unrests in the Niger Delta especially where the bulk of these resources are located. The effectiveness of judicial, regulatory and enforcement mechanisms at resolving these problems has been the subject of debates among academics, NGOs, corporations, members of the international community and indigenes of the Niger Delta. Recently, these debates and issues have led to the reform of the petroleum industry with the proposed Petroleum Industry Bill (PIB), 2008 now before the National Assembly.

Focusing on provisions on community participation this paper will aim to highlight some of the issues that the PIB raises with a view to investigating its effectiveness in dealing with environmental pollution, dispute resolution and corporate accountability in the Niger Delta region. The structure and essence of the bill, including questions on commencement of legal proceedings and Corporate Social Responsibility will be highlighted.

A background discussion on the Niger Delta Region, the environment, environmental pollution: gas flaring, oil spillage, will give a clearer understanding as to what led to the PIB. An explanation of the background issues will also help to appreciate the potential role of the PIB in dealing with problems facing hosts of communities in areas where oil and gas companies operate.

#### The Niger Delta, Environmental Pollution and Human Right Concerns

Nigeria has a federal structure of government made up of the central government and 36 states,<sup>20</sup> eight of which are located on the coast. This coastal area is known as the Niger Delta region. Its offshore belts are blest with extensive oil and gas fields, mostly on the continental shelf.<sup>21</sup> Oil and gas exploitation and exploration activities have transformed many aspects of the economic, social and political activities of people in the oil producing areas.

Oil production in Nigeria is carried out mainly through joint ventures between the government and Multi National Companies (MNCs) Shell Petroleum Development Company (SPDC), Exxon Mobil, Chevron, Texaco, Elf and Nigeria Agip Oil Company (NAOC). Between them they produce about an

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18. See World Bank Country Brief available at <http://www.worldbank.org> (Last visited 21 September 2009)

19. [http://www.tehrantimes.com/index\\_View.asp?code=164368](http://www.tehrantimes.com/index_View.asp?code=164368) (Accessed 15:11:2009). A 2003 estimate showed recoverable crude oil reserves at 34 billion barrels which is expected to increase due to additional exploration and appraisal drilling. See 'Oil and Gas Reserves' available at <http://www.nnpcgroup.com> (Last visited 30: 10: 2009)

20. Section 2 and 3 of the 1999 Constitution of the Federal Republic of Nigeria

21. For a map identifying the Nigerian offshore oil wells see <http://www.ocdi.gov/cia/publications/factbook/index.html> (Accessed 27 Sept 2009)

# COMMUNITIES and the PETROLEUM INDUSTRY BILL (PIB)

## PHOTO REPORT





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average of two million barrels of oil daily.<sup>22</sup>

The effect of these exploration activities by the MNCs are conspicuous as the Communities report that they are affected negatively by air and water pollution caused by these activities. There are however compensation mechanisms through community developmental projects such as road construction, amenities and funding opportunities for educational institutions in the communities. There have also been employment opportunities for some people in their areas of operations.<sup>23</sup>

These developmental efforts however have not been commensurate to the level of degradation experienced in the region, as the law does not adequately provide for this. The ordeal of people of the Niger Delta have therefore caused increasing national and international concerns<sup>24</sup> and have been the focus of Non-Governmental Organisations (NGOs) with respect to human and environmental rights violations.<sup>25</sup>

The main causes of these agitations and the consequent conflict between communities and MNCs is environmental pollution arising from oil and gas exploration. The host communities in the Niger Delta region of Nigeria have experienced negative environmental consequences and have seen their livelihoods destroyed because of environmental degradation of farmlands and from the consequences of oil and gas exploitation.<sup>26</sup>

## Environmental Pollution

'Environment' will be used to refer to every natural resource in the Niger Delta, including the air, water, soil and vegetation.

Omoweh writes that as a non-renewable natural resource, co-existing with other environmental resources, the process of finding and winning crude oil inevitably results in the removal of other natural resources from the earth crust, which in turn upturns its balance and degrades the larger environment.<sup>27</sup> Okonta & Douglas note that apart from air pollution from the oil industry's emissions and flares day and night, producing poisonous gases that are silently and systematically endangering the lives of plants and humans, there is wide spread water, soil and land pollution that have resulted in the death of most aquatic life.<sup>28</sup> Agricultural land contaminated with oil spills become dangerous for farming, even where they continue to produce any significant yields.<sup>29</sup>

Gas flaring and oil spillage are major sources of pollution in the area. A brief explanation of these gas flaring and oil spillages will be undertaken here for three reasons. First, their impacts have been shown to be more harmful to the human lives and every aspect of the environment.<sup>30</sup> Second, they are the most recurrent sources of environmental pollution in oil producing areas in Nigeria.<sup>31</sup> Third, there are scientific links between gas flaring and climate change.<sup>32</sup> Gas flaring and oil spillage will be explained briefly.

## Gas flaring

Traditionally, oil companies do not like to find gas together with other oil fields associated gas (AG). They prefer to find gas without it being mixed with oil so called non-associated gas (non AG). Finding AG means they have to find ways to dispose of it in order to maximise profit from the oil. Whereas finding non-AG gives companies the freedom to control their gas production easily. Gas flaring has been common generally. It started from oil exploration by Shell and BP. The first oil field was found in 1956 and the first export was carried out in 1958.<sup>33</sup> As oil production increased, so has associated gas production.<sup>34</sup> On 23 November 2004, the World Bank stated "Nigeria currently

22. Ibid

23. F. Okunmadewa et al Nigeria: Ill being and Insecurity in *Voices of the Poor from many Lands*, Narayan D, Petesch P (eds). Oxford University Press: Oxford, 2002 85-112

24. VE Kalu, & NF Stewart, 'Nigeria's Niger Delta Crises and Resolution of Oil and Gas Related Disputes: Need for a Paradigm Shift' (2007) 25 (3) *Journal of Energy and National Resources Law* 199-349

25. The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities (New York: Human Rights Watch, 1999), Olokoya, S. 'Environmental Justice from the Niger Delta to the World Conference Against Racism' available at <http://www.corpwatch.org/article> (Last visited 20/09/2009)

26. G. Eweje 'Environmental Costs and Responsibilities Resulting from Oil exploitation in Developing countries: The Case of the Niger Delta of Nigeria', *Journal of Business Ethics* (2006) 69:27-56 at page 34

27. D Omoweh, 'Shell Petroleum Development Company, the State and Underdevelopment of Nigeria's Niger Delta: A Study in Environmental Degradation'. Asmara, Eritrea: Africa World Press, Inc 2005 page 130

28. I Okonta & O Douglas *Where Vultures Feast: 40 Years of Shell in the Niger Delta* Environmental Rights Action/Friends of the Earth, Nigeria. 2001., T Shelly, *Oil: Politics, Poverty & the Planet*, London, Zed Books. 2005, D.A. at page 86

29. See generally, J.P. Eaton, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment' *Boston University International Law Journal*, Vol. 15 1997:261-307

30. Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity. A Report by the Environmental Rights Action/ Friends of the Earth, Nigeria and the Climate Change Justice Programme. Printed in Amsterdam, the Netherlands. Published June 2005

31. Ibid

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flares 75 percent of the gas it produces". This makes Nigeria one of the largest flarers in the world.<sup>35</sup>

## Oil spillage

The figures that exist vary considerably depending on the sources, but hundreds of spills occur each year. According to United Nations Development Programme (UNPD), more than 6,800 spills were recorded between 1976 and 2001. According to the National Spill Detection and Response Agency, in March 2008 there were at least 2,000 sites in the Niger Delta that required treatment because of oil-related pollution.<sup>36</sup> The actual number of spills may be more.

When a society depends on petroleum and its products, as it is the case in Nigeria, oil spills will continue to happen. It is due to the potential for human error and equipment failure inherent in producing, transportation, and storing petroleum.<sup>37</sup> In addition to the above causes, in the Niger Delta, oil spills result from corrosion of oil pipelines, poor maintenance of infrastructure, leaks and as a consequence of vandalism, theft of oil or sabotage.<sup>38</sup>

Gas flaring and oil spillage in Nigeria's Niger Delta have caused environmental pollution that have raised questions as to the effect of the emissions and spills on the people that live in those areas.

## Human Rights Questions

At the international arena, attempt has been made to link human rights and the environment. Africa has been part of this move to promote the linkage between human rights and the environment.<sup>39</sup> Article 24 of the African Charter on Human and People's Rights provides for the right of peoples' to "a general satisfactory environment favourable to their development". Nwobike writes that the African Charter represents a significantly new and challenging framework for the implementation of economic, social and cultural rights in Africa.<sup>40</sup>

Some states, including Nigeria have ratified and incorporated the African charter. It is now part of Nigerian law. It can therefore be argued that MNCs ought to operate with a view to not violating the provisions of Article 24 of the Charter in the course of their operations. The degradation of the environment as a result of massive pollution of the land, water and air in the Niger Delta, results in a slow and gradual death of people in the area. Therefore, there is no reason why people in the Niger Delta cannot claim that the infringement of their right to clean environment, which has grave effect on their health and life, is an infringement of their right to life.<sup>41</sup>

People in the Niger Delta have made claims that oil and gas operations have impacted adversely on their health. There are no clear and reliable statistics on the direct impact of activities of exploration on the health and lives of the people in the Niger Delta. However, there are scientific studies that have linked breathing particulate matter - emissions resulting from the combustion of AG (associated gas) in an open, uncontrolled manner will result in a series of significant health problems, including: aggravated asthma, increases in respiratory symptoms like coughing and difficult or painful breathing, chronic bronchitis, decreased lung function, and premature death.<sup>42</sup> Therefore, it is probable that people in oil producing areas in Nigeria may have similar health problems.

There have also been social consequences resulting from the operations of the oil industry in Nigeria.

## Protests and Conflicts

People in the Niger Delta have been protesting against the effect of activities of the oil industry like oil spillages and gas flaring for decades. These protests are also sequel to the fact that the people are neglected in the decision making process of an activity that impact on every aspect of their lives

32. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/EXTGGFR/0,,menuPK:578075-pagePK:64168427-piPK:64168435-theSitePK:578069,00.html> (Accessed 22/09/2009)

33. See note 15 above.

34. When pumping in full capacity, Nigeria produces an output of around 2.5 million barrels per day, making it the world's eighth largest oil producer

35. See World Bank Country Brief available at <http://www.worldbank.org> (Accessed 15/09/2009)

36. Petroleum, Pollution and Poverty in the Niger Delta. A Healthy Environment is a Human Right. Amnesty International, June 2009. Index AFR 44/018/2009 at [www.amnesty.org](http://www.amnesty.org) (30/09/2009)

37. M. Fingas 'The Basics of Oil Spill cleanup 2<sup>nd</sup> Edition', Jennifer Charles (ed), Lewis Publishers, London, 2001 at page 19

38. Amnesty International, note 20 above. See also World Bank, *Defining an Environmental Development Strategy for the Niger Delta, Volume II. Industry and Energy Operations Division, West Central Africa Department of the World Bank, 25 May 1995, Annex M.*

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as they face these challenges which are by-products of oil exploration, which consequently yields economic dividends for the country. The protests have been both peaceful and violent. Yusuf argues that successive Nigerian governments have continually denied the people of the oil-rich Niger Delta area of the country their economic, social and cultural rights, and by extension, their right to development.<sup>43</sup> This has led to social restiveness in the area. This social discontent manifests itself in paramilitary criminality, hostage taking, the sabotage of oil installations and car bombings in the area.<sup>44</sup>

Ghazvinian<sup>45</sup> records in more detail the peaceful and violent protests that have arisen as a result of oil and gas exploration activities in Nigeria. The author writes that in 1993, seven cases of 'pipeline vandalism' were officially recorded in the Niger Delta. In 1996 the number of pipelines vandalised was 33, and in 1998 the figure had risen to 57. In 1999, 497 instances of pipeline vandalisms were recorded, and in 2000, there were over 600.<sup>46</sup>

These figures show that violent protest that are directly and indirectly linked to operations of the oil industry in the Niger Delta have been on the increase. The effects of these actions have affected the country economically and socially.

Ibeanu<sup>47</sup> and Frynas<sup>48</sup> agree that structural changes within Nigeria's institutional framework are needed to end the oil related conflicts in the Niger Delta.

Operations of the oil industry in Nigeria's Delta region on the environment and lives of people in oil bearing communities have political, economic, social and legal dimensions. It is clear that the current regulatory and institutional framework that deals with these operations need to be reassessed. The Petroleum Industry Bill, 2008 is a legislative attempt at ensuring fairness.

## **The Petroleum Industry Bill, 2008.**

It can be said that this bill is in response to protests and conflicts resulting from oil and gas operations by corporations that reflect the regulatory, enforcement and judicial weaknesses in the current framework. The Bill seeks to bring together the provisions of many laws regulating the petroleum industry. It also aims to create new institutions to govern the operations of the industry; transform the existing joint ventures between MNCs and the Nigerian National Petroleum Corporation (NNPC) into Incorporated Joint Ventures (IJVs). Institute a new fiscal regime that increases government take, remove confidentiality in industry operations and fully deregulate the downstream sector.

## **Structure of the Bill**

The Bill covers its Fundamental Objectives, Institutions, Upstream Petroleum Joint Ventures, Downstream Licensing, Downstream Products, Indigenous Oil Companies and Nigerian Content, Health, Safety and Environment, Fiscal Provisions, Repeals and Transitional Provisions and Interpretation.

The decision to have a single piece of legislation that regulates the oil industry in Nigeria might have been well thought out. But the size, language and presentation of the text does not reflect modern lawmaking which aim should be to make the law easy to read and understand by those that are affected by the issues raised therein. Even lawyers will struggle to read through and fully understand the 495 sections in the ten parts. The bill is this massive as a result of repetitions. The provisions relating to institutions reflect this. Also, S.408 that deals with forced labor and child labor seem out of place in a Petroleum Industry bill especially when there are Labor laws that can deal with them.

39. See for example United Nation Conference on the Human Environment at Stockholm (Stockholm Declaration) from 5 to 16 June 1972; United Nations Conference on the Environment and Development at Rio de Janeiro (Rio Declaration) from 3 to 14 June, 1992 and the more recent Johannesburg World Summit on Sustainable Development (WSSD)(Johannesburg Declaration) from 26 Aug to 4 September 2002

40. J.C. Nwobike, 'The African Commission on Human and People's Rights and the Demystification of Second and Third Generation Rights under the African Charter: Social and Economic Rights Action Centre (SERAC) and the Centre for Economic Social Rights (CESR) v. Nigeria', *African Journal of Legal Studies* 2 (2005) 129-146 at page 145

41. E.Egede, 'Human Rights and the Environment: Is there a Legally Enforceable Right of a Clean and Healthy Environment for the "Peoples" of the Niger Delta Under the Framework of the 1999 Constitution of the Federal Republic of Nigeria?' *Sri Lanka Journal of International Law* 1 (2007) 51-84 p.67

42. <http://www.epa.gov/air/urbanair/pm/hlth1.html>

43. H.O.Yusuf 'Oil in troubled waters: Multinational Corporations and realising human rights in the developing world, with specific reference to Nigeria' *African Human Rights Law Journal* 8, 2008:79-107

44. International Crisis Group Swamps of insurgency: Nigeria's Delta Unrest (Africa Report 115 2006) <http://www.crisisgroup.org/home/index.cfm?id=4310> (accessed 10 August 2009)

45. J Ghazvinian, *Untapped: The Scramble For Africa's Oil*. Harcourt Inc: London, 2007 especially on pages at 17-32

46. *Ibid* at page 45

47. O.Ibeanu, 'Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria', *Environmental Change & Security Project Report*, Issue 6 (Summer 2000) 19-32

48. J.G.Frynas, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta', *African Affairs* (2001), 100 27-54

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## **Community Participation Ss398-402**

This section of the presentation will address the issue of Community Participation provisions and to show how the Bill has incorporated ownership, management and developmental issues of the host Communities. It is important to point out that what the communities of the oil producing areas are agitating for in the reform process, and indeed constitutional amendment is resource control. This is exemplified in the presentations made at the Public Hearings on the Bill and the Constitution Amendment debate.

The concepts of 'Host Community' and 'Participation' are issues that need clarification from the onset. Host Community in relation to the oil industry relates to the people who inhabit a given geographical location where oil resources and its antecedent exploitation and exploration devices are installed. Thus communities that host one form of oil installation or the other including oil wells, oil fields, rigs, platforms, pipelines, Christmas trees etc. While this description has served to enhance the identification of boundary and territorial delineation for the oil companies in naming their facilities, it has also been the bane of the oil producing communities as the fight over host communities' status remains a sore thumb for all the parties.

Participation refers to the involvement of the communities in the activities of oil production from the ownership of the resource to the management and the benefits from the resource. In this sense, can it be said that the PIB has promoted the participation of the Host communities in relation to previous legal frameworks in the oil industry in Nigeria? This is the question we will seek to answer in subsequent parts of this presentation.

## **Participation**

The PIB vests the ownership and management of all petroleum and natural gas 'in the sovereign state of Nigeria for and on behalf of the people of Nigeria.' **See ss. 1 & 2 PIB.** It goes further to provide for a local content rule that does not recognize the strategic position of the oil producing communities. See s. 8 ss. 1-4. This Nigeria wide local content is further amplified in s. 149 (m), which mandates the Nigeria Petroleum Research Centre to 'advise government on policy formulation on all issues that are relevant to increase Nigerian content levels in the petroleum industry.' The implication of the above is the lumping of the participatory interest of the oil producing communities with the generality of Nigeria, which in our view is against the agitation for the reform of the oil sector laws to reflect the interest of the oil producing communities.

The PIB in our view is not different from the past legal and regulatory framework with regard to the participation of oil producing communities in the oil and gas sector. The PIB reaffirms the disadvantaged positions of the oil producing communities.

## **Communities**

Communities are now referred to as 'people resident within the petroleum prospecting license or petroleum mining lease area...' See s. 280 ss. 1(b). This definition of communities is not only absurd but to say the least demeaning to the people of the oil-producing communities.

Except there is a proper recognition of the communities and their role in the oil ownership and production spectrum, the distrust and lack of commitment will always lead to conflicts in the oil producing region. This is so because community participation is one of the solutions to the crises in the oil producing region.

Our suggestions are that there should be adopted a gradual and progressive movement towards resource control by the oil producing regions with the Federal government levying taxes on the

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revenue from oil. But perhaps a more realistic provision now in the PIB will be the inclusion of the proposed 10% Equity stake ownership by the oil producing communities in the Joint Ventures (JVs) between the Federal Government and the oil companies. This should not detract from the need to pursue the resource control suggestion made earlier.

It is further suggested that there should be included in the PIB an impact benefit agreement clause (IBA Clause). The purpose of the IBA clause is the early identification of the impact of the production activities on the communities and the mitigating and beneficial measures put in place by the companies. This is to be done in consultation with experts nominated by the communities to work with representatives of the government and the oil companies.

Finally, community participation should move beyond (global) memorandum of understanding between oil companies and communities, which are only an extension of company corporate social responsibilities (CSR) to the communities rather than community involvement in the oil resource process.

Bearing in mind that all the crises that have engulfed the Niger Delta region are centered around the dispossession of the people, one wonders why an initiative such as the Petroleum Industry Bill from a government that makes the Niger Delta one of its Seven Point Agenda does not fully accommodate the interest of the oil producing communities the equal rights to participating interest in the shareholding, license and lease bidding. This demonstrates that the provisions of the PIB 2008 has not changed the status of the communities in their involvement and or participation in oil production activities, rather it has further alienated the communities from the benefits that should accrue to them considering the impact on the communities.

## **Provision on Legal Proceedings - Section 61(2)**

One of the tools for making environmental polluters accountable for their actions is litigation. Environmental litigation<sup>49</sup> for oil related cases is on the increase in Nigeria.<sup>50</sup> 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 usual defendants are the MNCs like Shell, Exxon Mobil, Agip and Totalfinaelf.

One would expect that a law like the PIB would support or expand the opportunity of people to use the legal process as a means of making companies accountable for environmental pollution. However, in Section 61(2) of the PIB places a restriction on legal proceedings. The Bill provides a maximum of twelve months period for suits whether civil or criminal against the inspectorates, a member of the governing board or an employee of the Inspectorates in respect of his functions and powers under the Act, can only be entertained within twelve months of its enactment; after which it shall 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 MNCs. Therefore, the 12 months restriction for legal proceedings in this respect is not in the interest of people in Niger Delta. It is more in conformity with the business needs of corporations. There seem to be no reason for this restriction as it will neither improve corporate accountability nor the relationship between corporations and communities.

## **Corporate Social Responsibility / Corporate Accountability**

The Bill has no provision for corporate social responsibility and there is no suggestion as to ways of

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making corporations accountable for any harm caused to communities in their areas of operations. If the PIB is going to become the main law that regulates the petroleum industry, it should aim to ensure that the root causes of the conflicts between MNCs and communities (environmental pollution) are dealt with. One would therefore expect this bill to clearly make polluters accountable for pollution. The failure of the Bill in this regard effectively puts this bill in the same position with other oil and gas laws and is out of line with modern developments in this regard. What this bill should incorporate is a clear provision on social, legal, economic and political tools for corporate accountability, which will be the basis on which companies should operate in the Niger Delta.

## **CONCLUSION**

The impact of oil and gas exploration on the environment and lives of people in oil producing communities in Nigeria have led to the proposed Petroleum Industry Bill (PIB) now before the National Assembly.

The Petroleum Industry Bill seeks to bring together the provisions of many laws regulating the petroleum industry that would make the legal framework more accessible.

However, the structure, size, language and some provisions of the Bill make it ill placed to address the fundamental issues that led to this Bill in the first place. The Bill is too long!

Difficulties with the provisions on community participation make the PIB appear ill thought through as it fails to address the key concerns of people in the Niger Delta region. Modern global thinking in environmental protection recognizes that, without the communities, environmental plans tend to be shallow and protective only of the interests of a few local collaborators of business concerns. This aspect of the Bill needs to be reworked to align it with interests of the oil-bearing communities.

This paper has also highlighted concerns with the restriction on legal proceedings. The absence of a provision on corporate social responsibility and corporate accountability make this Bill out of touch with measures that seek to protect the environment in the global scene.

The difficulties with the PIB that have been highlighted in this paper are not exhaustive. The size and content of the bill does not reflect a fundamental departure from the practices and institutional limitations that have made other oil and gas laws ineffective. It needs to show a real understanding of the underlying concerns of people in oil producing areas and reflect the will to address them.

If some of the issues raised above are addressed, it may help to ameliorate some of the problems with the Bill. It is hoped that a reconsideration of the aspects highlighted here will be carried out to enhance the position of the Bill in dealing with environmental pollution.

It is hoped that there will be the political will to enforce the provisions of the Bill.

## CHAPTER 4

### CRITICAL ISSUES ARISING FROM THE PETROLEUM INDUSTRY BILL 2009

By Bamidele Aturu Esq

In Venezuela, since 1999, we've never had a raise in fuel price. We only pay \$1.02 to fill the tank. What I pay for with N12,000 here (Nigeria), in Venezuela I'll pay N400. What is happening is simple. Our President (Hugo Chavez) decided one day to control the industry, because it belongs to the Venezuelans. If you don't control the industry, your development will be in the hands of the foreigners. You have to have your own country. The oil is your country's. Sorry I am telling you this. I am giving you the experience of Venezuela. We have 12 refineries in the United States, 18,000 gas stations in the West Coast. All we are doing is in the hands of the Venezuelans." The envoy said, "Before 1999, we had three or four foreign companies working with us. That time they were taking 80 per cent, and giving us 20. Now, we have 90 per cent, and giving them 10. But now, we have 22 countries working with us in that condition. It is the Venezuelan condition. You know why? It is because 60 percent of the income goes to social programmes. That's why we have 22,000 medical doctors assisting the people in the community. The people don't go to the hospital; doctors go to their houses. This is because the money is handled by the Venezuelans. How come Nigeria that has more technical manpower than Venezuela, with 150 million people, and very intellectual people all around, not been able to get it right? The question is: If you are not handling your resources, how are you going to handle the country? "So, it is important that Nigeria takes control of her resources. We have no illiterate people. We have over 17 new universities totally free. I graduated from the university without paying one cent, and take three meals every day, because we have the resources. We want the resources of the Nigerian people for the Nigerians. It is enough! It is enough, Minister"<sup>51</sup>

#### Introduction

Everything is wrong with the management of Nigeria's oil industry. Everyone, the foreigners perhaps more than Nigerians, know the sorry state of the industry, as the quotation above demonstrates. Sadly, the government has been incapable of dealing with the problems associated with the industry, mainly cartelism, mismanagement, inefficiency and corruption for a variety of reasons. The Petroleum Industry Bill before the National Assembly appears an attempt to deal with the multifaceted and multidimensional problems of the industry. However, the Bill has been greeted with all sorts of controversies. There have been allegations and counter allegations by vested interests on the real motives for the Bill and whether or not some persons have been commissioned to kill the Bill and even as to whether what is before the National Assembly is the authentic Bill.<sup>52</sup> We are not concerned with these controversies but rather we aim at doing a broad examination of the Bill in order to raise policy issues that may help in improving the Bill as presented.

#### Structure of the Bill

The Bill is a massive and ponderous text of 495 sections divided into ten parts. The Bill deals with Fundamental Objectives, Institutions, Upstream Petroleum Joint Ventures, Downstream Licensing, Downstream Products, Indigenous Oil Companies and Nigerian Content, Health, Safety and Environment, Fiscal Provisions, Repeals and Transitional Provisions and Interpretation. It is proper for

51. Venezuelan Ambassador to Nigeria, Enrique Fernando Arrundell admonishing or chastising the Nigerian Government on its deregulation of everything obsession in The Punch of 24 the November, 2009  
52. There are more than one version of the Bill in circulation. One is said to have been produced by an inter-agency group comprising the NNPC, the Department of Petroleum Resources, the Federal Inland Revenue Service and the Nigeria Extractive Industries Transparency Initiative. See Patrick Heller, The Nigerian Petroleum Industry Bill: Key Upstream Questions for the National Assembly



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a modern legislation to state clearly the objectives underpinning it as the Bill has done. It is a practice that ought to be encouraged.

The decision to bring together all the institutions in the petroleum industry might have been informed by the need to have all the laws relating to the industry in one single text for accessibility. Nevertheless, the size of the text could have been considerably reduced if the administrative provisions relating to the institutions such as pension, restriction on suits, funds, power to accept gifts/or to borrow, power to sue and be sued, disqualifications, secretary, other staff, service, indemnity et cetera which are similar if not identical are not repeated for each and every one of the institutions. For example the provision on disqualification could just be in one section for all the different institutions. It could read thus: **'No one shall be appointed as a member or head of any of the Institutions created by this Act, if....'** instead of repeating a similar provision for each and every institution created by the Bill. The Bill can benefit from some technical surgery in this regard. The processes for the different kinds of licenses also need not be repeated since they are similar. The language of the Bill is refreshingly gender sensitive. One does not get the impression that the Bill is made only for the males as the drafters use the two pronouns, 'he' and 'she' generously, although in many of the sections gender neutrality is possible and would have been preferable.

## **Fundamental Objectives of the Bill**

The objectives generally appear well-reasoned. It includes freedom to apply for grant or award of leases and licences for the exploration and production of petroleum. The Bill also states that the management of petroleum resources shall be conducted in accordance with the principles of transparency, good governance, and sustainable development of Nigeria. It makes a commitment to ensuring community development, and participation of Nigerians in the industry fundamental objectives. The government shall also ensure compliance with international standards on the protection of the environment. These objectives are doubtless laudable.

However, the restatement of the sovereignty of the Nigerian state over petroleum on behalf of Nigerians is bound to generate its own controversy. Agitation for resource control has always focused on attacking provisions of this nature. As recently as 2005, the National Political Reform Conference recommended that communities should be involved in the 'management and control of the resources in their communities by having assured places in the Federal Government mechanisms for the management of the oil and gas exploration and marketing'. The absolute sovereignty of Nigeria over petroleum is bound to be an explosive issue during the readings of the Bill.

## **Multiplicity of Institutions**

The long title of the Bill makes it explicit that the Bill sets out to create institutions and regulatory authorities for the Nigerian petroleum industry. The Bill proposes six or seven institutions, namely: National Petroleum Directorate (s. 12); Nigerian Petroleum Inspectorate (s.37); Petroleum Products Regulatory Authority; National Petroleum Assets Management Agency (s. 113); Nigerian Petroleum Research Centre (s.148); National Frontier Exploration Service (s.174); Petroleum Technology Development Fund (s. 223) and Petroleum Equalisation Fund (s.199).

Many of these bodies are existing under various Acts. It is therefore tidier that they should all be included in just one statute for ease of reference. Here we are referring to Petroleum Equalisation Fund, Petroleum Technology Development Fund and to a limited extent the Petroleum Products Regulatory Authority.

The question can nevertheless be asked whether some of the bodies are not a mere replica of one another or whether the functions of the institutions cannot be conveniently performed by just three

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institutions. With the National Petroleum Directorate (NPD) it is difficult to fathom what the Ministry of Petroleum will be doing. Indeed section 13(s) of the Bill is indicative of the overlapping functions of some of the institutions. The paragraph provides that the NPD shall 'promote compliance with all legislation by all participants and stakeholders in the industry'. That exactly is the function of the Nigerian Petroleum Inspectorate unless one is interested in the needless hairsplitting exercise of distinguishing between enforcing and promoting compliance with the laws. The country can conveniently do without the National Petroleum Directorate with its full complement of bureaucracy and Board.

At a time when the proposal to establish a Petroleum University is at an advanced stage, it is difficult to see the necessity for the Nigerian Petroleum Research Centre. The functions of the National Petroleum Assets Management Agency and the National Frontier Exploration Service can be undertaken, indeed should be undertaken by the Ministries of Finance and Petroleum Resources respectively. There is a need to spend some more quality time in streamlining these institutions. On a technical note the objects and functions of the institutions can also be harmonized and reduced in order to reduce the size of the Bill. Creating more bureaucracies has not proved an effective solution to our problems in this country if the truth must be told. Indeed multiplying them may multiply inefficiencies if the underlying attitude and orientation persist.

## **Funding of the Proposed Institutions**

Section 28 of the Bill provides that a portion of fiscalised crude or gas shall be paid into an account of the Directorate to be shared by the proposed institutions for the purpose of their operations. This provision is likely to be misunderstood by many. In the first place, the fiscalised crude or gas proposed to be paid into the account of the Directorate is supposed to be part of the revenues accruing to the Federation which ought to be paid into the Federation Account. Thus, section 28 of the Bill may be declared unconstitutional if challenged in a court of law. Second, there is no justification for creating bodies or institutions that cannot be funded in the normal course of governance. The extra-governmental funding proposed reflects a tendency to spend money accruing from the upstream sector before any serious accounting or reflection on how to spend the money is done. It is as if these institutions are being created simply because we can get the oil companies to fund them. That is not right at all.

## **Restriction on Suits against the Proposed Institutions**

The Bill follows in the Nigerian tradition of either creating special limitation in respect of the period within which suits can be filed against statutory bodies or of requiring that pre-action notice be given to such bodies before they can be sued. Although the Supreme Court has repeatedly affirmed the constitutionality of such provisions and laws, there is little doubt that they restrict rather than grant access to the courts. On this score such provisions are objectionable. The National Assembly would be rendering an invaluable service to this country if it crosses out such provisions which dot the present Bill. Section 61 of the Bill contains the two types of restrictions.

## **Resolution of Disputes**

Some of the new institutions notably the Inspectorate and the Petroleum Products Regulatory Authority are saddled with resolving disputes between persons coming under its operations (s. 68). The Bill stipulates that disputes cannot be referred to the Inspectorate unless parties have attempted to negotiate. One can understand the desire to ensure that matters are conciliated to prevent

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needless recourse to courts with the attendant acrimony and delay. But the point is that these bodies are not suited for settling disputes. It would have been preferable to have a provision which makes it mandatory for parties to attempt to resolve disputes by conciliation and arbitration before having recourse to the courts. In that case the arbitration would be governed by the relevant Arbitration and Conciliation Act. There is the tendency for the bodies to lose focus if this aspect of the Bill is not tinkered with. It is also needless to state as is done in section 72 of the Bill that parties aggrieved by the determination of the bodies can seek judicial review. That is a right conferred by the Constitution that needs no restating in an inferior statute.

## **Transparency and Openness**

The Bill makes serious and noteworthy attempts at granting public access to the activities of the proposed institutions. Sections 306 and 344 are typical in this regard. Section 306 makes it clear that registers of technical licences issued under sections 301 and 302 should be made to members of the public who can also receive certified true copies of the documents upon payment of the prescribed fee.

Section 259 voids confidentiality clauses in respect of royalties, bonus, taxes and any other financial matters that directly affect the revenues derived by the State from exploration and production of petroleum. This provision should enhance accountability and openness. At the present time, most production sharing agreements and Joint Venture Agreements between the NNPC and the oil companies are shrouded in baffling secrecy. The provision in section 259(3) which states that the determination of the Directorate as to whether a piece of information is proprietary and so outside the openness clause in section 259 shall be final is however likely to detract from the benefits to be derived from the clause. The Bill should attempt to lay down objective criteria for determining such an important question.

## **Privatisation of NNPC**

Section 136 of the Bill creates the Nigeria National Petroleum Company Limited to succeed the NNPC and inherit the latter's assets and liabilities. At inception ownership of the Company shall be vested in the Federal Government, but after two years of its incorporation government may divest its interest in the company and sell same to members of the Nigerian public through the Nigerian Stock Exchange. It appears that the privatization of the Corporation is being done outside the existing system supervised by the National Council on Privatisation and under a different statute. The reason for using this procedure is unclear, but it may raise concern as to the genuineness of the ultimate privatization of the corporation, particularly as the petroleum industry is a major sector of the economy which privatisation section 16 of the Constitution forbids.

## **Redundant Provisions**

Provisions relating to the incorporation of Joint Ventures as Limited liability companies are largely redundant as the issues are already covered by the Companies and Allied Matters Act. We have in mind such provisions to the effect that the Board of the companies shall be accountable to shareholders, act in good faith, treat shareholders equally et cetera (s. 252). The same consideration applies to the specified functions of the Board and the rights of shareholders in sections 253 and 254 respectively. Section 408 which deals with prohibition of forced labour and child labour and also the upholding of the right to collective bargaining are matters which have been adequately dealt with in

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our Labour Statutes. Repeating them in the Bill may lead to the unintended result that the operators may carry on as if the other provisions in the Labour laws which are not repeated are to be disobeyed or do not carry the same weight which is not the case.

## **Equity Participation for Communities in Joint Ventures**

There is a proposal allegedly emanating from the Presidency that the communities should hold 10 per cent of the shareholding of the Joint Ventures.<sup>53</sup> There is no doubt that equity participation by the communities is better than the current regime of no-participation or even denial of the right of the communities to control their natural resources. Nevertheless, the proposal is at best hazy. To start with, we need to be clear as to what is meant by 10 per cent equity participation. Is it 10 per cent of the equity held by the current NNPC which is to be transferred to the proposed National Oil Company or are the communities to hold 10 per cent in relation to the whole shareholding of the Joint Ventures? This clarification is important as it would affect the quantum of the holding of the communities in the ventures. It should be noted that the Bill under discussion does not contain the provision. What is in the Bill for now in section 246 (3) is that

Each joint venture company shall be owned by the parties to the existing joint ventures, in proportion to their existing participating interests, with the exception of the participating interests held by the Nigerian National Petroleum Corporation, which shall henceforth be held by the National Oil Company

Another matter that requires clarification in respect of the proposal, and which is really a matter to be sorted out by the communities, is to determine those who will hold the shares or represent the communities on the Board of the Joint Ventures. This is a matter that should be handled carefully as the equity participation may generate acrimonious divisions that can be the enemies of the company to keep the people of the oil-bearing communities politically divided and ultimately weaken their resolve to be in the driver's seat of the oil industry. In other words, the offer of equity participation may turn out to be a Greek gift unless the communities have a reasoned common position on these issues.

While no easy solution may be proposed, the communities may decide to float an Oil Communities Incorporated Trustees (OCIT) to take up the equity on behalf of the people. The different communities would have nominated persons of impeccable moral character as Trustees preferably from each of the states but with the state apparatus having no input whatsoever in the nomination. The possible advantage of this suggestion is that the articles of incorporation would detail how the profit accruing to the communities would be used. The OCIT could become a parallel NDDC. This obviously is a tentative proposal. The decision is for the people themselves to take. Whatever the position equity participation in the Joint Ventures is a matter to which we need to pay close, serious and careful attention.

It is arguable that the better approach to the management of the oil industry is not to continue with the Joint Venture system as this has a tendency to compromise government institutions in that government cannot be expected to regulate the activities of its business partners.<sup>54</sup> As we noted elsewhere, the Technical Assistance Agreement is a better commercial mode that has been tried and used in other oil-producing countries that are governed by serious minded power elite. Under such agreements, the country owns the crude oil, the facilities and equipment which is managed by the National Oil Company. The oil companies are just technical advisers paid negotiated management fees pending such a time when their services would no longer be needed. The agreement also facilitates technology transfer and the elusive local content more easily than the present commercial

53. The source of the proposal is unclear. One reports claims that it emanated from an unnamed Senator, while others claim that it was the Presidential Adviser on Petroleum Matters, Dr Emmanuel Egbogah that dropped the hint. See [www.informationnigeria.org](http://www.informationnigeria.org)

54. Bamidele Aturu, Fashioning the Political Will to End Gas Flaring In Nigeria: A Comparative Analysis of the Associated Gas Reinjection Act and the Gas Flaring (Prohibition and Punishment) Bill, paper presented at the 2nd National Consultation on the Environment organized by ERA in Port Harcourt on 25th November 2009

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agreements in place. With democratic governance based on the will of the people coupled with the true ownership of the oil, there would be no joint ventures. The people would manage and control their resources through their own governments, not governments imposed by electoral fraud and mafias.

## **Indefensible Environmental Remediation Levy**

States and Local Governments are required to pay 1% and 0.5% of their annual derivation allocation into Remediation Fund under the custody of the Inspectorate to restore the environment in cases of damages caused to the environment as a result of sabotage (s. 286). This proposal is likely to be contested by the States and the Local Governments as making them vicariously liable for the crime of sabotage. This is a fundamental negation of our criminal jurisprudence. The Bill does not make any provision for refund in any year when there is no act of sabotage. No reason was also proffered for not making the Federal Government to pay any percentage of the royalties received by it for remediation in cases of sabotage. After all, the Federal Government controls the security agencies that ought to be responsible for preventing sabotage in the first place. There is no justification for the levy. It should be deleted from the Bill. However, the financial provision required in section 285 of licensees for remediation is justifiable since it is more or less like a caution fee that may be returned to the licensees if not used up. It is hoped that it would make the activities of operators more environment-friendly.

## **The Bill, the Environment and the Communities**

The proposal in section 283 that every licensee shall within three months of the coming into effect of the Bill submit an environmental programme or an environmental quality management Plan dealing with such specific matters as its environmental objectives, commitment to comply with relevant laws and regulations and also remediation of environmental degradation is clearly well motivated. It is without doubt based on an awareness of the devastating effect of untrammelled exploitation of oil and gas on the environment. Nevertheless, the provisions inexplicably and inexcusably exclude the communities which bear the brunt of environmental degradation from its purview (see also 405(3)). Indeed section 284 categorically states that the Inspectorate shall 'consult with the Federal Ministry of the Environment and the State Ministries of Environment within which the licence or lease is situated and with any other relevant bodies within which the licence or lease is situated'. Communities are conspicuously omitted. Modern global thinking in environmental protection recognizes that without the communities environmental plans tend to be shallow and protective only of the interests of a few local collaborators of business concerns. This aspect of the Bill needs to be reworked to make it align with the interest of the oil-bearing communities.

The processes of awarding licenses are by competitive and open bidding process. This speaks to years of abuse and cronyism when mining and prospecting licences are given to people who lack the technical knowhow or the means to drill boreholes near the lagoons (s. 270). It is heartwarming that the Bill specifically prohibits discretionary awards (s. 270(2)).

## **Some Positive Features of the Bill**

The Bill has some useful or rather potentially (as all depends on enforcement) useful provisions. These include, among others, consumer protection (s.386), provision of service to customers (s. 387), competition and market regulation (s.391), encouraging indigenous participation in the petroleum sector (ss398-402), Nigerian Content (ss. 403-404). Indeed the Bill sets minimum limits for Nigerian

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board membership and managerial and professional cadre.

## **Conclusion**

The Bill seeks to bring together the provisions of many laws regulating the petroleum industry. That may make the legal framework more accessible if the technical issues raised above are dealt with. It is also hoped that the substantive concerns raised here will inform a reconsideration of the relevant provisions. If this is done the Bill may help address certain aspects of the industry. As may be apparent, we have left out a detailed consideration of the fiscal provisions in sections 414-432 or so as they are essentially contained in existing laws that are now more or less codified in the Bill. Ditto the provisions on licences and leases.

As we noted earlier implementation has always been a problem with us. One may craft the best law but if the will to enforce it is lacking and if the people are not willing to struggle and mobilize for democratic governance it would not be worth more than the paper on which it is written. On a technical note, we are of the opinion that if some of the drafting suggestions we made in this presentation are taken into consideration the Bill can be pruned to about half its present prolix length.

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## **Communiqué Issued at the End Of A 2-Day Community and Civil Society Consultation Forum on the Petroleum Industry Bill Held At Creek Motel Yenagoa On 27-28 November, 2009**

### **PREAMBLE**

More than eighty-eight (88) representatives of community organisations, women and civil society organisations in Nigeria and ethnic nationalities in the Niger Delta participated in a 2-Day Consultation Forum on the Petroleum Industry Bill to discuss the proposed bill in Yenegoa on the 27-28 November, 2009.

Worried by the manner in which community people and the civil society have been excluded from making input into the bill, Social Action in collaboration with Stakeholder Democracy Network (SDN) and the Bayelsa NGO Forum (BANGOF), commissioned legal and social analyses of the PIB for the benefit of an informed decision and action by stakeholders at the Forum.

The Forum which was chaired by Rev. Bassey Nnimmo Executive Director, Environmental Rights Action and Chair, Friends of the Earth International, discussed issues of democratic accountability in Nigeria and ways of improving participation and dialogue among communities, civil society and governments to ensure that revenues from natural resources work for the people. It was a gathering of like minds working and determined to forestall another attempt by the ruling elite to exclude community people from being part of a processing of designing an oil-regime that will ultimately affect their fate and speak volumes about their citizenship rights.

### **ISSUES**

The Forum notes that in spite of the huge returns from exploration and production of the oil, the Federal Government of Nigeria is yet to put back substantial part of the money earned into addressing the development crisis and despoliation of the environment in the Niger Delta. Apparently, the Niger Delta where the oil is mined has suffered the environmental consequences of the oil industry for more than fifty years.

The untold destruction of the environment and livelihood of the Niger Delta people as a result of the reckless manner in which multinational oil companies operate and the criminal absence of social and economic infrastructure in the region has caused tension between oil companies and the government on the one hand and the communities on the other hand in the region. Not only is the Forum worried by the role that the oil plays in this conflict, it is equally concerned with the fact that the oil is likely to remain strategic and significant for the political class in Nigeria, as well as an important global commodity for a fairly long time, along with the danger that this portend for communities where the oil is extracted. In fact, the exclusion of these communities from the current law making process regarding the PIB raises age-long critical issues of violation of economic, democratic, environmental, cultural and social rights of these communities as articulated, for example by the Ogoni people in their Ogoni Bill of Rights and the Ijaw Youth Council's Kaiama Declaration.

Concerned that policy makers appear incapable of independently deciding what line of action to take in addressing issues bordering on the environment and community needs and having observed that discussions so far have addressed only production and commercial aspects of the PIB - leaving out issues of immediate concern to oil bearing communities, such as resource control and environmental management, participants at the forum hereby resolve as follows:

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## RESOLUTIONS

**That the National Assembly suspends debate on the Petroleum Industry Bill until adequate time has been created for consultation with community people and the civil society;**

I That section 1 of the proposed bill be deleted and replaced with the following:  
“Property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the exclusive economic zone and extended continental shelf shall vest in the oil producing communities.” In other words, the control and management of natural resources including petroleum should be vested in the oil-producing communities who should pay taxes to the Federal Government in Nigeria;

That Community Development Agreements should be incorporated into the PIB to ensure development of the oil-producing communities. This should be a prerequisite for the issuance of licenses as obtained in the Mineral and Mining Act of 2007;

That the aspirations of the various ethnic nationalities as contained in their Bill of Rights and Declarations such as the Ogoni Bill of Rights (1990), The Charter of Demands of the Ogbia People (1992), Kaiama Declaration (1998), The Resolutions of the First Urhobo Economic Summit (1998); The Akalaka Declaration (1999); The Warri Accord (1999); The Ikwerre Rescue Charter (1999); The First Niger Delta Indigenous Conference (1999); Oron Bill of Rights (1999) and the Niger Delta Peoples' Compact (2008) be addressed in the PIB;

**That the role of communities in matters concerning granting of licenses for oil prospecting and production be clearly spelt out in the PIB;**

**That the PIB should properly stipulate penalties for environmental violations by operators of the oil industry in Nigeria and expunge section 286 which requires States and Local Governments to pay 1% and 0.5% of their annual derivation allocations into a Remediation Fund under the custody of the Inspectorate for the purpose of restoring the environment in cases of damage caused to the environment as a result of sabotage;**

**That the Land Use Act be repealed in line with provisions of the PIB.**



# COMMUNITIES and the PETROLEUM INDUSTRY BILL (PIB)

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