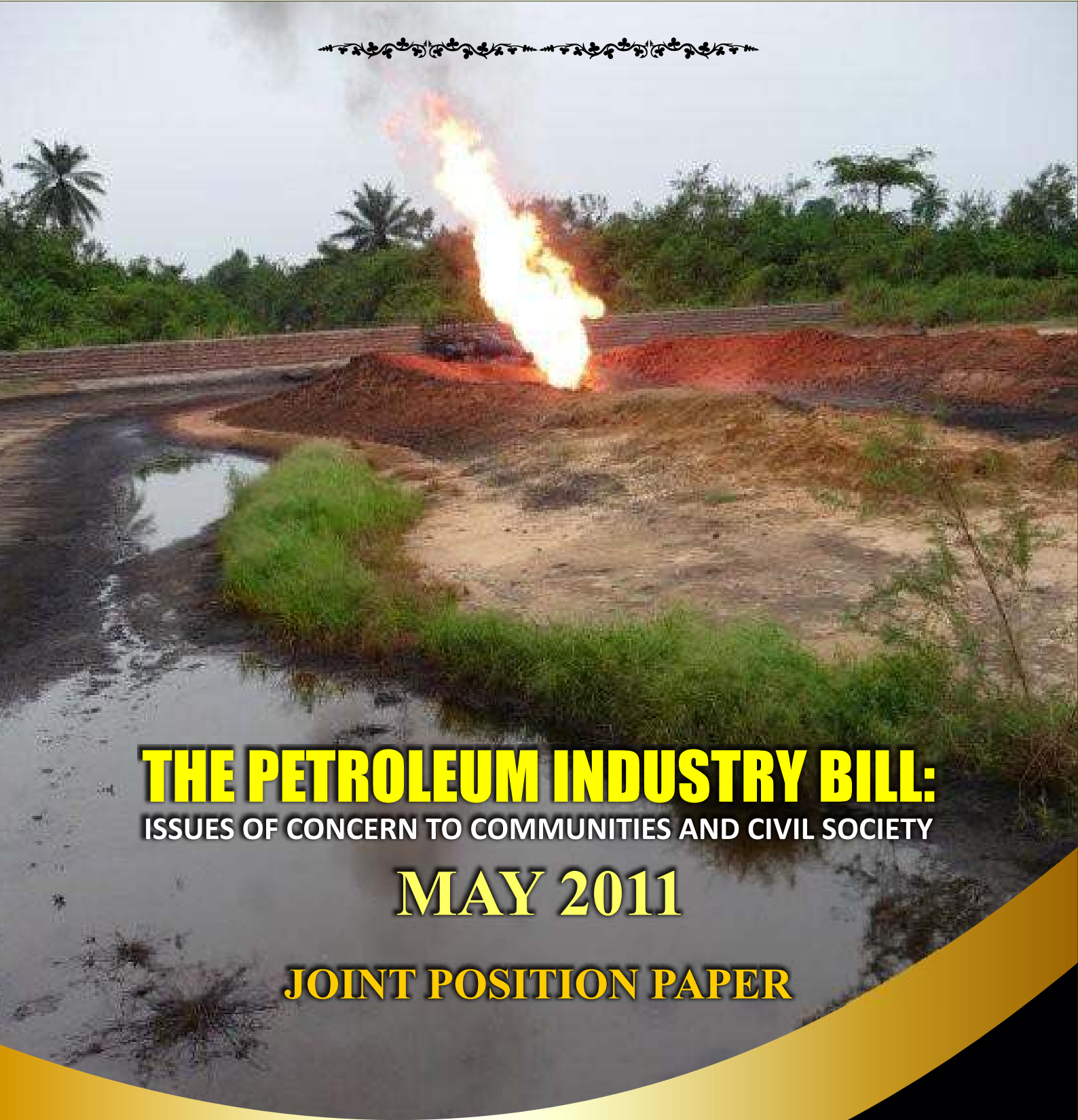

THE PETROLEUM INDUSTRY BILL:

ISSUES OF CONCERN TO COMMUNITIES AND CIVIL SOCIETY

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JOINT POSITION PAPER

Social Action
Social Development Integrated Centre

Environmental Rights Action
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Civil Society Legislative Advocacy Centre

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PREFACE

The Environmental Rights Action, Social Action and Civil Society Legislative Advocacy Centre are among the leading Non Governmental Organisations in Nigeria that have been at the forefront of the campaign for the passage of a Nigerian peoples Petroleum Industry Bill since the introduction of the Bill by the late President Umaru Musa Yar'Adua's administration in 2008.

In the course of time, the Petroleum Industry Bill became the most celebrated, interesting, discussed and controversial bill in the annals of legislative history of Nigeria in recent times.

The above was not surprising as the bill meant different things to different sectors of the Nigerian society and foreign business associates depending on what their expectations were.

While the three organisations and their colleagues as grassroots organisations tried hard to create a balance in the final outcome of the bill in other to satisfy to a very large extent the desires and expectations of the Nigerian people, other interests were equally at work leading to various versions of the bill being placed in the public domain at different times.
Believing that as critical stakeholders, we owe our dear compatriots in the hallowed chambers the duty of supporting them in the bid to actualising the dream of a prosperous Nigeria based on equity, justice and fair play, it becomes important that at this point in time, when the bill is almost at its passage stage, we raise the red alert as to what our representatives are about to pass and its implications on the Nigerian people both alive and unborn!

It is with this sense of responsibility that we cause this position paper which is to x-ray the version of the bill before the National Assembly which we believe is a version totally made and manipulated by the Oil Companies Operators both local and trans-national to be passed by our representatives who in their patriotic bid to give Nigerians the most wanted Petroleum Industry Bill, because of time constraint and as a rush hour activity may give Nigerians a destructive piece of legislation.
We will use this medium to call on Honourables and Distinguished Senators to pulse and exercise some restraint over this Bill to ensure that what they eventually come out with will be that which will bequeath prosperity to the Nigerian people rather than much more agony to the people. We will rather encourage the National Assembly Members to ensure that their actions are on the side of patriotism by incorporating the contributions of the broad spectrum of Nigerian people instead of the skewed version that which will compound the Nigerian peoples crisis point.

The above is premised on the time hallowed assumptions that in legislative drafting, in order to make a law that will command acceptability, the following issues should be taken into consideration:

1. The problem on ground – there is in most instances an issue on ground which cannot be tackled ordinarily, such problem or situation may need legislation to tackle it.
2. How it can be solved – in the circumstance above, such piece of legislation should provide for how to tackle the said problem. It must provide for solution.
3. Consistency with existing good laws and repeal of existing bad laws – such law must take into consideration all relevant existing laws relating to the sector it covers. Depending on the nature and scope of such new law either repeal existing laws that will impede its effective implementation or is made to reinforce existing laws that will enhance its implementation.
4. Penalty/punishment for violation – Any law that is made with little or no provision as to what constitutes a violation of that law with punishment prescribed will end up being either a history book or a mere statement of intention or admonition.
5. Enforcement mechanism – Related to the above is the issue of enforcement. Any law that fails to prescribe a clear cut enforcement mechanism, ends up even if beautifully couched, becoming a dead law or law in the text books as it will be either difficult, cumbersome or impossible to enforce.
   The basic question posed here is, does the Petroleum Industry Bill 2010 before the National Assembly meet the above conditions?

INTRODUCTION

The Petroleum Industry Bill (PIB) pending before the National Assembly is a positive attempt to deal with the multifaceted problems of the industry, including inefficiency, corruption and environmental degradation. In this position paper, we outline some of the broad policy issues that should be revisited to ensure an improved consolidated Petroleum Industry Bill. We have examined the Senate and House version as compared with the original proposals of the Federal Government during the Yar'Adua and Jonathan's Presidencies. In all, our overriding focus is with the concern of communities that host and have been victimized by decades of crude oil and gas exploitation, transportation and processing. While we believe that leaving oil in the soil is ultimately better for the Nigerian society, and for the livelihoods of communities, we are making this intervention principally because of the grave and immediate risks a faulty PIB portends for Nigeria.

GENERAL COMMENTS: POSITIVE ASPECTS OF THE PIB

We welcome the decision of government to have laws relating to the industry in one single text for accessibility.

We note that the language of the PIB is gender sensitive.

It is encouraging that the PIB states that the management of petroleum resources shall be conducted in accordance with the principles of transparency, good governance and sustainable development of Nigeria. Furthermore section 3(2) which mandates all actors in the industry to 'consider the economic, social and environmental interest of petroleum producing communities as an important element of their overall project development and management philosophy...' is an acknowledgement of the concerns of the communities.

The PIB has reduced the powers of the Petroleum Minister and creates a Petroleum Commission to run the petroleum industry. However, the power to make subsidiary legislation which the Petroleum Minister exercises presently has been removed with no clear provision vesting power on any official to make subsidiary legislation.

We note other useful provisions which include consumer protection (s.316), provision of service to customers (s. 317), competition and market regulation (s.320) and encouragement of participation of Nigerians in the petroleum sector (ss334-338). Indeed the PIB sets minimum limits for Nigerian board membership, managerial and professional cadres. (Though in the house and senate version, the Nigerian Content provisions are completely removed on the ground that the provisions are already covered by the Nigerian Oil and Gas Industry Content Development Act, 2010) Section 214(2)(a)(I), which provides for a minimum of 50% of available petroleum blocks or fields for bidding to be awarded exclusively to indigenous companies.

GENERAL COMMENTS: LIMITATIONS OF SENATE AND HOUSE VERSIONS OF THE PIB

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 PIB makes a lame attempt under section 121 (1)(e) with the suggestion that one person would be appointed into the National Oil Company to represent the oil producing areas. By this proposal, the person to be so appointed must have technical experience in the Nigerian petroleum industry and would be appointed in order of alphabetical rotation among the oil producing states. However, it fails to provide for any form of community participation in the award of licence and exploration process. Unlike the positive provision in the Mineral and mining Act 2007, the owners and occupiers of land in oil exploration areas are completely ignored in the process of granting licences and leases for oil exploration.

There are no provisions for capacity building of indigenes of host communities to become employable in the petroleum industry and have meaningful stake in the petroleum industry.

In addition, several provisions of the PIB are problematic, especially, the operations and management of the Petroleum Producing Host Communities Fund. This Fund is proposed for the development of the economic and social infrastructure of communities within each PML for which the Fund is established.

There is no concrete provision for responsibility for restoring the environment as a result of petroleum exploitation activities. It is our view that a model similar to the Environmental Protection and Rehabilitation Fund, established for the purpose of guaranteeing the environmental obligations of Holders of Mineral titles under the Minerals and Mining Act, 2007 should be adopted for the PIB. The Rehabilitation Fund under the Mining Act is managed by reputable institutions customarily engaged in business as trustees or fund managers. The trustees appointed operate the fund in accordance with the provisions of the Trustees Investment Act, Cap T22 Laws of the Federation of Nigeria, 2004.

Section 8(3) on the appointment of a Director General of the National Petroleum Commission is restrictive and as such inappropriate. It is wrong to assume that only engineers and geologists possess requisite experience in the oil industry as to be the only ones that can be appointed to the position.

SPECIFIC AREAS OF MAJOR CONCERN:

COMMUNITY PARTICIPATION

By participation we mean the involvement of communities in the process from the ownership of the resource to the management and the benefits from the resource. The current Senate and House versions of the PIB do not make provisions for developing the specific capacity of members of host communities to participate in the oil industry and benefit from it as those who bear the harsh reality of its devastating effects.

There is the need to make concrete and positive provision under Part VI in the PIB to not only make provision for all Nigerians to participate in oil exploration but also guarantee participation of indigenes of host communities as a way of mitigating livelihoods lost to petroleum exploitation.

The real issue is that, in many areas, the host communities have lost their traditional means of livelihood such as farming and fishing and it is the absence of guaranteed alternatives that has brought about the agitations and dissent in the Niger Delta. Section 121 (1)(e) which provides for one person to be appointed into the Board of the National Oil Company to represent the entire oil producing areas of Nigeria does not translate to community participation.

A grave omission is the fact that unlike the Minerals and Mining Act, land owners in the host communities are not consulted in any way before the grant of leases and licences over their farm lands and waters.

In current practice, communities have no say on oil installations crisscrossing their farmland. The PIB maintains this unfortunate status quo.

COMMUNITY PROTECTION UNDER THE PIB AND THE NIGERIAN MINERALS AND MINING ACT, 2007: ONE COUNTRY, DIFFERENT REGIMES

There are very stark differences between provisions for host communities in the Minerals and Mining Act of 2007 (Mining Act) and the proposed PIB. While the Mining Act attempts to protect communities within the mining areas, the proposed PIB continues with the relegation of community concerns. It is disappointing to note that the proposed PIB has no clear provision to redress the situation whereby oil and gas infrastructures have been built sometimes within communities with the result of adverse health impacts and destruction of community livelihoods.

With the proposed PIB, an oil licence or lease can be granted without regard as to whether the said field would be very close to communities. However, with the Mining Act, lives of communities and individuals are held sacred. Section 3(1)(c) the Mining Act provides that

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

Unlike the proposals of the PIB, the Mining Act provides for consultation with land owners even before the grant of mining title to a mining company. Also, where private land is to be affected, government must obtain the consent of the private owner of land before mining title would be granted. Where such consent is absent, the private land will be excluded.

In further recognition of the right of the owner of property to determine its rent, the Mining Act clearly gives the land owner 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) require the owner or occupier of the land to state in writing within the period specified by the Regulations made under this Act, the rate of annual surface rent which the owner desires should be paid to him by the lessee for the land occupied or used by it for or in connection with its mining operations.
(3) If within the time specified pursuant to subsection (2) of this section, the owner or occupier states the rate of the rent he desires should be paid, and the Minster is satisfied that the rent is fair and reasonable, the surface rent payable in respect of the land of the owner or occupier shall be the amount specified and the rent shall be notified to the lessee as soon as possible...
(4) The rate of the surface rent, whether fixed by the owner, occupier or by the Minister, shall be subject to revision by the Minister at intervals of five years.
(5) In fixing the surface rent payable, the Minister shall take into consideration the damage which may be done to the surface of the land by the mining or other operations of the lessee, for which

compensation is payable.

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

A holder of the Mineral title may, in addition to any other amount(s) payable under the provision of this Act and subject to valuation report by a Government licensed valuer, pay to the occupier of the land held under a State lease or the subject of right of occupancy-

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

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

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

The above provision for compensation under the Mining Act creates more certainty on how the amount of compensation would be arrived at than the provisions of Section 221, 222 and 346 of the PIB.

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

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

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

COMMUNITY EQUITY

The current Senate and House version of the PIB in Chapter G provides for the establishment of a Petroleum Producing Host Communities Fund for every petroleum mining lease which shall be a body corporate (s. 168(1)). Then a nominal 10% equity participation called the “Community Equity Participation” in upstream petroleum operations is vested in the Fund as beneficial owners to hold in trust for the communities 'enclosed fully or partly within the respective PML' (s. 169(1). There are no stated criteria for identification of communities that are to be considered enclosed fully and those enclosed partly. To avoid confusion in the distribution process we suggest that these terms be properly defined and the criteria clearly stated.

Section 169 (2) provides that “the contribution of the Community Equity Participation will be paid into the Fund by each corporate entity holding an equity or contractual right in the PML pro rata its production entitlement”. This seems to be the basic provision of the actual meaning of the 10% equity. From the above

section it would appear that every oil company is expected to pay 10% of its holding in any PML to the Fund established for communities within the PML. However, the position of the National oil Company, whether it will make contribution or not is not clearly stated. The 10% equity is made nominal. The word nominal is not defined in the PIB. Nominal means – supposed, insignificant, in name only, ostensible. Therefore, going by the ordinary dictionary meaning of nominal, the communities have no stake in whatever happens in any PML beyond the money paid to them. This is far from participation in a process and contrary to the spirit of equity promised by the Late President Yar'Adua and President Goodluck Jonathan. The least the communities deserve is actual equity.

Section 170 provides criteria to be used for allocation of the Fund to communities. It is such that no community can be sure of what to expect from the Fund. The combined effect of sections 168 – 191 is that another interventionist institution like the Niger Delta Development Commission (NDDC) has been created. As much as 20% of the Fund is to be spent on those that will administer the Fund. Also the PIB restricts the manner of use communities can put their money into – it provides for only projects to be decided by the powers that control the Fund – the Council. Also 10% of the 10% nominal equity due to the communities in any PML is to be paid to the National Petroleum Commission. This is unjustifiable. It is our view that to avoid a repeat of the NDDC situation where the Funds end up making individual billionaires at the expense of the people, a management arrangement similar to the Environmental Protection and Rehabilitation Fund model in section 121 of the Minerals and Mining Act with necessary modifications be adopted for the Petroleum Producing Host Communities Fund.

By the provisions of section 169(4), the sole contributor to the Fund becomes the Nigerian state. The section states that 'the Fund contribution made by each such corporate entity will constitute an immediate credit to its total fiscal rent obligations as defined in this Act. Can this be said to be in the National interest? We don't think so. This amounts to lower annual income for the Nigerian state. Unless petroleum companies are made to respect and appreciate host communities, see and treat them like partners there may not be sustained peace and development in the petroleum producing areas of Nigeria.

ENVIRONMENTAL MANAGEMENT

Furthermore, the version of the PIB being considered by the National Assembly makes no serious provisions for environmental protection beyond urging the various holders of licences and leases to operate in line with international best practices. Though the Inspectorate is vested with powers to make regulations in every aspect of health, safety and environment in the petroleum industry, it is doubtful if any reasonable and adequate regulation on environmental protection within the context of the oil and gas industry is possible in view of the consistent disregard for the people and environment of the Niger Delta as displayed even by the provisions of the PIB.

Moreover, the provision for compensation excludes the active participation of land owners and land users in oil producing areas in the determination of what is adequate as compensation for them. Section 222 provides that:

"The amount of compensation payable under section 221 shall be determined by the guidelines set out by the inspectorate in consultation with designated persons and representatives which shall include a licensed valuer, in accordance with regulations prescribed under this Act." (See also section 346 still on compensation).

This is a completely vague provision as the persons that will be involved in the process of computation of the amount of compensation are not clear and the prescribed regulations under the Act are uncertain. The regulations could be bad or good. However, the provision for mandatory annual review of the guidelines is a welcome development.

Section 223 provides for the submission of an environmental management plan by every licensee or lessee engaged in petroleum operations. While the provisions contained therein and in section 224 are positive if met with the political will required to enforce the provisions, it is sad to note that the entire process

excludes the participation of the host communities that are the sure victims of environmental disasters associated with petroleum exploration.

Furthermore, Part VII makes provision for health, safety and environment. The provision of sections 339-347 are substantially the same with previous versions of the PIB. The only significant change is the removal of the environmental remediation fund. It provides for the application of the precautionary principle but fails to clearly adopt the polluter pays principle. Section 343 that provides for the duty to restore is watered down by an unjust transfer of responsibility to State and Local Government in cases of sabotage. 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. 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. It is suggested that the Environmental Remediation Fund be well established at least in the same intent and purpose like the Environmental Protection and Rehabilitation Fund model under section 121 of the Minerals and Mining Act, 2007.

We wish to state that the issue of sabotage as provided for under the PIB is anti-environment and negates the principle in Ryland V. Fletcher. It is an oppressive provision to cow the indigenes of petroleum host communities in favour of Petroleum exploration companies. The natural and just thing to do is for the owner of oil facilities to look for whoever sabotaged their operation and bring the person to book.

GAS FLARING

Under the existing law (Associated Gas Re-Injection Act), gas flaring is illegal. Oil producing companies were given a deadline of January 1, 1984 to stop all gas flares or be made to pay penalty for breach of the law banning gas flaring. Section 3(1) of the Associated Gas Re-Injection Act provides:

"Subject to subsection (2) of this section, no company engaged in the production of oil or gas shall after 1 January, 1984 flare gas produced in association with oil without the permission in writing of the Minister".

The Minister's permission is on field by field basis and on a case by case basis. And by section 4 of the law the penalty for breach of section 3 is forfeiture to the concessions granted.

Unfortunately, the PIB as currently drafted, seems to have given complete legality to the flaring of gas as the earlier inadequate provision that merely imposes penalties for gas flaring has been removed completely. There is no condemnation of gas flaring in the PIB and this action clearly is a slap on the face of communities that have borne the impacts of pollution and other hazards of associated gas flaring, and negates Nigeria's commitment to combat climate change.

The PIB simply mandates companies to flare associated gas indefinitely in all existing oil wells and flare points. One had expected that with the responsible people we have at the National Assembly, the PIB would have been used to categorically legislate on a flare-out date while stipulating very strict penalty for failure to put out the flares on the day so provided. The implication is that host communities to these oil companies will continue to suffer from the obvious health hazards associated with gas flares even after gas fkare has been declared to be illegal and breach of the constitutionally guaranteed rights to life and dignity of the human person by a Nigerian court of competent jurisdiction. (Jonah Gbemre Vs. SPDC & 2 Ors)

There are no concrete and compelling provisions for use of associated gas. Section 203(1) (merely provides that where a licensee declares a commercial discovery it shall be required to submit a development plan of the commercial discovery to the Inspectorate. Section 203 (3)(f) then provides that such development plan shall only be approved where it 'provides for elimination of routine gas flaring'. Generally section 203 only requires that new operation should be with proper utilization of the associated gas. There is no difficulty in submitting a development plan. The issue is the willingness to stop gas flaring on the part of petroleum companies and the political will of government to enforce stipulated penalties, if any. Obviously, the political will is already lost by the failure of the National Assembly to insert into the PIB deadline on gas

flaring and worse still a complete non-mention of ongoing gas flaring and the stand of government on the burning issue. When considered along with the fact that the national assembly scuttled an opportunity to stop gas flaring when the Senate passed a bill that sought to terminate gas flaring by end of 2010 while the House of Representatives took no action at all, we reach the conclusion that they are unwilling to legislate for the full criminalisation of this already illegal act.

TRANSPARENCY AND ACCOUNTABILITY IN RESOURCE MANAGEMENT

The present version of the PIB in terms of transparency and accountability is an improvement on previous ones. The powers of the Minister to approve budgetary variations without legislative approval have been expunged under sections 18, 43, 44, and 79. However, sections 21, 80 and 113 still retain provisions that empower the Minister of Finance to grant approval on borrowing "on such terms and conditions as the Minister may determine". This is against existing legislation on borrowing threshold (see the Fiscal Responsibility Act).

Section 20(2) allows the Commission to accept gift of money or other property. The same applies to sections 45, 81,112, 160 of the PIB in relation to other institutions in the petroleum industry. This provision provides opportunity for corruption, therefore they should be amended to insulate them against the corrupt influences of individuals and corporations.

FUNDING OF PROPOSED INSTITUTIONS

We commend the courage of the National Assembly in the review of the various provisions on the funding of the various institutions created in the PIB. For example the fiscalised crude or gas proposed to be paid into the account of the Directorate (now Commission) has been removed in the current version of the PIB. However, the provision of section 19(2)(d) which entitles the National Petroleum Commission 10% of money due to the Petroleum Producing Host Communities Fund as provided for in section 169(3)(a) is unethical and a show of insensitivity to the plight of the host communities. This is an indirect way of making host communities to fund the activities of the Commission and reduce the gains of the 10% nominal equity.

RESTRICTION ON SUITS AGAINST THE PROPOSED INSTITUTIONS

One of the tools for making environmental polluters accountable for their actions is litigation. In such cases, the typical claimants are individuals, families and communities where oil and gas multinational corporations operate that may have been affected by the activities. The expectation is that a law like the PIB should support or expand the opportunity of people to use the legal process as a means of making companies, government institutions and agencies accountable for environmental pollution. However, sections 50, 90, 116, 165, 190 of the PIB as currently drafted places restrictions on the exercise of the enforcement of civil rights as the limitation of action is shorter than the time provided for civil action. Under the Statutes of Limitation, the PIB provides a maximum of twenty-four months period for suits against the institutions and agencies created under the PIB, a member of the governing boards or an employee in respect of their functions and powers under the Act to be instituted against them. After twenty-four months such cause of action would lapse.

Claimants in oil and gas pollution are known to have difficulties with collating evidence, raising money to fund their case and other structural problems with litigation against oil companies. Therefore, the 24 months limitation of cause of action in this respect is not in the interest of the poor people who are most times the victims of the oil politics in Nigeria. It is suggested that the general laws of limitation be applicable to the oil industry.

TRANSPARENCY AND OPENNESS

The processes of awarding licenses are by competitive and open bidding process. It is important that the PIB specifically prohibits discretionary awards (s. 214(6).

The PIB makes serious and noteworthy attempts at granting public access to the activities of the proposed

institutions. Sections 244 and 282 are typical in this regard. Section 244 makes it clear that registers of technical licences issued under sections 239 and 240 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 of the previous PIB 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. Unfortunately, the old section 259 has been replaced by a new section 198 which has watered it down by deleting 'any other financial matters that directly affect the revenues derived by the State from exploration and production of petroleum'. The provision is now restrictive and provides room for shady financial deals in the petroleum industry. Section 198(7) creates for barrier to information relating to data obtained under petroleum prospecting licence and petroleum exploration licence.

The provision in section 198(3) which states that the determination as to whether a piece of information is proprietary and so outside the openness clause in section 198 shall be decided by the owners of the information is however very likely to detract from the benefits to be derived from the clause. Petroleum companies in Nigeria have always thrived in secrecy and would want to declare almost all information relating to their operations as proprietary. The present provision would create avenues for dispute between the Commission and the petroleum companies. Therefore, the PIB should attempt to lay down objective criteria for determining such an important question.

Section 198(8) which makes all information pursuant to section 380(1) on the roles and activities of the Agency, National Oil Company and Inspectorate to be non-confidential and imposes a duty on the Inspectorate to publish such information on their website is a welcome development.

RECOMMENDATIONS

In order to correct some of the above identified lapses in the PIB and make it come close to what it was initially intended to achieve, we recommend the deletion of some provisions and inclusion into the PIB Sections and subsections that will accommodate the following issues:

1. A clear provision requiring the active, positive and direct participation of representatives of host communities especially owners and occupiers of land in the award of licence and exploration processes as is obtained in the Mineral and mining Act 2007 and a removal of the requirement of payment of 10% of the 10% equity share to the National Petroleum Commission.
2. Since claimants in oil and gas pollution are known to have difficulties with collating evidence, raising money to fund their case and other structural problems with litigation against oil companies, the 24 months limitation of cause of action in this respect is not in the interest of the poor people who are most times the victims of the oil politics in Nigeria. It is suggested that the general laws of limitation be applicable to the oil industry.
3. Environmental Auditing
   (a) The Inspectorate shall conduct biennial environment audit of all the corporate bodies carrying out business in Nigeria or any part thereof based on a well advertised rules and regulations.
   (b) The environmental audit shall ensure that individuals and or corporate bodies are accountable to and protective of, not only shareholders but the environment as well.
   (c) The rules and regulations in subsection (1) of this section shall be approved by the Minister and published in the gazette.
   (d) Every individual and or corporate body shall be issued with a certification.
   (e) Every corporate body issued a certification shall, if it gets a better certification subsequent to the preceding certification after the biennial one, may be presented an environment friendly award by the inspectorate.
4. Gas flaring prohibition

(a) Upon the commencement of this Act or any other law that prohibits gas flaring, no person or operator shall flare any gas of any form including pilot flare without a permit issued by the Petroleum Minister and published in at least three Nigerian national newspapers.

5. Oil Spillages Prohibition
   (a) Persons engaged in oil production activities are to carry out their operations in such a manner as to ensure that the incidents of oil spillage are eliminated.
   (b) licensees and lessees shall ensure best international practices by:
   (I) employing modern technological practices in their operations,
   (ii) conducting regular maintenance and upgrade of their facilities,
   (iii) providing adequate security/surveillance over their facilities,
   (iv) where oil spill occurs for any reason both containment, clamping, cleaning and first remediation shall be carried out not latter than 7 working days from the day the spillage is discovered or informed of.
6. Enforcement of Part VII
   (a) There shall be established out of the existing State and Federal High Courts in Nigeria Environmental Tribunals, in this Act referred to as the Tribunal.
   (b) The Tribunal shall have and exercise exclusive jurisdiction over all causes and matters relating to the environment, in addition to any other jurisdiction that may be conferred on it by an Act of the National Assembly.
   (c) The Tribunal shall be presided over by a Judge of a High Court in Nigeria or a person qualified to be so appointed with 2 assistants who must have in-depth knowledge about environmental matters out of which one must be a lawyer of at least post 5 years call to bar.
   (d) Notwithstanding anything to the contrary in the law of evidence, practice direction or any other enactment, any time environmental pollution, and or degradation is alleged, it shall be the duty of the defendant to show that he/she is not liable.
   (e) The Tribunal before whom an environmental pollution/degradation matter is pending, in awarding damages, shall take into consideration:
   (I) the nature, size, scope and worth of the area polluted and or degraded;
   (ii) the extent of the pollution and or degradation;
   (iii) the conduct of the defendant before and after the pollution and or degradation complained of; and
   (iv) the cost of livelihood sources existing in the damaged environment over the natural lifespan of such sources, whether plant, animal, equipment or other machinery or tool.
   (f) In the case of unauthorized tampering with of petroleum production and distribution facilities, the jurisdiction to adjudicate shall be vested upon the High Courts.

CONCLUSION

There is no doubt that the petroleum industry laws need to be updated. However, it must be done with a view to correcting the short comings in the extant laws and addressing the environmental, social-political and economic issues that have bedevilled the industry and adversely affected the petroleum producing host communities. Anything short of that is to create a time bomb waiting for it to explode in the near future.

In the premise, it is advisable for the National Assembly to have a rethink and take a sincere look at various section of the Bill especially the issues of acquisition of land for petroleum exploration which the PIB presently does not make a mention; the award process for licences and leases; the 10% Host Communities equity and its administration and application; host communities participation in the petroleum industry; oil spill clean-up; restoration and rehabilitation of degraded environment; the on-going deadly gas flares bearing in mind the global issue of climate change its inevitable negative impact if we fail to act now; financial transparency and accountability and measures to eradicate corruption in the industry.

The PIB is the most important bill currently before the National Assembly with various powerful and selfish interest groups lobbying to have it in their favour. We urge our Honourable members of the House and distinguished senators to act in the interest of justice, equity and national development.

About SOCIAL ACTION

Social Action (Social Development Integrated Centre) is an 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 that affects human rights, democracy and livelihoods.

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.

OUR CORE BELIEFS

Nigeria, the largest country in West Africa, is experiencing increasing mass impoverishment with rapidly decaying social infrastructure. Lack of democracy and pervasive corruption in public and private institutions and civil society have meant that the enormous human and material resources including significant oil and gas revenues cannot be put to public good.

The potentials of democracy are yet to be fully realised as the culture of accountability and political responsibility is not adequately imbibed by policy makers and implementers. Also, the organisations within civil society still face the challenge of forging a critical and active mass of citizens to work for change in policy and practice. Present political practices do not encourage popular participation in the decision-making processes in the different levels of government. Social Action believes that grassroots democracy is necessary for positive change, and this can best be expressed with communities' ability to set forth their own development agenda.

Underdevelopment cannot be adequately addressed by dispensing foreign aid or government handouts aimed at attacking symptoms. Rather, underdevelopment should be addressed from an understanding of its different and interconnected causes and effects, manifesting in dictatorship, poverty, scarcity and conflict, hindered production capacity, environmental and human rights abuse, climate change etc. Global forces do influence and affect domestic realities. The character of subsisting direct foreign investment and expropriation of capital have resulted in environmental degradation, external debt, weakened local economy and compromised state institutions.

Social Action seeks to support community groups and other segments of civil society towards a collective self – analyses with the aim of encouraging and supporting change in citizens' actions towards influencing democratic practice, people oriented policy, accountability and social justice.

THE WAY WE WORK

Encouraging Public Debate on Policies:

The programmes of Social Action focus on analysis of issues around specific policies and practice and how these interconnect and affect citizen's rights and livelihood. Working with communities and other citizen groups, peoples' alternatives can be forged and propagated while widening the space for public debate.

Mass communication:

Social Action assembles and disseminates data and information on government and corporate policy and practice to the public with the aim of promoting popular understanding and debate, and to capture and disseminate public opinion to policy makers. This is done with systematic publication of books and other education materials. Activities targeting the expanding mass media (electronic and print) are used to convey information and perception between the public and policy makers and implementers.

Monitoring:

Social Action monitors and documents the environmental and social practices of government, private investors, international financial institutions and communities for use by local and international citizens groups involved in advocating for change.

Community Support:

Social Action provides support to communities and social movements involved in resistance to the negative impacts of resource extraction, trade policy, climate change etc. by providing them with information, media outlet and capacity building through community exchanges.

Community and Democracy Action:

Social Action works with other citizens groups to support marginalized communities to organise and take direct actions to protect community rights, seek participation in development processes and defend democracy, using the courts of law and public opinion to cause positive change in the community, government and among public and private companies.

Part of a Global Movement:

Social Action is working to build a national citizens movement that will be active in the global movement for social change.

About ERA

Environmental Rights Action/Friends of the Earth, Nigeria is a Nigerian advocacy group dedicated to the defence of the Human ecosystem in terms of human rights.

ERA/FoEN is the Nigerian chapter of the Friends of the Earth International (FoEI). ERA is also the coordinating NGO for the Oilwatch International as well as the host of the secretariat of the Africa Tobacco Control Regional Initiative (ATCRI).ERA is also the coordinating NGO for the Nigerian Tobacco Control Alliance (NTCA).

The organization's committed struggles for environmental human rights has won it recognition through awards such as Sophie Prize (1998) for excellence and courage in the struggle for environmental Justice and the Bloomberg Award for Tobacco control activism (2009)

PURPOSE

The organization is dedicated to the defense of human ecosystem in terms of human rights and to the promotion of environmentally responsible governmental, commercial, community and individual practice in Nigeria through the empowerment of local people. It describes itself as having two purposes:

- To act as a peaceful pressure group campaigning for change in the policies of governmental, non-governmental and commercial organization where those policies are likely to act against environmental human rights and
- To enable local people defend their environmental human rights in Law

PHILOSOPHY

ERA is bound together and guided by a philosophy which avoids moral ambiguity when approaching problems of human ecology. This philosophy is not a dogma, but a guide based upon the following beliefs described below

ENVIRONMENTAL RIGHTS ARE HUMAN RIGHTS

Article 24 of the African charter of Human and Peoples' Right states that:
"All people shall have a right to (a) generally satisfactory environment favorable to their development."
ERA believes that a respect for all forms of life is an essential foundation to human happiness. In other words, a genuine concern for human kind and our habitat depends upon a respect for other animals and their habitats, and upon recognition of the importance of diversity. Human kind cannot achieve happiness in a degraded environment; living in harmony with other forms of life (as in some traditional relationships between people and their environment) is in itself a human rights. Furthermore, every individual and responsible human being has an equal right to happiness, regardless of his or her wealth.

ALL ECOSYSTEMS ARE NOW HUMAN ECOSYSTEMS

This concept is central to the ERA philosophy. Because of humankind's growing dominance of the Biosphere, all ecosystems are now ultimately human ecosystems as seen, in ignorance, as something separated from humankind.

PRIMACY OF LOCAL INTEREST

People living in a locality have an investment in it's long term future. Outsiders, whether in government or non-government agencies, are more likely to be interested in short and medium term considerations. Outside interest may have rights that must be taken into considerations. However, local interests are more likely than any other to be concerned about genuine conservation and must take priority when decisions are being made.

MEMBERSHIP

ERA is open to membership from all parts of Nigeria. Membership is independent of the centre but cannot be independent of the philosophy. Membership is built around projects and communities. We work with volunteers.

About CISLAC

ORGANIZATIONAL OVERVIEW:
CISLAC is a non-governmental, non-profit legislative advocacy, lobbying, information sharing and research organization. (CISLAC) works towards bridging the gap between the legislature and the electorate; by enhancing lobbying strategies; engagement of bills before their passage into law; manpower development for lawmakers, legislative aides, politicians and the civil society, as well as civic education on the tenets of democracy and human rights. It was integrated as a corporate body (CAC/IT/NO22738) with Nigeria's Corporate Affairs Commission (CAC) on 28th December 2006.

CISLAC's issues of focus include; budget monitoring, transparency, accountability, anti-corruption, human rights (gender equality, educational equity and improvement, sexuality and reproductive health, children and other vulnerable groups including beggars, pensioners, refugees, and internally displaced persons), trade policy and intervention, security/conflict management, and environment and Agriculture(livelihood).

CISLAC's engagement with Federal Ministries, National and State Assemblies, Local Government Administrations, private sector interests, the media, non-government and civil society organisations, and communities across Nigeria has opened a window through which public and policy officials can interact and corroborate.

VISION
To make legislature accessible and responsive to all.

WHAT WE DO
1. Capacity building for legislators on issues that will enhance legislative performance.
2. Training for CSO's on how to engage the legislators
3. Advocacy, lobbying and participation in legislative processes to facilitate the passage of people-friendly laws that will deliver good governance and development.

MISSION/PURPOSE
"To strengthen CSOs' impact in the legislative processes towards promoting legislative accessibility and responsiveness to all."

STRUCTURE
CISLAC in its efforts to deepen its engagement on issues and impact positively by ensuring that civil society views are adequately inputted in public policies, has defined governance structure. At foundation, some key allies who are well grounded in development issues and are currently at the decision making level in their organisations were consulted and accepted to serve on both the Board and Advisory Council of the organisation.

i. Board of Trustees:
This is the policy-making organ of the organization. Its approves the budget of the organization, provides contacts for operational funds and support the operation of the secretariat.

ii. Advisory Council:
This provides advisory functions to the organization. It consists of people of vast and extensive legislative and political experience.

Secretariat:
The Secretariat is vested with the day-to-day running of the organization. It implements the decisions of the Board of Trustees. It is headed by an Executive Director who oversees the day-to-day running of the organisation while a Senior Program Officer oversees programmes implementation along with other programme staff.

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