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THE PETROLEUM INDUSTRY BILL 2020:

EXAMINING PROVISIONS FOR THE ENVIRONMENT, HOST COMMUNITIES AND ACCOUNTABILITY

MAIN POINTS

The Muhammadu Buhari government submitted the Petroleum Industry Bill (PIB) 2020 to the National Assembly, as a revision of previous versions by the Umaru Musa Yar'dua and Goodluck Jonathan administrations.

As proposed, the PIB 2020 is inadequate to address the environmental, human rights and livelihoods concerns of host communities. Proposal for a host communities development fund does not support the participation of the communities in decision making. It may fuel oil industry divide-and-rule tactics and stoke communal conflicts.

Environmental pollution concerns are almost entirely ignored as the Executive Bill focuses more on production and commercial viability of the industry. The PIB 2020 disempowers federal and state environmental agencies from the monitoring and enforcement of environmental regulations in the petroleum industry.

While Nigeria records the highest and unacceptable levels of crude oil spills globally, and the country is among the worst in gas flaring globally, the PIB 2020 fails woefully in addressing these issues. There is no clear provision for addressing environmental pollution and sanctioning polluters. The Bill fails to introduce any new measures to encourage the elimination of routine gas flaring.

Oil exploration in a community in the Niger Delta, Nigeria

1. INTRODUCTION

Although Nigeria became a petroleum exporting country in 1956, it has never had comprehensive and detailed legislation to tackle the complex sectors that make up the petroleum industry (the industry)[1]. Instead, reactive laws are enacted from time to time to deal with situations as they arise. Scattered in several Acts, previous military regimes decreed many of these laws into existence.[2] The laws have not fundamentally altered

1 Petroleum is defined in section 362 of the PIB to mean' hydrocarbons as they exist in their natural state in strata and include petroleum, natural gas, condensate, bitumen but does not include coal and tar sands.'

2 Territorial Waters Act Cap T5 LFN 2004, Oil in Navigable Waters Act Cap O6 LFN 2004, Oil Offshore Revenues (Registration of Grants) Act Cap O4 LFN 2004, Exclusive Economic Zone Act of 1978 Cap E17 LFN 2004, The Petroleum Act 1969, Constitution of the Federal Republic of Nigeria

the industry's political economy, which remains heavily controlled by International Oil Companies (IOCs). Transnational corporations dominate the industry through joint ventures with the Nigerian National Petroleum Corporation (NNPC) and other contractual modes of operations like Production Sharing Contracts (PSCs), Risk Service Contracts, etc.[3] For over five decades after commencing oil production, Nigerian has earned significant revenues. However, petroleum earnings have contributed to distorting the national economy, politics and society as overall positive impacts are limited due to the overwhelming theft and corruption, lack of transparency and accountability, inefficient regulation and environmental degradation. Host communities in petroleum exploitation sites bear most of the adverse impacts with loss of livelihoods, diseases, social dislocation and human rights abuses.[4]

The Petroleum Industry Bill 2020 seeks to reform the Nigerian Petroleum Industry by repealing ten out of about fifty statutes that provide a legal framework for the industry and to amend one other.[5] It seeks to consolidate and codify most of the existing statutes and act as a one-stop legislative document for the industry. It also aims to restructure the commercial and regulatory governmental agencies representing Nigeria's interests in the industry. It introduces new fiscal requirements for upstream companies and deals extensively with gas development while seeking to entrench a transparent regime with open access to information against the present Petroleum Act regime. The Bill has 319 sections divided into five chapters and seven schedules that address governance and institutions, administration of the Nigerian Petroleum Industry (NPI) host communities, and fiscal and miscellaneous matters.

The PIB 2020 was forwarded to the National Assembly as an executive bill by the Muhamadu Buhari government. While the PIB 2020 is a return to the Umaru Musa Yar'dua administrations' initiative to have comprehensive legislation that encapsulates all statutes bordering on Nigeria's oil and gas industry, this version is a far cry from the ideals and good intentions of the 2008 and 2012 Petroleum Industry Bills. The PIB 2020 is a poor draft by all standards. Its provisions are inadequate to address environmental (including gas flaring), human rights and livelihoods concerns of host communities, in particular, which are the central focus of this briefing paper. We also examine how the PIB 2020 may impact state and local governments' ability to protect the environment, livelihoods, and health, using other legislative frameworks, including the Land Use Act.

2. A NEW REGULATORY REGIME FOR THE NIGERIAN OIL INDUSTRY

The major thrust of the PIB 2020 is to improve the profitability and commercialisation of the Nigerian

Cap C. 23 LFN 2004, The Associated Gas Reinjection Act CAP A25 LFN, 2004, The Deep Offshore and Inland Basin Production Sharing Contracts Act, CAP D3 LFN 2004, Hydrocarbon Oil Refineries Act No 17 of 1965, Cap H.5 LFN 200, Motor Spirits (Returns) Act CAP M20 LFN 2004, Nigerian National Petroleum Corporation Act No. 73 of 1977, CAP N.123 LFN 2004, Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993 Cap N.124 LFN 2004, Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003 Cap. P.43 LFN 2004, Petroleum Equalisation Fund (Management Board e.t.c.) Act No. 9, of 1975, Cap. P11 LFN 2004, Petroleum (Special) Trust Fund Act, Cap. P.14 LFN 2004 and the Petroleum Technology Development Fund Act

3 They Include Nigerian Agip Oil Company Limited, Shell Petroleum Development Company Nigeria Limited, Mobil Unlimited, Chevron Nigeria, TotalFinaElf Petroleum Company, among others. There are also new players like Statoil of Norway and China Oil Corporation.

4 Much literature abound on the theory that countries rich in natural resource perform less than their neighbours without any significant amount of natural resources. Nigeria is taken as a poster card country for this theory in that despite rich endowments of petroleum resources, it has performed economically than its neighbours like Benin and Ghana. See Annegret Mahler, 'Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta' (2010) No. 20 German Institute of Global Area Studies, < http://www.giga-hamburg.de/dl/download.php?d=/content/publikationen/pdf/wp120_maehler.pdf> accessed 2 August 2012, See also Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria (2004) 9(2) Geopolitics, < http://www.tandfonline.com/doi/abs/10.1080/14650040412331307832 > accessed 2 August 2012. Agency Reporter, 'Oil Industry Ridden with Corruption' Punch Newspapers (Abuja, 7 March 2012), http://www.punchng.com/business/business-economy/oil-industry-ridden-with-corruption-neiti/ accessed 1 August 2012, Oyedele, 'Fiscal Regime Under the New PIB: Revolutionary or Business as Usual?' Guardian (Abuja, 15 August 2012) http://www.ngrguardiannews.com/index.php?option=com_content&view=article&id=95600:fiscal-regime-under-the-new-petroleum-industry-bill-revolutionary-or-business-as-usual&catid=202:tax-watch&Itemid=728 accessed 17 August 2012

5 The Bills to be repealed include Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation 2004, and its Amendments, Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004; Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria 2004; Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004, Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123 Laws of the Federation of Nigeria as amended, when NNPC ceases to exist pursuant to section 54(3) of this Act, Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003, Petroleum Equalisation Fund (Management Board etc.) Act No. 9 of 1975, CAP P11 Laws of the Federation of Nigeria 2004, Petroleum Equalisation Fund (Management Board, etc.) Act, 1975, Petroleum Profit Tax Act Cap P13 LFN 2004, and the Deep Offshore and Inland Basin Production Sharing Contract Act 2019, as amended. It also seeks to amend aspects of the Pre-Shipment Inspection of Oil Export Act, 1996

petroleum industry and attract investment. This goal involves the measures to restructure the institutional and regulatory framework for the Nigerian petroleum industry. Top of the proposal is changing the role of the national oil company, the Nigeria National Petroleum Corporation (NNPC), and the Department of Petroleum Resources (DPR), an arm of the NNPC responsible for regulating the industry. In place of the NNPC, which has operated as a government parastatal, a new Nigeria National Petroleum Company Limited (NNPC Limited) shall be incorporated.

The proposed incorporation of the NNPC Limited is intended, among other objectives, to separate the Company from regulatory functions. Until the PIB 2020 becomes law, what has obtained in about 50 years is that the DPR has operated as a regulatory agency without clear legislative backing.[6] This means that it is not under any legislative mandate to operate transparently, accountably, and independently. This has seen the regulator submerged into the office of the Minister of Petroleum and the NNPC. The DPR is viewed more or less like a subsidiary rather than an independent regulator of the industry. It lacks an adequate funding arrangement and has to rely extensively on the NNPC and international oil companies (IOCs) to drive its logistics, adversely impacting its regulatory performance.[7]

In place of the DPR, the PIB 2020 proposes establishing the Nigerian Upstream Regulatory Commission (Commission) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (Authority) and confers them with varying powers to regulate the upstream and downstream aspects of the Nigerian petroleum industry. While the Commission has a remit for the upstream parts, the Authority has remit for the midstream and upstream aspects. The Commission and the Authority will be corporate entities,[8] saddled with ensuring that firms operating in the industry comply with laws and regulations. They are charged with monitoring firms' operations and promoting healthy, safe, efficient and effective conduct of petroleum operations in an environmentally acceptable and sustainable manner. The regulators will conduct investigations and enforce standards, maintain data banks, mandate firms to publish information relating to their operations, and publish reports. They will also be responsible for advising the Minister on fiscal, operational, technical and other matters including the issuance of permits and authorisations necessary for technical activities. The proposed agencies also have special regulatory functions regarding the commercial aspects of the industry, including reviewing and approving field development plans, supervising cost and cost control measures, etc. Furthermore, the Commission is responsible for promoting the exploration of the frontier basins and developing exploration strategies and portfolio management for exploration of unassigned frontier basins.

While the PIB 2020 would curtail the powers of the Minister of Petroleum and entrench some independence for the regulators, it would create a new all-in-all power in the form of the Commission. Apart from the Commission's regulatory functions, the PIB 2020 also vests the Commission with industry management roles. For example, the Commission would manage the Frontier Exploration Fund (FEC) provided for in section 9 (3-5) of the Bill into which is to be paid 10% of all rents receive for petroleum concessions. This Fund may distract the regulator from its core mandate of regulating. Ideally, the regulator should be separate from any involvement in the petroleum industry as this world compromise its independence and results in conflict of interest.

As the Commission is involved in regulating commercial activities of the upstream sector, the responsibility of computing, determining, assessing and ensuring payment of royalties, rents, fees, and other charges for upstream petroleum operations as stipulated in Sub-section (w) should have been handled by another agency and not the Commission, to prevent a conflict of interest.

3. ENVIRONMENTAL REGULATION AND PROTECTION

3.1 Need for Independent Environmental Regulation, Monitoring and Enforcement

The Niger Delta area of Nigeria shows more than any other location in the world how oil and gas exploration and development adversely impacts the environment and people's health and livelihoods. Therefore, a petroleum industry bill in the 21st century must place environmental issues at the front burner and make adequate environmental protection provisions.

6 It claims to be the successor to the Petroleum Inspectorate of NNPC which had been established by section 10 of the NNPC Act.

7 See P Subai, 'Towards a Viable Institutional Approach to Oil Spill Regulation in Nigeria' (2019) Vol. 2, NDU Law Journal

8 Ss 4 and 29

Oilspills devastates wetlands and mangroves in the Niger Delta

In particular, proper petroleum legislation should strengthen the powers of the Federal Ministry of Environment and agencies like the National Oil Spill Detection and Response Agency (NOSDRA) to make, independently monitor, and enforce compliance to environmental regulations for the oil industry.

However, the PIB 2020 makes the Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority established under Section 4 and Section 29, respectively, with environmental regulation and monitoring. While previous PIBs since 2008 made reference to the Federal Ministry of Environment and made provision for the Ministry to have regulatory powers in environmental matters, the PIB 2020 gives the Federal Ministry of Environment no such powers. The word environment was scarcely mentioned in the Bill. In chapter 2 Part II on upstream, which involves mostly international oil companies, the word environment was hardly mentioned.

Moreover, the PIB 2020 places too much power and responsibilities on the Commission to the ultimate detriment of the environment. For example, by section 7(c) the Commission is to:

> "(c) establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations including –
>
> (i) management of petroleum reserves and installations, and
> (ii) exploration, development and production activities within the onshore, offshore and exclusive economic zone of Nigeria;

For a meaningful regulation of any potentially environmentally harmful activity, the grantor of production licence should be different from the agency for monitoring and enforcing environmental standards. Enforcement of environmental compliance should be done by a completely different ministry or agency outside the said industry.

3.2 Environmental Impact Assessment is Not Enough

Section 102 makes a reasonable case for environmental protection by ensuring the licensee or lessee has an environmental development plan, and an environmental impact assessment before the Commission

or the Authority (mid and downstream sector regulators) gives approval for exploration. However, beyond ensuring that the lessee has plans to show they have considered their activities' environmental impact, there is no provision to address actual environmental pollution resulting from exploration and production activities. There is also no provision to sanction polluters or violators of environmental regulations beyond the financial (a contributory scheme) remediation plan spelt out in Section 103 particularly subsection 4 which does not show any serious punishment to offenders. This, therefore, makes the current PIB weak and could empower lessees to carry out pollution with impunity.

As drafted, the PIB 2020 is an invitation to environmental disaster. The operational standard demanded and expected of operators in the upstream and midstream petroleum operations in Nigeria is way below the acceptable international standard. The Bill requires the operators to operate in line with "good" international standards when the acceptable environmental standard if "best" international oil field practice. The "best" international oil field practice was the standard expected of oil and gas companies in the previous PIBs and raised the suspicion that the PIB 2020 has been doctored and sponsored by the International Oil Companies that worked against the earlier versions of the PIB. See sections 111 and 232. Section 111(2) provides thus:

"(2) The Authority shall only grant a licence for midstream or downstream petroleum operations, where -

(a) it meets the technical standards required for petroleum operations based on good international petroleum industry practices;

(b) the location and size of the area occupied by the facilities or right of way is acceptable to the Authority;

(c) it meets the health, safety and environmental standards, as determined by the Authority; and

(d) it provides for the efficient and economic use of facilities and pipelines."

In terms of environmental protection, a key element is the licensee's capacity to operate safely in line with best international oil field practice. Unfortunately, the assessment of bidders and the award process under section 74 has no environmental criterion. The reality is that the drafters of the Bill have minimal or no consideration for the environment.

Gas flaring acttivities still ongoing in the Niger Delta despite several deadlines for ending gas flaring in the country

Section 103(1) provides for licensee or lessee to "pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the licence or lease." However, there are no explicit

provisions for the determination of the amount to be contributed. The implication is that it will be subject to abuse in the absence of an objective and mandatory payment formalities and mandatory application of sanctions.

3.3 Who addresses oil spills?

It is essential and crucial that the PIB spells out clearly who is responsible for monitoring and regulating crude oil spills. Surprisingly, the PIB 2020 is silent on oil spill regulation, although, the general remit of the Commission includes environmental protection.

We propose that the PIB 2020, while abolishing the DPR, should reinforce the existing role of the National Oil Spill Detection and Response Agency (NOSDRA), as an agency under the Ministry of Environment, as an independent body to monitor regulate, monitor compliance, and appropriately sanction companies and entities responsible for oil spills.

4. GAS FLARING

Nigeria is among the top gas flaring countries in the world.[9] Nigeria flares about 800 million standard cubic feet (scf) of AG daily, from about 178 flare sites, while incidentally confronted by significant electricity shortages due primarily to the absence of gas to power its turbines.[10] Repeated deadlines for the ending of gas flaring and half-hearted government measures failed to address the problem in the past. Since returning to civilian rule in 1999, the country has attempted to tackle gas flaring via a multi-strategy framework which includes stronger regulation, gas utilisation, and gas commercialisation, with limited result.

Gas flaring causes severe devastation and unquantifiable environmental, socio-economic implications, and adverse health impacts for the communities' inhabitants in petroleum production sites. Through gas flaring, oil companies release greenhouse gases into the environment, contributing to the heating of the immediate atmosphere, and emit airborne contaminants, including cancer-causing agents. The combustion associated with gas flaring produces volatile organic compounds, polycyclic aromatic hydrocarbons, carbon monoxide, methane, nitrous oxide, sulphur oxide, nitrogen oxide, black and organic carbon, all with severe environmental and health implications.[11] It also releases organic compounds like benzene, toluene, xylene and hydrogen sulphide, and carcinogens like benzapyrene and dioxins. Gas flaring is responsible for the release of over 250 identified toxins such as carbon di-sulfide (CS^2), carbonyl sulfide (COS) and toluene; metals such 'as mercury, arsenic and chromium; sour gas with hydrogen sulfide H2S and sulfur dioxide (SO2); nitrogen oxides (NOx).[12] In addition, gas flaring contributes to climate change. Gas flaring in the Niger Delta has contributed more greenhouse gases to the earth's atmosphere than other sub-Saharan African sources.[13]

Gas flaring is illegal by the extant laws in Nigeria but was only permissible subject to fulfilment of certain conditions and payment of penalties. The Associated Gas Re-Injection Act of 1980 made it illegal, and the present Bill will repeal it once it is passed into law. The question is whether the Petroleum Industry Bill 2020 has made more explicit and rigorous provisions for discouraging gas flaring?

Unfortunately, gas flaring provision is very brief, and the PIB 2020 still creates excuses for continued gas flaring. This can be seen in Section 104, which provides:

> "(1) A licensee, lessee or operator that flares or vents natural gas, except –
>
> (a) in the case of an emergency;
>
> (b) pursuant to an exemption granted by the Commission; or
>
> (c) as an acceptable safety practice under established regulations, commits an offence under this Act and shall be liable to a fine as prescribed by the Commission in regulations under this Act.

9 See Global Gas Flaring Reduction Partnership, www.worldbank.org/en/programs/gaslaringreduction£7, accessed 27 April 2019.

10 Department of Petroleum Resources 'Oil and Gas Reports' (2017)https://www.dpr.gov.ng/oil-gas-industry-annual-reports-ogiar/, accessed 13 November 2018

11 AO Akinola, 'Resource Misgovernance and the Contradictions of Gas Flaring in Nigeria: A Theoretical Conversation' (2018) Vol. 53(5) Journal of Asian and African Studies, 749.
Akionla (n 11) 751

12 Ejiogu (n 8) 986

13 Anomoharan (n 11) 667

(2) A fine due under this section shall be paid in the same manner and be subject to the same procedure for the payment of royalties to the Government by companies engaged in the production of petroleum.

(3) A fine paid pursuant to this section shall not be eligible for cost recovery or be tax deductible."

The likely emergency envisaged is open to abuse and exploitation of the oil companies. More stringent conditions should be enacted for granting gas flaring exemptions to licensees, lessees or operator by the Commission.

Section 104(1)(c) gives the Commission the power to determine the fine for environmental damage. The Bill could provide more certainty by stating the minimum penalty for the offence of gas flaring. The Federal Ministry of Environment or a relevant agency under the environment Ministry should enforce environmental infringements in the petroleum industry. The fact that payments are to be made like royalties is a pointer that gas flaring of gas will be business as usual. The Bill does not address the health challenges of continuous flaring of gas, and there are no provisions for providing relief to victims of gas flaring in the sites of extraction. While host communities suffer the direct consequences of gas flaring, penalties are paid to the federal government without consideration to the communities/local or state governments who are the direct burden bearers of these acts

The absence of a flare out date is an indication that there is no obligation on the part of petroleum-producing companies to end gas flaring as far as they can pay the fine which is infinitesimal compared to amounts needed to execute projects that will address costs of energy shortages in Nigeria and the severe health and livelihood impacts borne by members and residents of communities in the sites of extraction.

The drafters of the PIB 2020 give no thoughts to the environmental damage and negative health implications of gas flaring. Though section 105 provides that a "Licensee or Lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations", the PIB 2020 would not encourage oil companies to bring routine gas flaring to a halt.

5. THE BURDEN OF HOST COMMUNITIES

Chapter 3 of the Bill, which contains Sections 234 to 257, provides for host communities development. The objective of the chapter, as stated in section 234(1) is to:

"(a) foster sustainable prosperity within host communities;
(b) provide direct social and economic benefits from petroleum operations to host communities;
(c) enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and
(d) create a framework to support the development of host communities."

Meanwhile, section 234(2) gives the Commission and Authority powers to make regulations concerning host communities development on areas within their competence and jurisdiction. There is no clear and sure punishment for operators' failure to establish host communities development trust and other obligation in chapter 3 of the Bill (see the use of "may" in section 238).

The chapter provides for the creation of various institutions of bureaucracy. First, the Settlor shall incorporate a "Host Community Development Trust" to benefit the host communities for which the settlor is responsible. The Trust is to have a Board of Trustees which membership is to be determined by the oil company with the liberty to appoint persons of their choice including those "who may not necessarily come from any of the host communities." It is this Board of Trustees, composed of persons possibly alien to the host community and selected by oil companies, that would manage the communities development trust and determine what happens to the trust fund. Also, they shall have 5% of the trust fund to themselves as administrative cost and for 'special projects'. (See section 244)

Funding is mainly from the oil companies' "annual contribution to the applicable host community development trust fund of an amount equal to 2.5% of its actual operating expenditure in the immediately preceding calendar year in respect of all petroleum operations affecting the host communities for which the applicable host community development trust was established" (See section 240). There is a Management Committee for the community development trust, the Host Community Advisory Committee, and then fund managers to be appointed. The Bill creates another bureaucracy in the form of the Niger Delta

Development Commission (NDDC) whose funds may be controlled by powers outside the host communities.

The entire chapter is to create an obligatory legal framework for existing corporate social responsibility spending of oil and gas companies. Section 316 under miscellaneous provisions in Chapter 5 made this very clear. It provides:

> "(1) Every settlor shall transfer any existing host community development project or scheme to a host community development trust established pursuant to the provisions of this Act."

Nothing new has been added for the host community's benefit because operator/settlors ordinarily have a duty to be socially responsible to the host communities. Thus, the PIB 2020's provisions for the host communities fall short of the 10 percent equity participation of host communities in oil and gas investments contained in the abandoned 2008 and 2012 PIBs.

Moreover, in exchange for or to be entitled to the oil company's social responsibility obligations, the PIB 2020 places the responsibility of policing and securing petroleum infrastructure on the host communities, as the communities would be liable for the cost of sabotage of oil and gas companies facilities. Members of host communities are expected to remain vigilant night and day throughout the year to ensure the security of oil facilities for the operator/settlor. What a burden to place on poor communities? See section 257, which provides thus:

> "(1) Any payment made by the settlor pursuant to section 240(2) of this Act, shall be deductible for the purposes of hydrocarbon tax and companies income tax as applicable.
>
> (2) Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host community, the community shall forfeit its entitlement to the extent of the cost of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year.
>
> (3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest."

We recommend that the percentage contribution to the Fund should be increased to 10 percent, and membership of any institution responsible for the management of the Fund should include representatives of the host communities. The operator may have a representative in the board to be abreast with what happens to the Fund. Also needed is a better legal framework for determining projects and their execution. Anything short of that is to create mushroom NDDCs over the Niger Delta with nothing to show for the billions and millions supposedly reserved for host communities development but syphoned by non-community members who control the board. This has been the bane of the NNDC, which is under the Presidency.

Details of the funding arrangements for the proposed petroleum host communities' development trust may create room for corruption. For example, section 240(3) of Chapter 3, it is stated that "Each host community development trust may receive donations, gifts, grants or honoraria that are provided to such host community development trust for the attainment of its objectives." The provision was silent on who can give these gifts and donations and under what conditions those donations and gifts are permissible. It may be difficult to determine a motive and how donations could be used to influence members of the development trust.

5.1 The PIB 2020 versus the Mineral and Mining Act, 2007 on Individual and Communities Rights

The Nigerian state must avoid the application of double standards in the extractive industry. A comparison of the PIB 2020 and the Minerals and Mining Act, 2007, which governs the solid minerals sector, shows that the legislation for solid minerals provides better protections for communities in extraction sites. The PIB 2020 denies communities the right to property and the freedom to participate in deciding how people should gain access to their land for petroleum production and to determine compensation amounts for damages to communal and personal property and livelihoods. The PIB

2020 provides that where property is damaged, the amount of compensation payable "shall be determined by the Commission and prescribed by regulation made under this Act". See section 101(3) & (4) of the Bill which provide that:

> "(3) A licensee or lessee who causes damage pursuant to subsection (2) of this section shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.
>
> (4) The amount of compensation payable under subsection (2) of this section shall be determined by the Commission and prescribed by regulation made under this Act."

Section 101 is significant as it determines the right to livelihood and property. The provisions are condemnable as better provisions are contained in the Minerals and Mining Act of 2007 that governs exploitation of solid minerals.

The practice where oil licence or lease can be granted without regard as to whether the said field would be very close to communities or not should end. Under the Minerals and Mining Act 2007, lives of communities and individuals are given due regard. For instance, section 3(1)(c) the Mining Act provides that

> "no mineral title granted under this Act shall authorise exploration or exploitation of mineral resources on, or, in, or the erection of beacons on or the occupation of any land – occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or sited within fifty meters for a railway, or which is the site of, or within fifty meters of, any government or public building, reservoir, dam or public road;".

Furthermore, unlike the PIB 2020 where decisions are solely made by the Minister, the Commission or the Authority, the Mining Act provides for consultation with landowners even before the grant of mining title to a mining company. Also, where private land is to be affected, the government must obtain the private owner's consent before the mining title would be granted. Where such consent is absent, the private land will be excluded. Such provisions are missing in the PIB 2020.

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

> "(1) The lessee of the mining lease shall pay rent, in advance without demand being made of it, at such rate per annum as shall be determined by the Minister for all lands occupied or used by it in connection with its mining operations.
>
> (2) The Minister shall, before granting a mining lease on any private or any state land –
>
> (a) cause the owner or occupier of the land to be informed of the intention of the Minister to grant the lease; and
>
> (b) required the owner or occupier of the land to state in writing within the period specified by the Regulations made under this Act, the rate of annual surface rent which the owner desires should be paid to him by the lessee for the land occupied or used by it for or in connection with its mining operations.
>
> (3) If within the time specified pursuant to subsection (2) of this section, the owner or occupier states the rate of the rent he desires should be paid, and the Minster is satisfied that the rent is fair and reasonable, the surface rent payable in respect of the land of the owner or occupier shall be the amount specified and the rent shall be notified to the lessee as soon as possible...
>
> (4) The rate of the surface rent, whether fixed by the owner, occupier or by the Minister, shall be subject to revision by the Minister at intervals of five years.
>
> (5) In fixing the surface rent payable, the Minister shall take into consideration the damage which may be done to the surface of the land by the mining or other operations of the lessee, for which compensation is payable."

Apart from the land rent, communities and individual landowners are still entitled to compensation for disturbance of surface rights. See section 107of the Mining Act:

> "A holder of the Mineral title may, in addition

to any other amounts payable under the provision of this Act and subject to valuation report by a Government licensed valuer, pay to the occupier of the land held under a State lease or the subject of right of occupancy-

(a) reasonable compensation for any disturbance of the surface rights of the owner or occupier and any damage done to the surface of the land on which the exploration or mining, is being or has been carried; and

(b) in addition pay to the owner of any crop, economic tree, building or work damaged, removed or destroyed by the holder of the mining title or by any of its agents servants, compensation for the damage, removal or destruction of the crop, economic tree, Building or work."

See also section 108 which provides:

"The Amount of the compensation payable under the provisions of this part of this chapter shall be determined by the Mining Cadastre Office after consultation with the State Minerals Resources and Environmental Management Committee and a Government licensed Valuer."

The above provision for compensation under the Mining Act creates certainty on how the amount of compensation would be arrived at as opposed to the obscure situation presented by the PIB 2020.

Also, by Section 19 of the Mining Act, a committee to be known as Mineral Resources and Environmental Management Committee established for each state of the Federation is to among others, consider issues affecting compensation and make necessary recommendations to the Minister; discuss, consider and advise the Minister on the matters affecting pollution and degradation of any land which may, from time to time, refer to the Committee and advise the Local Government Areas and Communities on the implementation of programs for environmental protection and sustainable management of Mineral resources. No such committee is created under the PIB 2020, which also fails to grant any roles to state and local governments.

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

Furthermore, section 121 of the Mining Act provides for the establishment of an Environmental Protection and Rehabilitation Fund to guarantee the environmental obligation of mining companies. This Fund ensures the restoration of any damaged environment in the cause of mining activities. There is no equivalent in the PIB 2020.

6. DISEMPOWERING STATE AND LOCAL GOVERNMENTS

Chapter 2 of the PIB 2020 on administration of petroleum activities gives no powers or recognition to state and local governments from exploitation to exploration and production stages. The Bill only contains a brief directive to state governors to issue certificate of occupancy, and this is only in respect of midstream and downstream petroleum operations.

See section 115 of the Bill which provides:

"(1) A Licence or Permit shall be issued subject to compliance by the applicant with the provisions of the Land Use Act Cap L5 Laws of the Federation of Nigeria 2004 in respect of compensation for acquisition of land for midstream and downstream petroleum operations.
(2) The Governor of a State of which land is required for carrying out operations or activities subject to a licence or permit may issue a certificate of occupancy pursuant to the Land Use Act in respect of the land and in accordance with existing state law."

There is no role for states and local governments in upstream petroleum activities. The entire decision process rests with the Commission.

Under the PIB 2020, state governments are still kept out of the process of environmental protection even though as trustees of state land under the Land Use Act legal ownership of land is vested in the governor of the state.

7. ACCESS TO JUSTICE

One salient area that affects communities adversely, which must be addressed and carefully monitored is access to justice. Once there is no access to justice, the injustice is perfected. Unfortunately, the PIB 2020 is wanting in the area of access to justice. Under the Bill, any persons or communities affected by a decision or an act of the Minister, Commission and Authority have only two months from the date of the act to take formal legal steps to seek redress. The implication is that even before poor host communities in the creeks of the Niger Delta know of an action and take a decision to brief a lawyer, their right to remedy and justice would have been extinguished by the provisions of the law. See sections 307 and 308 of the Bill.

8. CONCLUSION

The Petroleum Industry Bill (PIB) 2020 presented to the National Assembly of Nigeria by the Federal Government is a revision of previous versions that the National Assembly failed to pass due to controversies over provisions for host communities. As it stands, the 2020 version has eliminated the provision for 10 percent equity participation for the communities in extraction sites. Instead, the existing corporate social responsibility spending of oil companies is given the stamp of law without considering how such programmes spur violence and dislocation in the communities. Cronyism and divide and rule tacts of the oil companies would continue with the proposed host communities development trusts if the same oil companies determined their composition.

Furthermore, concerns about environmental pollution are almost entirely ignored as the Executive Bill focuses more on production and commercial viability of the industry. While Nigeria records the highest and unacceptable levels of crude oil spills globally, and the country is among the worst in gas flaring globally, the PIB 2020 fails woefully in addressing these issues. On the environment, what the Buhari government has proposed would produce an environmental regime that is even worse than what we have currently.

All voices must be considered. The issues that have historically plagued the petroleum sector, including environmental devastation and the loss of livelihood of millions of people in production sites, are addressed before the Bill is passed into law.

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