SPACES FOR CHANGE

www.spacesforchange.org

PIB RESOURCE HANDBOOK

An Analysis of the Petroleum Industry Bill's Provisions on Community Participation & the Environment

Spaces for Youth Development & Social Change (Spaces for Change - S4C)

Supported by
Open Society Initiative for West Africa (OSIWA)

2013

Spaces for Change(S4C) is a non-profit organization working to infuse human rights into social and economic governance processes in Nigeria. Through research, policy analysis, advocacy, youth engagement, public interest litigation and community action, the organization aims to increase the participation of Nigerian youth, women and marginalized constituencies in social and economic development, and also help public authorities and corporate entities to put a human rights approach at the heart of their decision-making

Prepared by:
Spaces for Change

Headquarters:
3A Oduyemi Street, 1st Floor
Opposite Ikeja Local Government Secretariat
Anifowoshe, Ikeja
Lagos, Nigeria

Telephone: 234.1.8921097, 234.81.84339156
Email: spacesforchange.s4c@gmail.com
info@spacesforchange.org

Website: www.spacesforchange.org
Blog: spacesforchange.blogspot.com
Facebook: http://www.facebook.com/groups/spacesforchange/
Flickr: http://www.flickr.com/photos/spacesforchange/
Twitter: @spaces4change

ABOUT THIS HANDBOOK

This handbook contains an analysis of the provisions of Nigeria's Petroleum Industry Bill (PIB) relating to community participation and environmental protection (CPE). With a focus on the identification of social priorities, issues and gaps within the industry reform bill, this handbook is written in considerable detail to deliver a policy critique that is both historically and contextually accountable. In essence, it lays the foundation for productive legislative engagement and facilitates informed debate amongst a broad range of agents – advocates, legislators, representatives of the oil and gas industry, different tiers of government, regulators, non-governmental organizations, oil producing communities and other stakeholders–supporting their contributions towards making the Bill's legislative processes more robust and effective.

This handbook has also been written for the purpose of building the capacity of oil producing communities to understand the PIB, and use its provisions to demand legal protection for their rights to a safe environment, and participation in oil industry operations. This is consistent with its objective to be a catalyst for the proposed reforms of oil and gas industry in Nigeria, especially in the area of environmental protection and community participation. It offers a rich resource book for training community and youth leaders to manage information, communicate and conduct negotiations on issues of concern to their communities.

Spaces for Change is grateful to the Open Society Initiative for West Africa (OSIWA) for supporting its Oil Sector Legislative Engagement and Accountability Project (OSLEAP) under which this research was conducted. Many thanks to the entire staff of Spaces for Change, consultants, non-governmental organizations, community partners, government officials, comrades and many others we cannot mention here, whose insights, interviews and comments invaluably contributed to the successful completion of this work.

Prepared and compiled by Victoria Ohaeri
Contributors: Ore Disu, Zumunta Machunga-Disu, Atim Ekemini Uba & Victoria Ohaeri
Edited by: Ore Disu

TABLE OF CONTENTS

CONTENTS

METHODOLOGY

The production and publication of this Handbook involved four streams of work. Preparations began with a rigorous desk review involving a team of researchers – lawyers, engineers, energy analysts and community advocates. This first stream involved examining a variety of legal standards, policy frameworks and guidelines relating to resource management, community participation and the environment (CPE) provisions in the Petroleum Industry Bill (PIB). Secondary literature was also taken into account within a comprehensive assessment on the context and nature of the development interventions designed to address aspects of the environmental challenges faced by oil-producing communities in Nigeria. Sources included media reports, independent research publications, books, and government documents.

The second stream sought to engage a wider spectrum of contributors of diverse professional backgrounds, the civil society and industry experts. To this end, social media, crowd-sourcing and web-based communication tools were employed to generate reflections and encourage collective input. An e-conference held on the Saturday, July 14, 2012, led by five industry experts comprising an oil policy analyst, multinational representative, a labour leader, extractive industries expert and an environmental justice advocate unpacked a variety of pressing environmental concerns and transparency issues affecting the PIB. The conference had a global reach, with participation recorded mainly from 12 countries across six continents: Nigeria, United Kingdom, United States, Russia, Austria, Germany, Canada, Cyprus, Ukraine, France, Malaysia and Ghana. Sustained postings of news updates on oil sector activities on our social media portals on Facebook and Twitter generated robust engagements among advocates, the youth and concerned citizens, while promoting learning and knowledge-sharing on the PIB.

At the third stream of work, two stakeholder roundtables and expert consultative meetings convened in Lagos and Port Harcourt on January 22, 2013 and February 25, 2013 respectively pooled diverse analytical perspectives on different provisions of the PIB, with major emphasis on the CPE provision. The roundtable also presented an opportunity to critically evaluate the draft Handbook and fashion out joint actions that must be undertaken to mobilize public support for the passage of the Bill. Deliberating agents included non-governmental organizations, community associations, grassroots movements, government officials and environmentalists.

The last phase of work involved field-based stakeholder consultations across communities and with government officials in Lagos, Port Harcourt, Rivers State and Abuja, Federal Capital Territory. The methods used during the field phase included key informant interviews, focus group discussions, guided tours of Niger Delta communities and observation. In Bori, Ogoni community, Rivers State, the draft report was presented to members of eight Niger Delta communities to seek their inputs into the report and cross-match research findings with experiences of oil producing communities. The list of persons and documents consulted is at Annex 1 and 2.

This work also benefited immensely from the ideas, suggestions and guidance of Dayo Olaide, the Economic Governance Manager at the Open Society Initiative for West Africa (OSIWA).

ACRONYMS

API	American Petroleum Institute
CBOs	Community-Based Organizations
CITES	Convention on International trade in Endangered Species OF Wild Fauna and Flora
CPE	Community Participation and Environment
CDB	Community Development Board
DPRA	Downstream Petroleum Regulatory Agency
DPR	Department of Petroleum Resources
DDR	Disarmament, Demobilization and Reintegration
DECC	Department of Energy and Climate Change
EIA	Environmental Impact Assessment
ECPRA	Emergency Planning and Community Right-to-Know Act
ES	Environmental Statement
FMOE	Federal Ministry of Environment
HSE	Health, Safety and Environmental
HYPREP	Hydrocarbon Pollution Restoration Project
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMO	International Maritime Organization
JMTF/JTF	Joint (Military) Task Force
LG	Local Government
MOSOP	Movement of the Survival of Ogoni People
MEND	Movement for the Emancipation of the Niger Delta
OPTS	Oil Producers Trade Section
PTF	Petroleum Equalization Fund
PTDF	Petroleum Trust Development Fund
NDES	Niger Delta Environmental Survey
NEITI	National Extractive Industries and Transparency Initiative
NESREA	National Environmental Standards and Regulations Enforcement Agency
NGOs	Non-Governmental Organizations
NOSDRA	National Oil Spill Detection and Remediation Agency
NNPC	Nigerian National Petroleum Corporation

ACRONYMS

NDDC	Niger Delta Development Commission
OSIWA	Open Society Initiative for West Africa
OMPADEC	Oil Mineral Producing Areas Commission
OSLEAP	Oil Sector Legislative Engagement and Accountability Project
OGIC	Oil and Gas Reforms Implementation Committee
OPEC	Organization of Petroleum Exporting Countries
PIB	Petroleum Industry Bill
PHC	Petroleum Host Community
PRSTF	Petroleum Revenue Special Task force
S4C	Spaces for Change
SPDC	Shell Petroleum Development Company
SPCC	Spill Prevention, Control and Countermeasure Plan
SIU	Special Investigation Unit
UN	United Nations
UNEP	United Nations Environmental Program
UNDP	United Nations Development Program
UPI	Upstream Petroleum Inspectorate
USA	United States of America
WHO	World Health Organization

1

The Petroleum Industry Bill

Nigeria is ranked Africa's number one and the twelfth globally among oil-producing countries.[1] Despite being among the world's top oil producers, Nigeria's oil and gas industry has been plagued by institutionalized corruption, corporate impunity, and grave environmental and humanitarian devastations. At the root of the rot in Nigeria's oil industry is the absence of a coherent legal and policy framework for holding operators accountable and for addressing serious violations of environmental standards, forcing aggrieved persons and communities to resort to extra-legal and violent confrontations. Further compounding the situation is the lack of political will to enforce the potpourri of legislations governing the industry operations.

Legal standards and operational procedures put in place soon after oil discovery and production commenced in the 60s and 70s – such as Petroleum Act (1969), the Associated Gas Re-injection Act, Nigerian National Petroleum Corporation (NNPC) Act (1977) – are now out of tune with contemporary global business realities, necessitating a comprehensive legislative overhaul. Decades of mismanagement have also deprived Nigerians of social and economic benefits from the sector, just as vested interests continue to block and/or stall important reforms.

Drafted in April 2000 by the RilwanuLukman-led Oil and Gas Reforms Implementation Committee, OGIC, the Petroleum Industry Bill (PIB) represents the Nigerian government's 12 year effort to introduce sweeping reforms[2] in the oil and gas industry, with a view to making the sector less corruption prone, more transparent and accountable and environmentally safe. The PIB was first presented to the sixth assembly in 2009, but efforts to pass it were hampered by vested interests, politicization of the legislative process, intense political intrigues, inadequate stakeholder consultation, compounded by the lack of adequate information for active citizens' participation.

To resuscitate the Bill and accelerate its passage, the Senator UdoUdoma-led PIB Technical Committee constituted to review the 2009 version of the Bill on January 17, 2012. Much of this was in response to an unprecedented civic uprising in January 2012 that forced high-level probes into the administration of fuel subsidies, including massive shake-ups in national oil and gas institutions. The revised draft is an aggregation of 16 extant legislations on the oil and gas industry, primarily charged to open up the oil industry to privatization, optimize of domestic gas supplies, including the liberalization of the downstream sector. The bill's passage will also bring an end to licensing rounds, contract renewals and investment that have been put on hold for five years, and also bolster energy security by attracting the much-needed investment into the natural gas sector.

---

[1] According to 2011 statistics by the United States Energy Information Administration

[2] The PIB seeks to deregulate the downstream sector of the industry; address host community concerns; establish commercially-oriented and profit-driven oil and gas entities, promote local content; optimize domestic gas supplies, particularly for power generation and industrial development; and to establish a fiscal framework that encourages investment and revenue inflow to the government.

If passed into law, the PIB could also improve governance of the environment and strengthen the structure for community participation. The direct impact lies in the potential to cut down conflicts between operators and affected communities of industry activities. Furthermore, in response to the decades of environmental devastation and violence ravaging oil-bearing communities, the new reform bill lays out basic provisions to check unsafe operations, ensure land remediation and compensation to oil producing communities affected by oil industry operations. Moreover, it contains robust provisions for the protection of human rights and community health, safety and security; protection of cultural property and heritage; use and management of dangerous substances including the impacts on indigenous peoples, and their unique cultural systems and values.

1.1 Community Participation and Environmental Protection in the PIB

Among several pioneering provisions, the bill introduced initiatives aimed at increasing the participation of oil producing communities in the oil and gas sector, as well as promoting environmental sustainability in the areas where oil exploration and production take place. It recognizes that oil operations (including seismic operations, mining, equipment failure, human error etc) can cause damage to private property rights[3].

Prior to the PIB, laws relating to the compensation of affected persons and communities were scattered in a maze of over 16 legal frameworks governing the oil industry, making it practically difficult for persons who suffer injury as a result of activities in the industry to effectively pursue their claims under the various laws. The harmonized draft will potentially eliminate the problem of determining under which law to bring a claim.

Parliamentary deliberations on the PIB reveal that the Petroleum Host Communities (PHC) Fund, and other provisions related to community development and environmental sustainability have faced intense criticism and opposition, particularly from northern lawmakers[4]. Largely described as unfair, critics allege that the PHC Fund, including a plethora of similar development interventions specifically targeted at oil producing states confer undue economic advantage on the Niger Delta region, to the detriment of other less-endowed states. For evidence, they point to disputed policy actions such as the Oil Mineral

[3]Such as lands, buildings, economic trees, crops, fishing rights and equipment, water sources and venerated objects.

[4]**'Northern Senators set to kill PIB',** Donald Ojogo and Sola Shittu, Daily Independent, February 11, 2013. According to the report, "**The PIB has faced a bipartisan opposition from Northerners who insist that the draft legislation seeks to empower only the oil-producing states".**

Producing Areas Commission (OMPADEC), Niger Delta Development Commission (NDDC)[5], the 13% derivation[6], the Amnesty program, the Niger Delta Ministry. While the controversy around the exclusive manner of such initiatives rages on, questions challenging the mismanagement of development interventions and environmental protection are equally as germane and deserving of cogent and compelling answers. In finding answers to these questions, it is imperative to study, streamline and harmonize official interventions designed to address aspects of the crisis in the Niger Delta that were introduced by both state and non-state actors. Taking a closer look at these various initiatives – their achievements, their design flaws, their failure to deliver – will help in fashioning out a holistic response in the reformed Petroleum Industry Bill (PIB).

1.2 Why community participation and environmental protection is imperative

- Community Participation: In all of the past endeavors, the supposed beneficiaries of the programs were essentially excluded from the conception and implementation phases. Programs therefore suffered from lack of clarity of vision and attention to the needs of the communities themselves[7].

- Governance Control[8]: The greatest flaw in the past poverty alleviation strategies was their top-down approach. While Federal authorities retained full directional control over all policies, State and Local Governments were reduced to mere implementing authorities. Moreover, former programs lacked any cogent framework by which to monitor and evaluate progress.

- Wealth Distribution[9]: Communities across the Niger Delta have benefited disproportionally several sections of the Niger Delta population appear to have benefited disproportionately from economic growth generated by oil exploration activities while the communities affected negatively by these projects have not benefited and are burdened with the hardships resulting from these activities.

---

[5]Launched in 2000 by President Olusegun Obasanjo, there was hope that this program would be the correct solution and mistakes of OMPADEC. The Bill establishing the Commission was passed in June 2000, but was officially inaugurated on December 21, 2000 with a mandate "to conceive, plan and implement … projects and programmes for the sustainable development of the Niger Delta area" and "to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful." The commission's funding came from three different areas: 15% from the derivation of revenue allocation, 3% from the annual budget of the oil companies within the Niger Delta Region, 50% from the ecological fund, and proceeds from NDDC assets and miscellaneous sources, including grants-in-aid, gifts, loans and donations.

[6] Under a constitutional principle known as "derivation", oil producing states receive special allocations. That provision was included in the 1999 constitution under President Olusegun Obasanjo's administration (1999-2007) requiring the allocation of at least 13% of petroleum revenues to the states and local areas where the resources are found.

[7] UNDP: Niger Delta Human Development Report, 2006, @ 5. "The worsening poverty in the Niger Delta and the limited involvement of the poor in poverty interventions go hand in hand, and require urgent actions by governments at all levels".

[8]UNDP ibid @ 15 -17

[9]This is similar to what Aaron Sayne and Alexandra Gillies called "Principal-Agent Crisis"; In the principle-agent crisis, 'the representative "agents" that control funds—whether state or local governments, NDDC, the Ministry of Niger Delta Affairs, or community boards—chronically fail to serve their "principal," the public. Government is the

Further compounding this problem is the fact that companies frequently ignore petitions of communities, but respond to threats of violence against company staff and facilities. This only further fuels the militant groups in using violence to seek money and power.

- Compensation for Victims: Victims of human rights violations in the Niger Delta are hardly ever adequately recompensed[10], either in the form of restitution, compensation, or sufficient guarantees of non-repletion. Such accountability measures have been hard to enforce in Nigeria due to the lack of an established mechanism for seeking redress for human rights violations.

Lack of information: Often too, petroleum-impacted communities in the Niger Delta lack access to even basic information about the impacts of the oil industry operations on their lives, traditional livelihoods and environmental health[11]. This lack of information feeds fears and insecurity within communities, contributes to conflict and fundamentally undermines human rights. Recognizing the right of communities to access information or records of oil and gas revenue collections and offshore development cannot be overplayed. Not only does it aid in unraveling tensions, informed groups are also better positioned to assert their development priorities in relation to the activities and resources of otherwise purely extractive industries. Affording better access to information is also consistent with the objectives of the Freedom of Information Act and international human rights law. Of particular relevance is Article 16 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which affirms the right to access periodic governmental information on progress related to economic, social and cultural rights in order to facilitate public examination of policies and stimulate participation.

---

largest source of resources in Nigeria, and competition over access to these resources dominates economic and political life. This means that the country's deep entrepreneurial, energies are spent disproportionately chasing contracts, pay-offs or other government resource flows." See full report: Aaron Sayne and Alexandra Gillies; Oil-to-Cash Initiative Background Paper, Center for Global Development, October 2011 @ 8.

[10]On February 24, 2006, a Federal High Court ruling in Port Harcourt ordered Shell (SPDC) to pay $1.5 billion to the Ijaw aborigines as damages for environmental degradation. A Concurrent Resolution of both the House of Representatives and the Senate affirmed the order directing Shell to pay the awarded sum. Till date, SPDC has neither paid nor engaged in effective dialogue with the affected Ijaw communities. To make matters worse, the Court of Appeal upturned the judgment in June 2012.

[11]Adedeji O. H., Ibeh, L. and Oyebanji, F. F; Sustainable Management of Mangrove Coastal Environments in the Niger Delta Region of Nigeria: Role of Remote Sensing and GIS; Proceedings of the Environmental Management Conference, Federal University of Agriculture, Abeokuta, Nigeria, 2011 @ 311

2

Community Participation in Development: The Niger Delta Experience

2.1 The Niger Delta

The Niger Delta is home to Nigeria's mineral oil resources, accounting for about 96 percent of the country's foreign earnings, rendering the country the fifth largest oil producer in the Organization of Petroleum Exporting Countries (OPEC). The discovery of the oil-rich basin in the early 60s saw the advent of a plethora of oil companies involved in joint ventures with the Federal Government. Industrial giants such as Shell, Chevron, Mobil, Elf, Agip and Texaco, among others, have successfully effected oil exploration, exploitation and production till date.

Despite the region's wealth of natural resources, the Delta exemplifies the resource curse as it remains one of the poorest and least-developed parts of the country. Local communities suffer from oppressive levels of poverty, infrastructural decay, and environmental degradation, which have in turn precipitated rising ethnic tensions and escalating violence among competing militia groups.

The human, environmental and economic crisis of Niger Delta can only be understood in reference to the checkered history of State and private oil sector collusions. Communal lands have been seized by the Federal government and handed over to oil companies, who have in turn desecrated the lands and rivers on which local communities rely as their source of livelihood. Without either the will or means to enforce accountability towards local communities, central government operators readily exercise their powers to sign off massive tracts of communal assets with little more than map-based knowledge. Ancestral lands, farmlands and back gardens are often handed over to transnational companies for the exploration and exploitation of oil and gas, with attendant loss of land for local livelihoods and dislocation of indigenous communities[12]. This practice of appropriation that bypasses existing landowners in the name of oil blocs allocation is a parody of justice not unlike the colonial sharing of African territories at the Berlin Conference[13].

In the 1990s, the execution of Ken Saro-Wiwa and eight other leaders of the Movement of the Survival of Ogoni People (MOSOP) in Ogoni, Rivers State ushered in a period of violent conflict and militancy. The security situation deteriorated to the extent that resistance groups barred Shell (SPDC) from resuming oil exploration and extraction activities in Ogoniland. In 2003, militants destroyed major oil pipelines conveying crude oil from the Chevron-Texaco terminus Escravos (near Warri) to refineries in Port

[12]Ledum Mitee: Oil Exploitation and the Challenges of a Non-Violent Struggle in Nigeria's Niger Delta; Being a Paper presented when he was President of the Movement for The Survival of the Ogoni People (MOSOP) at the Institute of African Studies, Emory University, Atlanta, Georgia, United States of America, on 27 March 2007

[13]Ledum Mitee ibid @ 3

Harcourt and Kaduna, thereby exacerbating fuel scarcity around the country. Later that year, militants again vandalized gas pipelines in Escravos supplying gas to the country's biggest power station near Lagos, reducing electricity generation by 25 percent.

Regardless of the country's return to democratic rule in 1999, the Niger Delta continued on a downward spiral of poverty, unemployment, and violence. Instability in the Niger Delta, aptly demonstrated by the Federal government sanctioning of military action to curb militant operations and ethnic insurgency, resulted in widespread human rights violations of people in the region. In August 2006, the Federal Government set up the Joint Military Task Force (JMTF) to provide security for oil prospecting companies and to root out violent militant groups engaged in sabotage and attack of oil installations in the region. November 1999 marked one such full-scale offensive military action against indigenous militants, during which JMTF razed Odi community, killing dozens of citizens in apparent retaliation for the death of eight security operatives. What was once a thriving suburban settlement was completely razed. To date, no official investigation has been carried out into these incidents, nor have the perpetrators been brought to justice. Compelling evidence suggests that the reprehensible conduct of the JTF has deepened mistrust and fueled this cycle of violence in the region. Resistance groups, aggrieved by failed attempts to engage the State and oil companies in dialogue have resorted to violence. Their reactionary approach quickly became rampant, making standoffs, hostage takings, sabotage and vandalism all regular occurrences throughout the region.

The discovery of oil in the Niger Delta in the early 1950's has been transformed from a dream that would uplift the lives of the members of the oil-bearing communities, to a nightmarish reality of conflict, poverty and pollution. Environmental degradation matched with infrastructural decay and poor governance have produced oppressive levels of poverty, in turn precipitating rising ethnic tensions and escalating violence among competing militia groups. Though some stability has returned to the Niger Delta in recent years, a comprehensive set of targeted and inclusive policies are needed to reduce volatility, address its multidimensional issues and effect development.

2.2 What is Participation?

In recent decades, the term “participation” has become a widely popular watchword in global discourses on governance and development, trickling down to all sectors and actors involved in policy and practice. However, its use is often misleading, referring to various forms of engagement, relationships and powers that lead to diverse and not always positive outcomes. Speaking broadly, “participation” encompasses notions of transparency, voice and openness in both corporate and public settings[14]. Basically viewed as essential to well-rounded economic development, the new orientation and understanding of participation

[14] Joseph E. Stigliz; Participation and Development: Perspectives from Comprehensive Development Paradigm; Review of Development Economics 6 (2), 163-182, 2002 @ 165

has produced concepts such as "participatory development and "sustainable human development" (UNDP 2010: 10). Effective participatory processes entail open dialogue and broadly active civic engagement. It requires that individuals not only have a voice in the decisions that affect them[15], but the means to impact decision-making and exercise influence to ensure directives are responsive and responsible parties are held accountable.

When referring to participation within the context of sustainable human development in the Niger Delta, emphasis is placed on the opportunities available for the local populations to get directly involved in the conception, planning and implementation of policies and programs that impact on their well being. It involves the use of social capital to leverage the unequal power relations between citizens and the government towards correcting or toppling existing structures of economic, social or political dysfunction.

2.3 Why Community Participation in Sustainable Development?

Community participation has increasingly become important in achieving sustainable development for a number of reasons. One critical reason is that it allows for the formulation of developmental solutions and plans that have greater buy-in and as such, increased prospects of both formal and informal implementation. If the priority of development interventions is on eliminating poverty and to have a significant, sustained positive effect, then, it is vital that the poor and excluded people get involved in making decisions. And by directly relying on poor people to drive decision-making, development activities has the potential to make poverty reduction initiatives more responsive to demands, more inclusive, more sustainable, and more cost-effective.

The Niger Delta is brimming with an array of development initiatives introduced by successive administrations, including state actors and oil companies operating in the region. Their mandates have been employed on various occasions, in order to placate or address specific social, environmental or infrastructural needs of communities. Their potential for success has been largely undermined by political influences, corruption, and other underlying structural problems that render them mere artifices. An examination of some of the interventions by all tiers of government and oil companies operating within the area will shed more light on the reasons for programmatic failures, as well as how they impacted on the communities within the region. Have these agents impacted on the environment where they are conducting businesses, respected human rights and guaranteed fundamental freedoms?

[15] Stigliz 2002:165

2.4 Why Development Programs Failed

Assessing the extent of community participation in the various initiatives rests squarely on the quality of policy, legal and institutional arrangements aimed at converting the region's abundant natural resources to wealth that benefits the majority. Overall, most of the past initiatives have been less effective than had hoped at conception. Yet, what can be learned from their creation and possible demise? To what extent have such initiatives been premised on an adequate assessment of the underlying problems of the Delta, and to what extent has the implementation of these initiatives adhered to their intended design? What programs will effectively bring about the desired level of peace, security and sustainable forms of comprehensive development to the region and Nigeria by extension?

Lack of Participatory Processes

Several attempts to address the many deeply embedded issues affecting the region failed to produce the intended outcomes for many reasons. Topping the chart is the dearth of a coherent strategy for promoting active local community as part of a regional development plan. Top-down development plans have made little impact on the real lives of Delta communities, serving instead to confirm their suspicions that development planning is little more than a face-saving imposition by the Federal Government[16]. The Ogoni Peace Process[17] exemplifies one such official intervention widely perceived as an imposition by the Federal Government. Describing how non-participatory approaches could frustrate a veneer of peace, a local activist[18] had this to say:

> *Since 2005, the Federal Government has, on paper, been engaged in a dialogue with the people of Ogoni. The opening of this dialogue showed some promise and the Federal Government, Shell, and MOSOP were asked to endorse the process by the initial facilitators – Coventry Cathedral. In the two years that have followed, there has been a lot of hype, some political dividends taken by the Federal government, and remarkably little action on the ground.*
>
> *MOSOP has been forced to take a public position distancing itself from the dialogue. Aside from the lack of actual dialogue – Federal Government, Shell, and MOSOP have not been at a single meeting at the same table – the lack of change in conduct on the ground in Ogoni has been deeply disappointing.*

---

[16] UNDP ibid @ 11

[17] Father Mathew Kukah led this process.

[18] Being a Paper presented by Ledum Mitee, President, The Movement for The Survival of the Ogoni People (MOSOP) at the Institute of African Studies, Emory University, Atlanta, Georgia, United States of America, on 27 March 2007

The above scenario is commonplace. Inherent structural issues aside, the chief failures of the Oil Mineral Producing Areas Commission (OMPADEC)[19] are largely attributed to the lack of meaningful representation and engagement of stake-holding communities vested in the planning and execution of projects directly affecting them. Similarly, local movements remain vigorously critical of the Niger Delta Development Commission (NDDC) for not seeking productive dialogue with oil communities on appropriate interventions before decision-making takes place.

Local communities remain in the dark regarding the technical and financial details of major projects. Without any reference to the indigenous populations, the government routinely executes long-term concession agreements with diverse oil multinationals to exploit oil reserves in communities. Oftentimes, as in the case of a N363.3 million electricity project in Ibeno, Akwa-Ibom, local communities are not involved beyond the initial stage of commissioning the project.

Apart from government interventions, oil companies are also noted for their exclusionary corporate behavior. Oil-company development assistance programs emphasize corporate philanthropy and social investment characterized by one-time "gifts" to host communities without their say in the design, monitoring and delivery of the community projects[20]. Such projects were often either poorly implemented or not patronized at all, as they failed to address local priorities. Hence, local communities are host to school blocks that were never used, renovated hospitals without doctors and water pipes that functioned for only a few days after construction.

At the oil exploration commencement stages, oil-bearing host communities are cajoled with promises of better economic opportunities and enhanced service delivery. Promises of job-creation remain a mirage, especially in light of oil companies' heavy reliance on foreign personnel and technology. As undocumented statements of intent, these promises carry little weight, neither bound by obligation nor subjected to any judicial controls or structural monitoring. Once projects are fully under way, communication between communities and companies are kept at a bare minimum, providing virtually no opportunity for locals to decide upon their own priorities in the development process.

Limited Access to Information

Lack of access to information regarding the nature, scope and focus of development

[19] The Federal Military Government under President Babangida established Oil Mineral Producing Areas Commission (OMPADEC) by Decree No. 23 in 1992. The Commissions mandate was to receive and administer monthly amounts from "the allocation of the Federation Account in accordance with confirmed ratio of oil production in each state for the rehabilitation and socio-economic development of Niger Delta." It was a specific allocation set out for displaced persons of exploration projects, economic development for minerals, and environmental issues that have stemmed from the oil exploration that has become a large part of this area.

[20] M. O. Agwu, Community Participation and Sustainable Development in the Niger Delta; 2013 @ 36

programs is another major factor responsible for the failure of initiatives. Ill-formed stakeholders tend to be passive, unaware or unaccustomed to better alternatives and prone to complacent acceptance of tokenism. Evidence neither indicates that community members are rarely fully and fairly informed of the nature and consequences of the oil concessions and contracts nor offered a true opportunity to participate individually and collectively[21].

Making information about petroleum operations, contracts and concession agreements readily available to communities is important for citizen participation. In many ways, such disclosure stands as a commitment to engage the communities and in ensuring that local project do not have adverse consequences on them. It must be emphasized that merely informing and educating residents and indigenes about a project does not qualify as participatory approaches, except where such information-sharing and education are matched by efforts to engage citizens in developmental dialogue. Such dialogue often involves series of consultative meetings and workshops with government departments, oil companies and the civil society. Other relevant agents include local governments (LG), state agencies, traditional leaders, community development associations, academics, and development practitioners to further define the roles and functional mechanisms for participation for a much-needed broad debate on policy issues that affect all stakeholders.

Corruption

Although there is no reliable data on the magnitude of corruption in the Niger Delta, a number of recent events[22] demonstrate that corruption is not only pervasive, but also, more than 50 percent of funds the government provided were misappropriated. . Before its expiration in 1999, OMPADEC managed to complete several projects, but it left a far greater burden of unfinished projects and debts. OMPADEC suffered from lack of focus, inadequate and irregular funding, corruption and excessive political interference, lack of transparency and accountability, and high overhead expenditures. Most of its projects had little to do with poverty reduction, and the vast majority of the people did not benefit from its activities. In brief, OMPADEC failed abjectly to abate discontent and restiveness in the Region.

Similarly, the NDDC has been able to implement a good number of initiatives within the region, including roads, electricity projects and some schools and health centres. Unfortunately, the commission seems to be facing many challenges similar to those encountered by initiatives before it. At the forefront of its challenges is corruption noted in the embezzlement of budgeted funds. Such blatant excesses have seen communities getting frustrated with the resulting lack of sustainable development.

---

[21] Celestine Akpobari, paper presentation, Spaces for Change Stakeholder Roundtable, Jan. 22, 2013

[22] On the strength of a motion presented by a lawmaker (Olusegun Odeneye (Ogun State) in November 2012, the House of Representatives directed two of its standing committees to commence an investigation into allegations of corrupt practices brought against the Minister of the Niger Delta Affairs, Godsday Orubebe. The petition reminded the House of allegations that the minister has paid for many phantom projects.

At the same time, oil companies have grown frustrated that their financial contributions[23] to the Commission have failed to materialize as real improvements in the communities

To date, local communities and organizations in the Niger Delta, remain very critical of the NDDC. Expressed frustrations have been directed at the Commission's current structure which critics regard as being poorly designed. The statement below byMovement of Survival of Ogoni People (MOSOP) vividly captures the mood of communities in the Delta:

> *"The youths are frustrated that years after graduation they have no jobs, communities are frustrated by years of neglect and valuable resources from their land are taken away ... The oil companies are frustrated that their contributions to the Commission and community development have not secured them the expected social license. These frustrations reinforce perceptions—the communities see the NDDC as an agency of government dispensing patronage, whilst government see the communities as trouble makers.[24]"*

Allegations of corruption have also trailed the Niger Delta Amnesty programme[25]. What was originally designed as an ad-hoc measure to tackle a dire security and economic situation has stretched over three years, with over N160 Billion sunk into the project, without commensurate returns. Despite public outcry the programme continues, marred by abuse of office huge costs, corruption, lack of accountability and schematic uncertainty. Questions regarding the future of the project and the associated huge costs of running it remain unresolved.

Increasing Violence

The Amnesty programme was a political solution to a problem, which seemed to have defied other solutions[26]. Prior to the launch of the Amnesty programme, other social solutions and developmental initiative ultimately failed to deliver a solution capable of placating the surging local discontent in the region.

---

[23] In order to implement these development programs the funding for this commission would come from three different areas: 15% from the derivation of revenue allocation, 3% from the annual budget of the oil companies within the Niger Delta Region, 50% from the ecological fund, and proceeds from NDDC assets and miscellaneous sources, including grants-in-aid, gifts, loans and donations.

[24] Presentation by Ledum Mitee, MOSOP President, "Civil Society and Implementation of the Master Plan," presented at the Niger Delta Stakeholders Network's Workshop on the Implementation of the Niger Delta Regional Development Master Plan. November 11-13, 2007.

[25] Late President Alhaji Umaru Musa Yar'Adua announced the amnesty programme on the 25th of June, 2009, granting amnesty to all persons who have been directly or indirectly involved in militancy activities, including kidnappings, extortions, bunkering and destruction of oil installations in the Niger Delta. Repentant militants had a 60-day period to lay down their arms, to renounce violence, surrender their weapons and accept the amnesty offer.

[26] V. Egwemi, From Militancy to Amnesty: Some Thoughts on President Yar'adua's Approach to the Niger Delta Crisis; May 08, 2010, @1

Obvious examples include the Niger Delta[27] Master Plan and the establishment of a Niger Delta Ministry. In the first nine months of 2008, 1,000 people were killed, 300 were taken hostage and the government lost $23.7 billion to attacks, oil theft and sabotage[28]. At the height of militancy[29], Nigeria's oil production dropped from 2.3 million barrels per day[30] to an astonishing low estimate of 900,000 barrels per day, resulting in about N8.7 billion revenue losses daily. The Amnesty offer was a desperate move to usher in a new phase of peace and progress in the Niger Delta in particular, and Nigeria as a whole.

The Amnesty program recorded a modest success. In large numbers, many militants abandoned the creeks, embraced amnesty and turned in their weapons before the expiration of the October 4 deadline in exchange for government's promise of their reformation and reintegration into the society. The post-Amnesty disarmament, demobilisation and reintegration (DDR) programme saw about 26,328 pardoned militants[31] benefitting from a wide range of vocational and professional trainings locally and abroad. Further, official records indicate that oil export figures improved from 800,000 barrels per day during the hostilities in 2006-2008 to 2.3 million barrels per day in 2010. This led to massive revenue gains, in turn placing the country on the path of economic rejuvenation.

On the other hand, certain incidents have cast doubts on the success of the Amnesty programme. First, the Independence Day bombing on October 10, 2010 reportedly perpetrated by a notorious militia group, Movement for the Emancipation of the Niger Delta (MEND) sparked reactions and questions regarding the success of the initiative. The increasing return of violence in the region[32] provides proof that the program failed to deal with the fundamental problems of the region: poverty, environmental degradation and social injustice. As the findings of the Nuhu Ribadu-led Petroleum Revenue Special Task force (PRSTF) disclosed, theft of crude oil and refined petroleum products may be reaching emergency levels.

---

27 Beginning in 2006, it is a 15-year plan (2006-2020) designed for "poverty reduction, industrialization and socio-economic transformation to prosperity." It is divided into three phases, each to be implemented every 5 years spanning the years 2006 to 2020. They five key areas are: economic development, physical infrastructure, human and community needs, natural environment and human and institutional development. The Master Plan recognizes challenges like: poverty reduction, security within the public law and order, growth within the regional economy, improvements and maintenance of infrastructure, human resources, effective institutional structure, and good and transparent governance.All of these challenges have been seen to affect the way past initiatives have been run.

28 Wendy Bruere, IRIN, November 25, 2011

29 In 2009, MEND claimed responsibility for attacks on the Shell Bonga Floating Production Storage and Offloading vessel, situated 120km off the Nigerian coast, shutting down the production of 225,000 barrels per day. The Bonga oilfield is Shell's largest and is also of great value to other oil companies, including ExxonMobil, Elf, and Agip. The attack was particularly significant because the militants demonstrated that even offshore facilities—previously thought to be beyond reach—are not immune to sabotage

30 PUNCH Editorial January 2, 2013

31 Kingsley Kuku, Chairman of the Presidential Amnesty Programme, quoted in The Punch Editorial of January 2, 2013.

32 On February 4, 2013, a group of ex-militants destroyed the Brass trunk line of the Nigerian Agip Oil Company (NAOC) in Bayelsa State. The multi-factional Movement for the Emancipation of the Niger Delta (MEND), issued a statement claiming responsibility for the attack.

Secondly, what was originally designed as an ad-hoc measure to tackle a dire security and economic situation has stretched over three years, with over N160 Billion sunk into the project and no commensurate returns. Currently marred by misappropriation, exorbitant bursaries and schematic uncertainty, questions regarding the future of the project and the associated huge costs of running it remain unresolved. There are also widespread concerns that the handing out cash stipends to ex-militants ostensibly rewards crime, rendering crime fighting and deterrence difficult. Some of the militia leaders have been rewarded with juicy maritime surveillance contracts wherein the state oil company pays them as much as $9 million a year to protect the pipelines they once attacked[33].

The Ethnic Dimension

It is worth noting that within the Niger Delta context, the term "non-participation" is often considered through ethnic prisms. For instance, the appointment of non-Niger Deltans into key positions of influence in the oil industry, or in the management of Niger-Delta focused programmes is generally viewed as "exclusion", or "non-participation", often triggering social tensions.

In the days of OMPADEC, the Commission's funds budgeted for development projects were misappropriated[34]. Corruption became so pronounced that the first two sole administrators of OMPADEC, Albert K. Horsfall and Professor Eric Opia, were dismissed on account of official corruption. Opia was removed in September 1998 for his inability to account for N6.7 billion, then worth almost U.S. $80 million. Much of the funds disappeared into projects that never came to materialize or that were abandoned midway.

The sleaze propelled high-level probes and forced the reorganization of the Commission on three separate occasions. Though the reorganization could be justified as remedies for corruption, the replacement of Opia (from Delta State) with Assistant Inspector General of Police Alhaji Bukar Ali (a Northerner) was is emblematic of a general sentiment among Delta people that OMPADEC was not representative of their interests but merely another arm of federal bureaucracy. In this manner, rather than reducing discontent in the Delta, OMPADEC appears to have increased it.

---

[33] NNPC was said to have paid a whopping N5.6bn as contract sum to Ebikaowei "Boyloaf", Victor Ben, Ateke Tom and Asari Dokubo to guard oil pipelines along the coast. The Wall Street Journal reports that Mujahhid Dokubo-Asari, Leader of the Niger Delta People's Volunteer Force earned $9m (N1.420bn) annually, to guard pipelines along the coast of the Niger Delta, while Government "Tompolo" Ekpumopolowas paid $22.9m (N3.614bn). Boyloaf and Ateke Tom were reported to have been paid $3.8m each annually for a similar contract.

[34] Other major problems that impeded OMPADEC's effectiveness included the inadequacy of its funds and its eventual politicization. The federal government reportedly withheld about N41 billion originally budgeted for the Commission, leaving the Commission with only a paltry N20 billion total in the six years that it was operational (IRIN Special Report 1999).

Another episode that clearly depicts how tribalism slows down the progress of initiatives is the Niger Delta Summit[35]. Introduced by President YarAdua, the summit brought together representatives from the federal and local governments, oil companies and local communities to chart the course of peace. One particular aspect of the summit that caused much controversy is the selection of U.N. official Ibrahim Gambarito lead the steering committee preparing the summit. Militants, joined by the Ijaw, Isoko and Itsekiri Leaders Forum from Delta South senatorial district of Delta State condemned the planned summit in its entirety as merely another "circus show," run by non-Niger Deltans and hosted in Abuja.

Further aggravating tensions, Gambari[36] was accused of playing a role in the murder of Ken Saro-Wiwa and eight other activists in 1995. Said MEND, "Here is a man who defended the despot, SaniAbacha, and the judicial murder, only to expect a warm embrace from the Niger Delta people. He is not welcome and we do not consider him credible." Largely perceived by the local people as another bureaucratic charade, the summit ultimately sparked protests and more violence in the region, eventually forcing the government to suspend its plans.

While the direct involvement of people in projects that affect them is an active ingredient of long-term sustainable development, care must be taken to avoid invoking "inclusion" to promote ethnicity. The implication such practice has on developmental progress is dire. To either placate communities or prevent the resumption of violence, evident managerial and technical deficits in the administration of regional programs are often unaddressed. Such development initiatives are just as likely to fail, susceptible to rent-seeking and left under the control and management of unskilled indigenous executives.

Weak enforcement of legal standards

Further aggravating the volatile situation in the region is that the relevant laws regulating the environmental impact of oil exploitation by multinational companies are plagued with both substantive failings and non-enforcement by the relevant authorities . This makes it practically impossible for aggrieved persons and communities to obtain legal or administrative remedies for grave legal and human rights breaches by state and non-state entities. The laxness of regulation and technical capacities mean regulatory agencies such as the Department of Petroleum Resources and the Federal Ministry of Environment are unable to effectively monitor and ensure compliance with regulatory statutes in the oil industry. [37]

---

[35] The then Vice President Goodluck Jonathan insisted that the summit would "not be business as usual" but rather would serve as a forum to give a firm commitment to all the development needs of the region. Said Jonathan, "President Yar'Adua is totally committed to bringing lasting peace to the region, hence, there will be a commitment on the part of the Federal Government and all recommendations at the summit will be carried out to the letter."

[36] Gamabri was Nigeria's envoy to the United Nations in 1995, when Ken Saro-Wiwa and eight other activists were hanged by the military government under General Sani Abacha

[37] M.O. Agwu ibid @ 37

Efforts by the government to overhaul the oil legal regime through the introduction of the Petroleum Industry Bill have yet to be matched with the legislative verve required to make the law operational. The domestic regulation of oil companies and the protection of oil-bearing communities will likely continue to be weak and inadequate, especially with the absence of sustained public engagement. Such deliberations open up opportunities to contest policy flaws, challenge bad corporate practices and demand accountability for harmful social and environmental actions.

2.5. Best Practice: The Niger Delta Technical Committee

Of all the initiatives designed to address aspect of the Niger Delta crisis, the Technical Committee on the Resolution of the Niger Delta Crisis stands out due to its consultative and participatory outlook. Namely, the Committee involves those who directly bear the brunt of recurrent violence and environmental damage. The initiative was inaugurated on September 8th, 2008 "at a period of heightened tension exacerbated by the frustrations and burning sense of injustice that is pervading the region which found extreme expression in attacks on oil installations, kidnapping and assassinations, the nation was at its tenterhooks"[38].

Chaired by prominent Niger Delta-born environmentalist, LedumMitee, the Committee had a mandate to collate, review and distil the various reports, suggestions and recommendations on the Niger Delta[39]. Broad consultations and engagement with individuals, communities, constituencies, and corporations yielded a set of recommendations necessary for government action. Attending stakeholders had ample opportunity to ventilate their grievances, state their demands and take part in policy discussions aimed at charting a course for peace and developmental progress.

Among other distinctive recommendations, the Committee proposed the "Disarmament, Demobilization and Reintegration (DDR)" of militant groups in the Niger Delta, urging the Nigerian government to grant amnesty to all Niger Delta militants willing and ready to participate in the programme. In their own wards, this was to "establish a credible and authoritative DDR institution and process including international negotiators to plan, implement, and oversee the DDR programmes at regional, state and local government levels[40]". Ostensibly, the idea behind the Niger Delta Amnesty program derived from the Committee's recommendations.

---

[38] Ledum Mitee, MOSOP President & Chair of the Defunct Technical Committee on the Niger Delta, at the Port Harcourt International Oil and Gas Conference posted on The Tide on June 27, 2011
http://www.thetidenewsonline.com/2011/06/27/implementation-of-committee-report-on-niger-delta-myth-or-reality/

[39] Reports examined include Sir Henry Willinks Commission Report on the Fears of the Minorities (1958) to General Alexander Ogomudia's Special Security Committee

[40] Report on Oil Producing Areas (2001) and on to the Report of the National Political Reform Conference (2005).
Report of the Niger Delta Technical Committee, November 2008 at 66

Niger Delta Technical Committee Recommendations (P.64)

To facilitate a situation in which communities willingly and voluntarily protect the assets of oil operators in their areas, a framework that allows them to share in the wealth available to each community has to be established. A Community Trust Funds will pool together resources arising from compensations, royalties, rents and entitlements directly accruing from relations with oil and gas companies. In addition, for the takeoff of these Community Trust Funds, some initial allocation will come from the additional 12% allocation.

The Committee recommends that the Federal Government should do the following:

- Institutionalize by law, a Community Trust Fund Scheme for Oil-Producing Communities which will allow registered community associations and local groups the opportunity to participate in deciding how the Funds are established and administered;
- Work out a framework for oil operators to pay royalties into the Community Trust Funds such that not less than $2 per barrel accrues from oil (or its equivalent in gas) to communities. The amount accruable to the community per barrel shall be negotiated every five years.

As the above shows, the Amnesty program is not the only Committee's recommendation that has found its way into other statutory and developmental frameworks. For instance, the inclusion of a Petroleum Host Community Fund in the Petroleum Industry Bill is consistent with the Committee's recommendation. This policy tool directs oil operators to pay royalties into a Community Trust Fund for Oil Producing Communities. Accumulated funds will be used to support various forms of community environmental preservation and protection programmes as well as support infrastructural development of the community.

On the whole, the Committee's report was warmly received and generally regarded as a credible road map towards sustainable resolution of the region's problems. The problems of the Niger Delta have persisted because outcomes of many conferences and reports have remained in the pipelines of implementation. In this connection, “a selective and ad-hoc implementation of the recommendations undermines the sense in which the Technical Committee on the Niger Delta and indeed the Region envisaged the pursuit of their peace, development, security and stability [41].”

[41] Members of the Technical Committee converged at a one- day meeting convened on November 5th 2010, to consider the implementation of the Report

3

Environmental Damage in the Niger Delta

For many peoples indigenous to the Niger Delta, oil exploration has been the adversary of their traditional means of subsistence, farming and fishing. Constant oil spills, gas flares, blow-outs and leaks affect networked water bodies with spiraling effects on the local ecosystem. Contamination of creeks, streams and mangroves has far-reaching consequences due to their impact on health, soil productivity, aquatic life as well as water and food sources. Natural assets and the environmental systems that support them are also critical elements of several traditional sources of livelihood for many communities in the Niger Delta. Both official reports and public outcry show that sustained degradation evident in the region has deeply and dynamically affected the well-being of local communities. The situation is compounded by the Nigerian government's persistent failure to provide adequate regulatory oversight for the environment. In its absence, this region has been subjected to cynical operations and manipulative politics of oil companies, resulting in violent confrontations between host communities and oil companies'.

Spillage in the Niger Delta is continuous and largely attributable to rusty and ruptured pipelines. Environmental violations are still being recorded even as forests are set ablaze[42] to wipe out evidence[43]. This further contaminating the environment and inflicts grave harm to the flora and fauna. Returning the land and rivers to its original state, if possible, will require a high level of detoxification. To compound the situation, the natives are rarely, if ever, compensated for the destruction of their lands and livelihoods. When compensated, most receive only a fraction of the deserved compensation and required support.

The August 2011 United Nations Environmental Program's[44] (UNEP's) study produced the most comprehensive assessment of its kind ever undertaken in the Niger Delta. The report found that as a result of oil industry operations in the area since the late 1950s, oil contamination in s extensive and inflicting grave, negative impacts on the environment[45]. The study provides the government, stakeholders and the international community with invaluable, baseline information on the scale of the challenge as well as priorities for action in terms of clean-up and remediation"[46].

Among several shocking revelations, the report revealed that people in Nsisioken Ogale have been consuming water containing benzene 900 times above World Health Organization's (WHO) guideline. It also called on the Nigerian government to compel multinational oil companies operating in the area to clean up the pollution caused by decades of oil exploration in the area.

---

42 Amanze-Nwachuku, Fire Guts SPDC's Yorla -16 Well in Ogoni Land; Thisday: June 4, 2007.
43 Hector Igbikiowubo Oil well fire rages in Ogoni, 42 days after The Vanguard: Tuesday, September 26, 2006
44 At the request of the Federal Republic of Nigeria, the United Nations Environmental Program (UNEP) conducted an independent assessment of the environment and public health impacts of oil contamination in Ogoniland, in the Niger Delta, and options for remediation.
45 http://www.unep.org/NewsCentre/
46 UNEP Report, 2011, page 1

multinational oil companies operating in the area to clean up the pollution caused by decades of oil exploration in the area[47].

More than a year after, protracted delays in implementing the study's recommendations have made the Niger Delta the most oil-impacted tragedy in the whole world, with unprecedented social and economic consequences on local inhabitants. The list of harms is copious: the continuing destruction of mangrove forests, the extermination of aquatic life, the record high decline in fisheries and agricultural produce, the escalating oil theft through artisanal refining and 'illegal bunkering" and the resulting youth restiveness. These are some of the cogent reasons why action must be taken very urgently to reverse and address the social, economic and cultural rights violations accompanying decades of oil exploration and production in the Delta.

A last minute attempt by the Federal Government to establish the Hydrocarbon Pollution Restoration Project (HYPREP), without adequate consultation with oil-producing communities, is perceived as a face-saving, knee-jerk reaction to cover up one year of dithering on the UNEP report. Perhaps most telling is that a variety of the clean-up and corrective measures outlined in the report require very minimal resources to implement, but yet, resolute action tarries. For instance, the report directs the Federal Government to mark and inform Ogoni people of all contaminated drinking water wells where hydrocarbons were detected. This includes posting signs around all sites with "contamination exceeding intervention values". This has not been done till date. Meanwhile operational, bunkering pollution and contamination of land and water sources continues unabated.

3.1 Community agitations against environmental destruction

> *"During the extraction of oil in the 1950s, the oil companies used dynamite. The vibrations from the dynamites caused the destruction of many homes. The vibration also caused the wildlife to run away. Many animals that were threatened by this vibration never returned. There are farmers who are hunters who lost their source of livelihood. The oil companies also used chemicals. This in turn poisoned the underground water bodies and soil. So, the agricultural output began to diminish in every place where oil was drilled. This was just the first phase"*[48].

From one community to another across the region, complaints like the one above are rife. Both the Federal government and the oil companies operating in Nigeria share a responsibility to ensure that oil production does not continue to violate the rights of those who live in the areas where oil is produced. Contrary to this obligation, evidence shows that multinational corporations aid and abet human rights violations, usually in

[47] Noting that the environmental restoration of Ogoniland may take 25 to 30 years, the report called for the establishment of the "Ogoniland Environmental Restoration Authority" with initial funding of US$1 billion, in addition to implementing emergency measures to mitigate the ongoing harm to communities from the oil pollution.

[48] Interview with AAA. Briggs

concert with the federal government[49]. As has been the case in the Niger Delta, military force is often deployed to suppress community protests against the activities of oil companies where state intervention to address community concerns is needed. While there are genuine security concerns relating to kidnappings of oil workers and the protection of oil company facilities, the arbitrary use of soldiers to quell community upheavals for environmental justice remains a leading cause of the massive human rights violations witnessed in the region.

Furthermore, environmental and community protests regarding the impact of oil industry operations in the Delta have largely been uncoordinated and misinformed, resulting in a situation whereby oil companies chose what concerns and groups to listen to, or ignore as the case may be. This has made it impracticable for genuine and meaningful consultation. Furthermore, it undermines prospective negotiations between representatives of the government, the Niger Delta communities, militants groups and the leading oil companies in the region.

3.2 Oil Company Community Assistance Programs

The oil companies operating within the Niger Delta region, including the Shell Petroleum Development Company (SPDC) of Nigeria have attempted to help the communities through many different assistance programs. The main focus of these programs is to improve the family and community welfare of the Niger Delta Region. Typical aims of assistance programmes state intentions to decrease the levels of poverty, enhance productivity capacity, and strengthen the community relationships[50]. Although incurring potential benefits, assistance given to the people living in the Niger Delta over the past few decades does not match the level of wealth acquired from oil taken away from their soil.

With 6,000 kilometres of pipelines, and more than 10,000 in employment, Shell is the largest oil company working in the Nigeria at the moment. As such, its role in community relations and environmental governance cannot be overlooked[51]. Shell Petroleum outlines on its website the ways in which it is aiding the communities it is working within[52]. It specifies that it has a number of initiatives going on in the Nigeria, but it doesn't outline what these programs are. Shell also recognizes the many environmental challenges within these communities, and lists current activities taken to attempt to meet the standards made for the oil companies.

---

[49] guardian.co.uk : Shell pays out $15.5m over Saro-Wiwa killing , Monday 8 June 2009 ; Among the documents that were lodged with the New York court was a 1994 letter from Shell in which it agreed to pay a unit of the Nigerian army for services rendered. The unit had retrieved one of the company's fire trucks from the village of Korokoro - an action that according to reports at the time left one Ogoni man dead and two wounded.

[50] Joyce O. Ogwezi, "Moving towards sustainable livelihoods in the Niger Delta region" online: Forum: Science and Innovation for Sustainable Development <http://sustainabilityscience.org/content.html?listed=1&contentid=722>.

[51] Shell Nigeria & the Environment, online: Shell Nigeria, <http://www.shell.com/home/content2/nigeria/society_environment/sust_dev/env.html>.

[52] Local Content, online: Shell Nigeria, <http://www.shell.com/home/content2/nigeria/society_environment/sust_dev/local_content.html>.

These actions include monitoring, completing assessments, and effectively responding to oil spills, whether due to accident or sabotage[53].The website also states the security issues their operators may face while developing and taking part in business[54], attributing much of the instability within the country to the "unfulfilled aspirations for political recognition and influence, poverty and historical neglect, and criminality[55]."This, it suggests, can be combated with proper communication, employment, and development of infrastructure within the area[56].

Specifically focusing on the Niger Delta Region, Shell Nigeria says that it is working to take care of oil spills in the most effective and prompt manner possible, and have reduced the environmental damage from operational oil spills through better business practice[57]. They are also participating in remedial projects within the area and involving local youth in the process in order to prevent any soil or water pollution from any of their sites affecting the community[58].

3.3 The Niger Delta Environmental Survey

In February 1995, SPDC on behalf of its joint partners (NNPC, Elf, and Agip) initiated the Niger Delta Environmental Survey (NDES) to conduct an environmental study of the delta region in order to generate a reliable source of information that would guide the companies' plans to bring about sustainable environmental development in the area.

NDES created a steering committee in 1996 and hired Dutch consulting firm Euro Consult. The NDES objectives are (1) to describe and quantify the renewable and non-renewable resources of the Niger Delta, and to assess the impact of resource extraction on local, regional, and national interests; (2) to stimulate and encourage relevant stakeholders to solve identified social and environmental problems; (3) to appraise the social and economic evolution of the state over time; and (4) to generate data on the Niger Delta to inform the strategic and sustainable management of natural resources. The Survey is entirely funded by oil companies in Nigeria under the umbrella of the Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce.

The question remains whether the methods and outcomes found within the survey have a beneficial outcome for the Niger Delta region. Compiled into 53 separate volumes, the report contained digital maps, photos, action plans and some recommendations for the Niger Delta Development Priorities and Action Plan[59]. The survey and action plan contained important information about environmental conditions in the Niger Delta.

---

53 Ibid.

54 Security in Nigeria, online: Shell Nigeria, <http://www.shell.com/home/content/nigeria/about_shell/issues/security/security.html>.

55 Ibid.

56 Ibid.

57 Remediation Issues in Niger Delta, online: Shell Nigeria, <http://www.shell.com/home/content/nigeria/about_shell/issues/remediation_issues/remediation.html>.

58 Ibid.

59 Ibid.

Although this program could be very favorable, the secrecy of the survey strategies, inaccessibility of the full report and community complaints of exclusion continue to mar the NDES process.

Official commentary from NDES indicates its agents are aware that the amount of revenue afforded to oil producing communities previously has not been sufficient for development[60]. It does not have the control over the funds it provides to the government, and that the initiatives for the allocation of the revenue required are much too delayed in their implementation[61]. They feel the future work that can be done between the oil companies and the community requires the support from both sides[62].

Finally with regards to the human rights of the community of the Niger Delta, Shell Nigeria states that it is very much supportive of the "greater opportunity for freedom of speech and a respect for fundamental human rights."[63] They outline that they will not use force, or suppress any demonstrations with the use of force regardless of how disruptive the demonstrations may be and reiterate the need for communication with the community in effectively remedying such situations.[64]

One of the fundamental problems with oil company development initiatives is that it requires private business entities to take on a role that is traditionally assumed by the government. There are two fundamental reasons why multi-national oil companies are placed in this unnatural role of providing community development projects. On one hand, the government fails to provide basic services to the communities, despite the huge revenue gains from taxes and royalties from oil production in the area. If the government was using oil revenue to improve the communities from which the oil was drilled, it is unlikely communities would look to oil companies for development assistance. Unfortunately this has not been the case in the Delta. The people in the Delta suffer the costs of oil production and are simultaneously denied the benefits.

The second major reason why communities look to multi-national oil companies for development projects is because of their role in the massive regional environmental damage. Part of this is again attributable to government failure to adequately regulate the environmental impact of oil companies. Yet, there is also a significant portion of responsibility that rests upon the actions of the oil companies themselves. This systematic destruction of the environment in the Delta has destroyed peoples' ability to live and make a livelihood. Multi-national oil companies are directly responsible for this degradation and therefore have an obligation to compensate for any loss incurred. Yet the process by which such compensation is determined can be extremely complex.

---

[60] Ogoni, online: Shell Nigeria, <http://www.shell.com/home/content/nigeria/about_shell/issues/ogoni/ogoni.html>.

[61] Ibid.

[62] Ibid.

[63] Human Rights, online: Shell Nigeria, <http://www.shell.com/home/content/nigeria/about_shell/issues/human_rights/hum_rights.html>.

[64] Ibid.

Rather than admit to their negligence, compensate and clean up in line with a legal regime, companies often deny responsibility for problems caused by their actions. When development projects are instituted, they are often presented as a form of charity for affected communities. This approach is dysfunctional in several ways. By evading responsibility, the companies deny the victims who have suffered environmental abuses any sense of justice or restitution. Furthermore it leaves the matter of compensation wholly dependent on the subjective "good will" of the oil companies. The oil companies decide what to provide, how much to provide, and who to provide it to.

4

The Petroleum Industry Bill: An Analysis of the Provisions on Community Participation and the Environment

The previous chapters discussed the range of social, economic and environmental problems in Nigeria's Niger Delta; issues responsible for the surge in civic discontent and the slowdown of local and regional development. The structural challenges outlined necessitate a change in the way the national oil regulatory framework is designed and implemented – an incentive that must be matched with concerted political action to restore the foundations of law and order needed to support sustainable reforms.

With a focus on the identification of social priorities, issues and gaps within the Petroleum Industry Bill, this chapter flags and critically reviews specific provisions that could potentially undermine community participation and environment (CPE) protection. Extracts of relevant sections of the PIB are followed by reflective commentary against global standards and buttressed with recommended actions for legislative action and engagement. Strengthening these critical provisions is of utmost importance to secure maximum support for the proposed reforms and avoid unwanted consequences that stifle productivity, economic growth and social cohesion.

While the analysis of the CPE provisions contained in this chapter is not exhaustive, it is hoped that the data and recommendations proffered will contribute to the achievement of a new social order predicated on social equity and environmental justice in the Niger Delta in particular, and Nigeria at large.

4.1 Petroleum Host Communities Fund

Extract 1 | Petroleum Host Communities Fund – 116 -118

116. Establishment of the Petroleum Host Community Fund
There is established a fund to be known as the Petroleum Host Communities Fund (in this Act referred to as 'the PHC Fund').

117. Purpose of the PHC Fund
The PHC Fund shall be utilized for the development of the economic and social infrastructure of the communities within the petroleum producing area.

118. Beneficial entitlements to the communities

(1) Every upstream petroleum producing company shall remit on a monthly basis ten percent of its net profit as follows -.
  (a) for profit derived from upstream petroleum operations in onshore areas and in the offshore and shallow water areas, all of such remittance shall be made directly into the PHC Fund; and
  (b) for profit derived from upstream petroleum operations in deepwater areas, all of the remittance directly in to the Fund for the benefit of the petroleum producing littoral States.

(2) For the purpose of this section 'net profit' means the adjusted profit less royalty, allowable deductions and allowances, less Nigerian Hydrocarbon Tax less Companies Income Tax.

(3) At the end of each fiscal year, each upstream petroleum company shall reconcile its remittance pursuant to subsection (1) of this section with its actual filed tax return to the Service and settle any such difference.

(4) The contributions made by each upstream petroleum company pursuant to subsection (1) of this section, will constitute an immediate credit to its total fiscal rent obligations as defined in this Act.

(5) Where an act of vandalism, sabotage or other civil unrest occurs that causes damage to any petroleum facilities within a host community, the cost of repair of such facility shall be paid from PHC Fund entitlement unless it is established that no member of the community is responsible.

(6) The Minister shall, subject to the provisions of section 8 of this Act, make regulations on entitlement, governance and management structure with respect to the PHC Fund established under this Act.

The establishment of the Petroleum Host Communities' Fund (PHC Fund) is viewed as a strategic response for addressing the continuing local discontent and instability in the Delta. Under Section 118 of the Bill, every company involved in oil and gas exploration and production is required to remit into the fund 10 per cent of its net profiton a monthly basis. According to the reform bill, this is defined as the adjusted profit minus the Nigerian hydrocarbon tax and minus the companies' income tax. The Fund will be utilized for the development of the economic and social infrastructure in oil-producing communities, furthermore affording their joint ownership of oil and gas assets.

This Fund is set aside for any community in any part of the country where oil is extracted and produced. This means that current river basins across the country with strong prospects of oil finds are potential beneficiaries of the PHC Fund. As an initiative that is not limited by geographic location, the PHC Fund represents an intergenerational mechanism for addressing the environmental damage and infrastructure deficit in areas where oil is extracted.

Points to note:

1 First off, sections 116-118 did not define “host community” nor outline the features a community must have in order to earn the title of a “host community”.

The reference to “host communities” is vague, rendering that term amenable to conflicting interpretations. Among several questions asked: Will ''oil-producing communities'' include those through which pipelines travel outside the Niger Delta region? Is it the community where the wellhead is located or others that also suffer the negative consequences of the spills and pollution? The vagueness is also perceived as a real threat to peace in the Niger Delta, which may potentially set communities against each in a bid to be defined as a 'host'.

2. Secondly, the bill is silent on how the fund will be administered, but empowers the Petroleum Minister to develop guidelines for managing the Fund. In the absence of an effective administrative framework, the looming discord the Fund portends is not in doubt. Most of the community clashes in the region are linked to funds given to communities either by the government or oil companies.

3. By providing for the "economic, social and infrastructural development" of the "communities within the petroleum producing areas”, the PHC Fund shares similar characteristics with NDDC. The Bill does not indicate how this differs from NDDC, except in terms of sources of funds. As an industry stakeholder observed, placing the administration of the fund under the guidelines issued by the Inspectorate takes us back to the days of OMPADEC, and there is nothing to convince that it would be different.

4. Again, the Bill did not state the criteria for allocating resources from the Fund to host communities. Neither does it clarify the procedures by which the citizens, especially aggrieved victims or impacted communities can verify the actual sums that accrue to them from the Fund.

5. Another disturbing clause is Section 118 (5)which dishes out collective punishment on host communities where obstruction or damage to any petroleum facilities occurs as a result of vandalism, sabotage or other civil unrest. The costs of repairing such damaged installations will be deducted from the Fund payable to that host community. The Bill failed to take into account that persons responsible for an act of vandalism or sabotage may not necessarily come from the community where the facility is located. The difficulty in identifying and apprehending culprits also poses a huge challenge. The implication of subsection 118(5) is that the Federal government is outsourcing the policing and protection of oil facilities to “host communities” [67].

Take note that the sophistication, complexity and intensity with which organized crimes (e.g. pipeline vandalisation and theft of petroleum products) are perpetrated require

---

65 A wide range of questions were submitted by industry stakeholders during the first-ever E-Conference on the PIB, hosted by Spaces for Change on July 14, 2012. The lead discussants at the conference were: Peter Esele of the Trade Union Congress, Ledum Mitee, ex-president of MOSOP, Samuel Diminas of Chevron Corporation USA, Jeremy Weate, an extractive industries expert and Opeyemi Agbaje, a policy analyst.

66 Ledum Mitee, Spaces for Change's E-Conference Report, PIB & YOU @ 8

67 Emmanuel Ojameruaye, Reviewing the PHC Fund, Business Day, Sept 2012

very skilled security interventions often absent within the host communities. Put in another way, communities lack the skills and expertise needed to confront or combat such violent acts of sabotage perpetrated by heavily-armed criminal gangs who often act in connivance with security agencies. For instance, System 2E/2EX which conveys products from the Port Harcourt refinery to Aba-Enugu-Makurdi depots onwards to Yola-Enugu-Auchi, particularly the Port Harcourt-Aba/Isiala-Ngwa axis, appears to be the haven of pipeline vandalism in the country. 8,105 breaks were recorded along the system 2E within the period representing about 50.3 percent of the total number of petroleum products pipeline breaks in the country. The attacks left the NNPC with a cost of N78.15 billion in products losses and pipeline repairs. [68]

While the Joint Task Force (JTF) is charged with the surveillance of upstream operations in the Niger Delta region, the Federal government (through the NNPC) expanded the oil surveillance operations in the creeks by awarding maritime surveillance million-dollar contracts to ex-militants. The PIB also empowers the Inspectorate to establish the Special Investigative Unit – an agency charged with the responsibility to conduct surveillance operations on oil installations. With all these duplicated arrangements already in place, it is wrong to hold oil-producing communities responsible for the protection of oil facilities within their communities.
Lastly, no whistle blower protection mechanisms are in place in the Bill, meaning that any citizen who draws the public's attention to the vandalization or damage to petroleum products is left vulnerable.

Recommended Action:

1. The term, "host community" needs to be defined.
2. Delete section 118 (6) of the Bill.
3. A governing structure and administrative framework is imperative to bring the PHC Fund at par with other Funds created under the PIB such as the Petroleum Equalization Fund (PEF) and the Petroleum Trust Development Fund (PTDF).
4. Creating a governance structure for the PHC Fund should not be left in the hands of the Petroleum Minister alone as proposed under section 118 (6) of the PIB, as this counteracts the Bill's objective to promote an institutional approach to inclusive management of the oil and gas industry.
5. The National Assembly is urged to consider the creation of a community-based fund management structure, called the Community Development Board (CDB), to manage the PHC Fund. The proposed CDB will serve as an independent body, without prescriptive interference from government agencies, state governors and traditional institutions, whose members are appointed for a fixed tenure by different interest groups. Candidates and overseeing groups will include women, youth, traditional rulers and elders' council within oil-producing communities [69].

---

68 **Wole Balogun,** Pipeline vandalization: The unstoppable racket; **Sun Newspapers,** October 3, 2012

69 Demand by leaders of 6 oil producing communities in Ogoni, Rivers State at a meeting held on February 26, 2013

4.2 The Inspectorate's and Agency's Reporting Obligations

Extract 2 | The Inspectorate's and Agency's Reporting Obligations - 15 (1)(h) & 45 (1)(h)

15. Functions of the Inspectorate
    (1) The Inspectorate shall in collaboration with other relevant government agencies, where applicable:
    …
    (h) publishreports and statistics on the upstream petroleum sector;
45. Functions of the Agency
    (1) The functions of the Agency in collaboration of other relevant Government institutions where applicable are to:
    …
    (h) publish reports and statistics on the downstream petroleum sector;

The combination of 15 (1)(h) and 45 (1)(h) which require the Upstream Petroleum Inspectorate (UPI) and the Downstream Petroleum Regulatory Agency (DPRA) to publish reports and statistics on the upstream and downstream petroleum sectors are smart provisions that would aid the industry meet its transparency goals.

Commendably too, S.174 appears to have subdued the doubts regarding the accessibility to information about petroleum operations. That section requires the texts of any subsisting or future license or lease or contract with the National Oil Company to be published on the website of the Inspectorate and imposes penalties for non-compliance. All geological, geophysical, geochemical and other technical information stored in the petroleum data obtained during upstream petroleum operations "shall be accessible for any interested person under such access agreements as may be determined by the Inspectorate"(S.174 (11)).

Points to note: The Bill requires the information to be published on the websites of both agencies, rendering the information accessible to predominantly online users. An online medium offers scant opportunities to populations who lack both the access and capacity to use online-based data and statistics. In effect, remote communities likely to be directly affected by upstream and downstream operations are further excluded and prevented from meaningfully participating in matters that affect them.

Although the non-confidentiality clause of S.174 laudably includes the establishment of clear reporting timelines, it fails to address the current gaps between policy and practice. In effect, information disclosure procedures are either non-existent or riddled with bureaucratic bottlenecks. Although presently petroleum product marketers are required to present similar reports to the NNPC and the PPPRA, key agencies such as the National Extractive Industries and Transparency Initiative (NEITI) and independent audit firms have had great difficulty accessing such information. The requirement to publish has only further disguised on-going corruption, as "the procedures for managing and reporting the country's crude oil and gas revenues are

characterized by gaps, overlaps and inconsistencies in the role of key parties responsible for the assessment, collection and reporting on these revenue streams"(KPMG Nov. 2010). The process is very convoluted and requires years of experiences in the joint-sharing contracts, taxation and historical industry knowledge of the oil and gas industry that even the tax office is not presently equipped to properly execute. Accurate data collection and assessment is just as relevant as data access[70].

Recommended Action: A mixed reporting and communication strategy is necessary in order to ensure that information reaches a wider audience, in a manner that respects community-right-to-know requirements, while allowing for independent monitoring of official activities. Except for specified categories where confidentiality is required, an information disclosure policy outlining the procedure for obtaining different types of information is needed to give full effect to this provision. Consistent with the a global perspective of transparency in public administration, the policy will also stipulate how and when the Inspectorate and the Agency will respond to requests for access made to it by the media and the public. These will adhere to the limits prescribed by the Freedom of Information Act.

4.3 Limitation of Suits Against the Inspectorate

Extract 3 | Limitation of Suits Against the Inspectorate - S.37 (1) & S. 67

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Inspectorate, Director General, an officer or employee of the Inspectorate.

(2) No suit shall lie against the Inspectorate, the Director General or any other officer or employee of the Inspectorate for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced—
   (a) within three months next after the act, neglect or default complained of; or
   (b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.

(3) No suit shall be commenced against the Inspectorate, the Director General orany official or employee of the Inspectorate before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Inspectorate by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.

70 Zumunta Machunga-Disu. She is an author, researcher and consultant on renewable energy and climate change working across sectors to bring business intelligence and best practices on green growth to economic development in Nigeria.

Anything done by the Inspectorate, the DPRA and their employees under the Act is protected under the Public Officers Protection Act. (S.37 (1) and S. 67). The two sections specifically exempt the afore-mentioned officers and agencies from being sued for any act done in connection with the performance of their official duties. The exemption holds except when legal actions (lawsuits) brought against them are commenced within three months after the act complained of; or within 6 months in the case of a continuing damage or injury. S.37 (3) and 67 (3) require intending plaintiffs to serve a one-month pre-action notice on the Inspectorate, or any of its officials in relation to any suit instituted against the Inspectorate, Director General, an officer or employee of the Inspectorate. Pre-action notices are time frames within which any person aggrieved by the conduct of a government corporation or its officials may bring an action against them. Such notices are routinely stipulated in statutes setting up government corporations and agencies.

Points to note: This provision has a strong potential to hurt and deprive communities affected by petroleum operations of their rights to legal redress. First off, the 3-6 month limits does not seem to take into account the time lag between when an incident occurs and when it reaches notice of the appropriate authority. Neither does it accommodate the difficulties relating to gathering evidence and the associated high costs. The report of the United Nations' Environmental Programme (UNEP) on oil devastation in Ogoni land confirmed that industry-related oil spills in Nigeria are not immediately identified, reported or attended to. This often leads to fires, causing total or partial destruction of vegetation.

In oil spill cases, scientific studies are sometimes required to establish the precise nature and extent of environmental damage caused by an oil spill. It took UNEP four long years to conclude its assessment of the environmental devastation in Ogoniland. As the UNEP study demonstrates, the consequences of petroleum operations are often subjects of lengthy investigations that usually stretch beyond three and six months. Similarly, the Farouk Lawan[71], AigImokhoede[72] probes have shown investigating allegations of systematic corruption in the administration and management of oil revenues is a complex task requiring specialized knowledge, technical and scientific expertise. The oftenrigorous analysis of accounting and payment documents, contractual terms, decision-making processes and other corporate documents are tasks that require dedicated effort and time, usually exceeding the stipulated three months when the relevant act occurred.

Recommended Action: The 3-6 month time bar should be removed. Limitation provisions like that of sections 37 and 67 of the PIB effectively shield offending corporations and indicted officials from

71 Following the removal of subsidy on PMS on the 1st day of January, 2012 by the Federal Government of Nigeria and the attendant spontaneous social and political upheavals that greeted the policy, the House of Representatives in an Emergency Session on the 8th of January, 2012 set up an Ad-hoc Committee to verify and determine the actual subsidy requirements and monitor the implementation of the subsidy regime in Nigeria. The Committee was headed by Farouk Lawan

72 Aigboje Aig-Imoukhuede is the Chairman of the special committee appointed by President Goodluck Jonathan to verify and reconcile the records of payments on fuel subsidy. The special committee had the mandate to "properly identify all cases of overpayments and/or irregular payments; to accurately identify all likely fraudulent cases for criminal investigations, and to review any other pertinent issues that may arise from its work and make appropriate recommendations."

legal proceedings, even in deserving circumstances. If the pre-action notice is still considered a necessity, an extension of the limitation period to three (3) years after the occurrence of the Act complained of is recommended.

4.4 Protected Objects & Compensation

Extract 4 | Protected Objects & Compensation - 198 & 199

198. Protected Objects
- (1) In the course of upstream petroleum operations, no person shall injure or destroy any tree or object which is:
- a. of commercial value;
- b. the object of veneration to the people resident within the petroleum prospecting licence or petroleum mining lease area, as the case may be.
- (2) A licensee or lessee who causes damage or injury to a tree or object of commercial value or which is the object of veneration shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.

199. Compensation
- (1) The amount of compensation payable under section 198 shall be determined by the Inspectorate in consultation with designated persons and representatives of the person whose protected objects have been damaged and the licenses or lessees, in accordance with regulation made by the Minister on the advice of the Inspectorate.
- (2) Where a licensee or lessee fails to pay compensation, the license or lease may be suspended until the amount awarded is paid.
- (3) Where the licensee or lessee fails to make payment within thirty days after the suspension of the said licence or lease in accordance with subsection (2) of this section, the Minister may revoke the licence or lease.

Under S. 198 and 199, licensed oil operators are directed to refrain from damaging or destroying commercial trees, images or objects venerated by those who reside in areas where petroleum prospecting or mining take place. Communities are entitled to “fair and adequate compensation” in the event of such losses resulting from corporate operations. Compensation shall also be paid where damage occurs as a result of negligence on the licensee's part, or where oil leaks destroy crops, trees and other means of livelihood. In event of failure to pay compensation, defaulting licensees may have their licenses suspended or revoked.

In determining “fair and adequate compensation”, affected persons or their representatives will be consulted and their views sought. In this process, citizens are invited to share or contribute their opinions regarding the loss or harm occasioned by the licensee's oil operations.

Points to note: The Bill did not define what constitutes "fair and adequate compensation", depending instead on the discretion of the Inspectorate without any clearly stipulated criteria. The section is also silent on how affected communities and individuals will be consulted and how feedback will be compiled and analysed. Moreover it fails to specify explicit mechanisms for consulting affected individuals and communities for the purpose of determining adequate compensation. Relevant mechanisms unspecified in the Bill include specific committees, public meetings or traditional institutions that are responsible for communication, negotiation and local decision-making. Considering the historical relationships in which local residents and their representatives have felt tokenized, it is critical to outline the procedures and processes for engaging affected persons/communities in culturally appropriate ways.

Secondly, there is no provision for independent valuation. Inadequate compensation terms and flawed negotiation processes are at the root of the growing hostilities between oil companies and their host communities. Finally, the Bill does not provide any localized complaint procedures or mechanisms through which affected persons and communities may complain about their losses or object to unfavourable compensation terms.

Recommended Action:

1. Thecriteria for determining what is 'fair and adequate' compensation and the processes for consulting affected persons should be clearly spelt out.
2. Legislative recognition and protection of the rights of women and female-headed households to participate and benefit directly from compensation schemes is highly desirable.
3. The grievance procedure for registering compensation-related grievances at the Inspectorate needs to be specified.

4.5 Environmental Quality Management

Extract 5 |Environmental Quality Management - 200

(1) Every licensee or lessee engaged in upstream petroleum operations shall, within one year of the commencement of this Act, or within three months after having been granted the license or lease, submit an environmental management plan to the Inspectorate for approval.
…
(3) The environmental management plan (EMPs) shall:
  a. establish initial baseline information and a program for collecting further baseline information concerning the affected environment to determine protection and remedial measures and environmental management objectives;
  b. investigate, assess and evaluate the impact of the licensees or lessee's proposed exploration and production activities on:
    i. the environment; and
    ii. the socio-economic conditions of any person who might be directly affected by the upstream petroleum operations;
  c. describe the manner in which the licensee or lessee intends to –
    i. modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
    ii. contain or remedy the cause of pollution or degradation and migration of pollutants; and
    iii. comply with any prescribed waste management standards or practices.
    …
(5) The Inspectorate, in approving the environmental management program shall consider the comments of the Federal or State Ministries of Environment.
(6) The Inspectorate may call for additional information from the licensee or lessee and may direct that the environmental management programme in question be adjusted in such ways as the Inspectorate may require.
(7) The Inspectorate may at any time after it has approved an environmental management programme and after consultation with the holder of the licence or lease concerned, request an amendment of the environmental management programme.
(8) No chemicals shall be utilized for upstream petroleum operations, unless the Inspectorate has granted the applicable permits.

The primary purpose of this provision is to establish clear policies and guidelines aimed at preventing or minimizing pollution damage. Section 200 obligates licensees, oil companies involved in upstream petroleum operations to adhere to sound oil field practices, protect the environment and promote sustainable development. The volatile nature of the oil producing areas and high environmental risks associated with oil production underscore the importance of these legal and social obligations.

Points to note:

1. Persons and communities living within the proximity of oil exploration and production activities continue to bear the brunt of environmental pollution and degradation. Beyond the requirement for oil companies to develop an awareness plan for informing their employees of any environmental risks which may result from their work, section 200 failed to create a corresponding obligation for operators to outline how they will warn local communities about the potential social, economic and health impacts of their activities. The increasing oil exploratory activities in Nigeria means that now more than ever, persons and communities likely to be impacted need to be prepared and informed on the impacts of oil prospecting and mining. The options available to control negative environmental impacts as well as the benefits of precautionary action should be shared with affected and other critical stakeholders. In addition, section 200 does not establish mechanisms or procedures through which impacted persons and communities may access the EMPs, or information regarding detailed strategies for impact prevention, minimization, and mitigation.

2. In preparing the EMPs, operators are not required to consult and seek feedback from local residents and landowners. Many of these groups depend on the environment for subsistence through agriculture or fishing and are therefore particularly vulnerable to the impacts of environmental damage. Operators are also not required by to build awareness of the EMPs and invite feedback. There is no requirement to involve communities in the implementation of the EMPs, especially the monitoring, maintenance and surveillance of oil and gas installations. Communities need to understand the contents of the EMPs of various operators working in their communities, and how to use those standards to demand protection against environmental hazards.

3. S. 200 (5) prohibits the use of chemicals in upstream operations, except where the Inspectorate has granted the necessary permits. While this is good practice, it still falls short of applicable international standards on the reporting of usage of hazardous chemicals. For instance, in the United States of America (USA), the Emergency Planning and Community Right-to-Know Act (EPCRA) establishes requirements for federal, state and local governments, Indian Tribes and industry representatives regarding emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. EPCRA was passed in response to concerns about environmental and safety hazards posed by the storage and handling of toxic chemicals. Triggered by the disaster in Bhopal, India, in which more than 2,000 people died or suffered serious injury from the accidental release of methyl isocyanate, this legislation aims to reduce the likelihood of such a disaster in the United States. A unique feature of this legislation is the involvement of local governments who are required to prepare chemical emergency response plans and review plans at least annually.

4. Industry experts[73] have also opined that section 200 provisions are not strong enough to guarantee environmental protection. Asking operators in consultation with the Ministry of Environment to come up with an environmental plan does not deal with the question of the gaps between policies and practices – the central and most critical driver of environmental mismanagement. For instance, the UNEP report on Ogoni found that Shell breached its own environmental guidelines as well as those set by government.

Recommended Action:

1. A strict legal obligation on oil companies to involve oil-bearing communities in the design and implementation of the EMPs is very vital.
2. This obligation should be supported by robust legal provisions requiring licensed operators, state and local governments to undertake awareness creation on the EMPs and the hazardous chemicals used in petroleum operations.
3. A community-right-to-know legal framework is also long overdue to increase local knowledge of environmental risk mitigation and emergency planning.

4.6 Gas Flaring Penalties

Extract 6 | Gas Flaring Penalties - 201

(1) The lessee shall pay such gas flaring penalties as the Minister may determine from time to time.
(2) The lessee shall install all such measurement equipment as ordered by the Inspectorate to properly measure the amount of gas being flared.

The vagueness of above provisions is not only alarming, but also framed in a language that hardly conveys the seriousness needed to make gas flaring a thing of the past. The lack of clarity regarding the penalty payable by offending operators, especially oil companies, companies portends a sign of a looming floodgate of litigation, which has seen communities often at the losing end. Litigation provides operators the advantage of continuing activities undisturbed while the case suffers undue delay.

With over 14.9billion cu ft (10.6%) of gas flared in 2008 alone, the US National Oceanic and Atmospheric Administration ranked Nigeria as the second highest gas flaring country in the world after Russia. Communities living within exploration and mining sites where gas flaring occurs unabatedly continue to endure the resulting environmental pollution, adverse climate changes, food insecurity,

[73] Ledum Mitee, Spaces for Change E-Conference, PIB & YOU held on July 14, 2012

diseases, unemployment and deforestation, which in turn destroy livelihoods dependent on local resources.

The absence of reliable data for gas flare volumes, coupled with the oil operators' signature non-compliance to the revised flaring regimes are among the top reasons why local agitations for environmental justice have not yielded positive results.

Points to note: Gas flaring constitutes irresponsible environmental behaviour on the part of the oil extracting companies, and as such, should be deterred in the interest of environmental safety of endangered individuals and communities. Attempts to end gas flaring continue to be impeded by the dearth of adequate infrastructure such as storage and processing facilities for conversion of gas to cashable use. Not only that, oil companies and private firms are prohibited from undertaking in commercial energy production. To bring gas flaring to an end, facilities for gathering, storing and processing gas must be built, and the end products properly harnessed for onward distribution to consumers.

Lastly, it is not just enough to require oil companies to install measurement equipment for measuring the amount of gas being flared. This must be matched with a corresponding capacity of regulatory agencies to independently verify, track and measure gas volumes produced and flared. The findings of the NuhuRibadu-led Petroleum Revenue Special Task force (PRSTF) show that the agency responsible for collecting gas flare penalties, the Department of Petroleum Resources (DPR), is currently unable to independently track and measure gas volumes produced and flared. It depends largely on the information provided by the operators. The PRSTF also found that none of the oil companies operating in Nigeria have paid any gas penalty fee in 2012, resulting in massive revenue losses.

As a side note, propositions to channel the accumulated penalties towards affected communities to support environmental protection are worth considering. For example, channeling part of the revenue derived from gas flare penalties into the Petroleum Host Community Fund could potentially help in mitigating the negative consequences of oil exploration on affected individuals and communities, including the development of community environmental governance initiatives, local environmental education programmes, a Niger Delta green development fund, or even to support a watch guard for corporate and state environmental mismanagement.

Recommended Action:

1. A strict enforcement of the revised gas flare penalty directive emblematizes a strong deterrence measure. Impose stiffer penalties for non-compliance.
2. Channeling part of the revenue derived from gas flare penalties into the Petroleum Host Community could potentially help in mitigating the consequences of flared gas on impacted individuals and communities.

3. Through research and training, build the capacity of Inspectorate's officials to establish safe technologies and mechanisms for independently tracking gas volumes produced and flared.
4. The Inspectorate should be required to publish gas flaring data, including the gas flaring penalties paid or payable periodically.
5. A comprehensive review of gas-to-energy policies is critical to the attainment of efficient conversion of gas for productive use, which will in turn, bring gas flaring to an end.

4.7 Consultation with State Ministries & Departments

Extract 7 |Consultation with State Ministries & Departments - 202

(1) When considering an environmental management programme, the Inspectorate shall consult with the Federal Ministry of the Environment (FME)and the State Ministries of Environment within which the licence or lease is situated and with any other relevant bodies within which the licence or lease is situated.
(2) The Federal and State Ministries of Environment and any other bodies that the Inspectorate may consult, shall submit their written comments within thirty days of the date of request.

In considering and approving the EMPs submitted to it by operators, the Inspectorate is required to consult the federal and state ministries of environment, or other relevant bodies within which the license is situated. The consulted agencies and bodies can raise issues or objections to the EMPs by way of comments submitted to the Inspectorate within 30 days the request was made.

Embedded in this provision is a requirement for oil companies to comply with all state and federal laws related to the protection of the environment, including town/country planning codes regulating the construction and maintenance of environmentally-safe infrastructural facilities. One of such laws is the Environmental Impact Assessment Act (EIA), 1992 (Decree No. 86 of 1992) which all public and private projects that could potentially affect the environment must fully comply with. Section 52 (2) of the EIA states: “Where a review panel established to assess environmental effects ... submits a report to FME indicating that the project is likely to cause any serious adverse environmental effects, FME may prohibit the proponent of the project from doing any act or thing that would commit the proponent to ensuring that the project is carried out in whole or in part until FME is satisfied that such effects have been mitigated.'
Points to note: First, it is unclear whether “other bodies” referenced in the above provisions include traditional institutions, community and non-governmental organizations. Secondly, the impact assessment community is under increasing pressure to act now and promote the use of broader principles of sustainability assessment to better understand the true impacts of policies, plans, programs and projects affecting

the environment. This priority should be addressed by incorporating other scientific and social analysis into EIAs, such as climate change, biodiversity, forestry, water, desertification, air quality and stratospheric ozone depletion.

Recommended Action:

1. How objections raised by the state and federal ministries and other bodies regarding the EMP are resolved needs to be clarified.
2. Recognizing communities as active participants in the EMP preparation processes will represent a huge step forward in the Bill's efforts to promote and sustain participatory development and inclusive environmental management.
3. Consultations relating to the EMPs would be most impactful particularly when environmental and social issues are statutorily assessed together before the commencement of oil-related projects.
4. Effective communication mechanisms between the Inspectorate, the Federal and State Ministries of Environment and "other bodies" such as the scientific experts, impact assessment practitioners and local communities need to be put in place to increase collaborative problem-solving and information exchange in a way that is beneficial to all stakeholders.

4.8 Financial Contribution for Remediation of Environmental Damage

Extract 8 | Financial Contribution for Remediation of Environmental Damage - 203

(1) As a condition for the grant of the licence or lease and prior to the approval of the environmental management plan by the Inspectorate, every licensee or lessee shall pay the prescribed financial contribution to an environmental remediation fund established by the Inspectorate, subject to audit by the lessee, in accordance with guidelines as may be issued by the Inspectorate from time to time, for the rehabilitation or management of negative environmental impacts with respect to the license or lease.

(2) In determining the amount of the financial contribution the Inspectorate shall take into consideration the size of the operations and a reasonable level of environmental risk that may be determined to exist.

(3) If the licensee or lessee fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any negative impacts on the environment, the Inspectorate may, upon written notice to such licensee or lessee, use all or part of the fund contemplated in subsection (1) of this section to rehabilitate or manage the negative environmental impact in question.

(4) The licensee or lessee must annually assess its environmental liability and if necessary increase its financial contribution to the fund referred subsection (1) of this section.

(5) If the Inspectorate is not satisfied with the assessment and financial contribution contemplated in subsection (4) of this section, the Inspectorate may appoint an independent assessor to conduct the assessment and determine the financial contribution and the licensee or lessee shall be obliged to pay the fees of the assessor and the determined financial contribution.

As part of measures to protect the environment from devastation through oil operations, this provision establishes the environmental remediation fund, to be managed and administered by the Inspectorate. Drawing up environmental plans and the setting up of a remediation fund form part of measures to enhance compliance with good oilfield practices as well as health, safety and environmental (HSE) standards. The essence of such remediation is to restore the environment to what it was before drilling, development or oil production activities. Obligating operators to pay prescribed fees into the Fund as a condition precedent for the granting of a prospecting license or lease and approval of the EMPs, operates as a disincentive for oil companies to carry out activities that are harmful to the poor, the environment, and the local economy.

Even though this provision does not specifically reference oil-producing communities, there is no doubt that the persons and communities living within the proximity of impacted sites will benefit from the Fund. Taking into account that persons and communities activity zones typically have no voice to negotiate benefits or effectively secure reprieve when their rights are infringed, the Fund is solely applied towards the remediation or containment of any adverse effects of soil and water contamination.

Point to note: The Fund will be applied towards the rehabilitation, remediation or management of negative environmental impacts only when the licensed operator lacks the capacity, or is unable to undertake such rehabilitation effectively. In addition, it requires oil companies to self-evaluate their environmental liability for the purpose of increasing their financial contributions to the Fund, while allowing independent assessments only when such self-assessments are unsatisfactory.

In this context, the Inspectorate doubles as the Fund manager and the facilitator of investigation, remedial planning and remediation of sites that pose a risk to human health and the environment. Also implicit in that role is an obligation on communities to cooperate and support environmental rehabilitation and remediation efforts. The Inspectorate's expectation of support and cooperation cannot be considered in isolation from the duty to provide practical advice and guidance to communities on ways of identifying, assessing and managing soil contaminants.

Recommended Action: As the National Oil Spill Detection and Remediation Agency (NOSDRA) is already responsible for overseeing remediation of oil-impacted sites, getting the Inspectorate involved in remediation undertakings amounts to an overlapping of roles. The management of the remediation fund should therefore be vested in NOSDRA, as opposed to the Upstream Petroleum Inspectorate (UPI). This will not only guarantee the UPI's and NOSDRA's independence and effectiveness, but also inject more clarity in institutional obligations and regulatory functionality in the oil industry. Not only that, Ascribing too many powers to one office or official creates vulnerabilities by heightening the likelihood of abuse of authority, rent-seeking and conflicts of interest.

4.9 Abandonment, Decommissioning & Disposal

Extract 9 |Abandonment, Decommissioning & Disposal - 204

(1) The decommissioning and abandonment of onshore and offshore petroleum wells, installations, structures, utilities and pipelines shall be conducted in accordance with good oil field practice and in accordance with regulations and implemented by the Inspectorate, provided that such guidelines, standards and regulations shall be in line with the guidelines and standards set by the International Maritime Organisation with respect to offshore petroleum installations and structures.

…

(9) The Inspectorate may recall any licensee or lessee responsible for the decommissioning or abandonment programme with respect to a licensee or lease that has expired to carry out its decommissioning and abandonment obligations under this Act.

(10) The Inspectorate shall ensure that a list of all the petroleum installations, structures and pipelines onshore and offshore Nigeria and their current status is compiled and made available or accessible to the public.

(11) The Inspectorate shall require a lessee to set up and manage an abandonment fund for the purpose of abandonment, decommissioning and disposal for the use by the lessee during abandonment, decommissioning or disposal with the approval of the Inspectorate and such funds shall be accessible by the Inspectorate in case the lessee fails to carry out the obligations under this Act.

This section provides detailed guidelines and regulations that licensed operators must comply with when onshore and offshore installations cease operations, or have become obsolete and production contracts with multinational and indigenous oil companies expire. The decommissioning programme aims to restore the disused site as far as possible to its original condition. However, any decommissioning of offshore oil installations, pipelines and structures must comply with the guidelines and standards set by the International Maritime Organization, while the decommissioning of onshore installations are covered by the Inspectorate's regulations.

According to Ayoade Morakinyo (NIALS 2011), decommissioning “is the process by which options for the physical removal and disposal of obsolete installations at the end of their working life are assessed; a plan of action is formulated by the operator; the operators plan is reviewed and approved by government; and the decommissioning plan is implemented. It is a complex process with an overall timescale lasting several years dealing with diverse issues and involving inter alia government agencies, oil producing companies, third party contractors, local communities and non-government organisations. It is essentially a reclamation process”.

From the above explanation, decommissioning operations are planned from the project initiation and design phase, incorporating remediation or restoration measures. Only the Inspectorate can grant approvals for decommissioning programmes and the disposal of disused offshore installations. In considering whether or not to grant approvals, the

Inspectorate will hold consultations with "interested parties" and other relevant public authorities and bodies. Approval is granted only after all relevant environmental, technical and commercial regulations or standards are met. Licenses may be recalled where an operator does not comply with the above guidelines. All operators are required to set up and manage an abandonment fund and the Inspectorate retains the right to access and use such funds if the operator fails to fulfill his obligations under this section.

Point to note: One of the major issues to consider during decommissioning work is the environment. Through different activities, such as chemical use and platform parts removal, harm to the environment is a risk the operator is responsible for. Harmful wastes and toxic or noxious substances including those of a radioactive nature are often found in deactivated installations. Fixed structures left on decommissioned platforms ultimately corrode, with the potential to pollute the environment and adversely affect aquatic life and the ecosystem. As AyoadeMorakinyo observed, "there is the possibility of ecological damage to the near shore and disposal site through the contamination of ground water supplies. Such an action endangers human health and might be impossible to rectify".

It is unclear whether "interested parties" referenced in section 204 (6) includes communities that may be impacted by decommissioning activities. Taking into account the huge costs[74] and risks involved, consultations with communities that may be impacted by decommissioning activities are very essential. Consultation in this sense includes the right of communities to express their views and be consulted on decision-making processes related to decommissioning as this will ensure that the potential negative impacts are collaboratively assessed, planned and addressed prior to project take-off.

Consistent with section 204 (5) (a-d), which requires operators to submit detailed decommissioning programmes to the Inspectorate, NGOs and other independent watchdogs should be allowed to have access to these documents. Because good communication is vital, the Inspectorate must also take steps to sensitize local organizations, reputable third parties, communities about the location and status of decommissioned structures. This will increase their capacities to understand the potential risks from the environmental, social, economic perspectives and to introduce mitigation measures for significant adverse impacts.

The PIB requires that the current status of all onshore and offshore petroleum installations, structures and pipelines in Nigeria is to be made available or accessible to the public. It is important for NGOs and CBOs to increase their capacity to monitor these processes and to ensure that the decommissioning of offshore installations and pipelines is carried out in accordance with the requirements of national legislation and with Nigeria's international obligations as set out by the International Maritime Organization.

[74] Decommissioning oil and gas installations can cost operators an average of $4-$10 million in the shallow water Gulf of Mexico. http://www.rigzone.com

Recommended Action: ThePIB could borrow a leaf from S. 29 of the UK's Petroleum Act which requires operators to publish decommissioning proposals in a public notice in the appropriate national or local newspapers or journals. The notice should specify where copies of the Decommissioning Programme are held and to whom representations should be submitted.

In addition, sections 204 and 205 is silent on the potential impacts of decommissioning programs on local amenities, the activities of communities and on future uses of the environment. In other jurisdictions such as the United Kingdom, an Environmental Impact Assessment (EIA) must be carried out and an Environmental Statement (ES) submitted to the Department of Energy and Climate Change (DECC)to support the Decommissioning Programme. There is no such requirement in the PIB. An EIA in this context will help to identify the impact of the decommissioning activities on the natural habitat, including emissions tothe atmosphere, leaching to groundwater, discharges to surface fresh water and effects on the soil.

4.10 Responsibility over the Environment

Extract 10 |Responsibility of the Environment – 289

(1) Without prejudice to the overall responsibility of the Federal Ministry of Environment for the environment of Nigeria, the Inspectorate and the Agency shall have responsibility in their respective areas over all aspects of health, safety and environmental matters in respect of the petroleum industry.

(2) The Inspectorate and Agency in their respective areas shall at all times ensure the enforcement of other environmental laws, regulations, guidelines and directives issued by the Federal Ministry of Environment and other relevant Government agencies.

(3) For the avoidance of doubt the Inspectorate and Agency in their respective areas shall, in consultation with the Ministry of Environment, make regulations and issue directives specifically relating to environmental aspects of the petroleum industry.

In the above provisions, the Nigerian government through the Inspectorate, the DPRA and the Federal Ministry of Environment (FMOE) makes a strong commitment to take the regulation of environmental, health and public safety issues connected with oil industry activities very seriously. It is worth noting that similar guarantees enshrined in a wide range of oil legal regimes preceding the PIB did not translate into effective regulation. As such, re-echoing similar sentiments in the PIB is not sufficient to demonstrate official willingness to move away from a conventional business as usual approach to sustainable environmental management.

Entrenched in the Inspectorate's, the DPRA's and the FMOE's responsibility over the environment is the duty to ensure that environmental guidelines, regulations, and directives issued pursuant to the Bill are properly communicated to communities impacted by oil industry operations.

In cooperation with non-governmental organizations (NGOs) and community-based organizations (CBOs) and other stakeholders, the regulatory agencies should establish a targeted program aimed at creating awareness and expanding citizens' access to information. Local residents and stakeholder need to be aware of emergency response plans, pollution and potential impacts, including adequate monitoring and maintenance of oil installations.

4.11 Compliance with Health Regulations

Extract 11 |Compliance with Health Regulations - 290

Every company engaged in activities requiring a license, lease or permit in the upstream and downstream sectors of the petroleum industry in Nigeria, shall comply with all environmental health and safety laws, regulations, guidelines or directives as may be issued by the Federal Ministry of Environment, the Minister, the Inspectorate or the Agency, as the case may be.

Companies engaged in upstream or downstream sectors of the oil industry are bound to comply with the health and safety laws, as well as all ancillary regulations and guidelines issued by regulatory agencies.

Compared to similar documents in other oil-rich countries, this section failed to impose an obligation on oil companies and licensees to publish environmental, health and safety reports of their various operations. Each year, the American Petroleum Institute, API publishes a "Petroleum Industry Environmental Performance Annual Report", which presents statistical information about the US petroleum industry's environmental and safety performance. The report cover eight key areas: workplace safety, chemical releases, refinery residuals (by-products), oil spills in US waters, underground storage tanks, used motor oil, gasoline vapour controls and US environmental expenditures.

Similarly, a number of countries require corporations to mandatorily report on the release and transfer of various potentially toxic or harmful polluting substances as part of national environmental health schemes. For example, Australia's National Pollutant Inventory, Canada's National Pollutant Release Inventory, the UK's Chemical Release Inventory and the USA's Toxic Release Inventory. Such requirement is clearly absent in the PIB, and an inclusion of similar provisions would bring Nigeria at par with similarly situated oil producing countries.

Recommended Action: Create a legal requirement for oil companies and licensees to publish environmental, health and safety reports detailing the potentially toxic or harmful, polluting substances used in their various operations. The reports shall be published annually and form part of national environmental health schemes.

4.12 Conduct of Operations

Extract 12 | Conduct of Operations - 291

Every company engaged in activities requiring a licence, lease or permit in the upstream and downstream petroleum industry in Nigeria shall conduct its operations in accordance with internationally acceptable principles of sustainable development which includes the necessity to ensure that the constitutional rights of present and future generations to a healthy environment is protected.

By Sections 290 and 291, it is compulsory for all licensed oil and gas operators to comply with all national environmental health laws, respect human rights and comply with internationally acceptable principles of sustainable development. While the creation of this obligation is a step in the right direction, more specificity and clarity is needed to provide guidance on the meaning and scope of "internationally acceptable principles of sustainable development" because relevant industry practices change over time.

To make the provisions more specific and more stringent, it is imperative to detail an ancillary guideline that clearly outlines the procedures, schedule/frequency, types of equipment covered, person(s) conducting the activities, record keeping practices, inspection, evaluation and other elements. For instance, the preamble to the USA's 2002 revised Spill Prevention, Control and Counter measure Plan (SPCC) lists examples of industry standards and recommended practices that may be relevant to determining what constitutes good engineering practice for various rule provisions. Similarly, the American Petroleum Institute (API) Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction," includes a cap on the maximum interval between external and internal inspections. It also provides specific criteria for alternative inspection intervals based on the calculated corrosion rate. In the same way, the SPCC establishes various, specific requirements to be applied to different types of equipment and to different types of facilities. The requirements are generally aimed at preventing discharges of oil caused by leaks, brittle fracture, or other forms of container failures before they can become significant and result in environmental damage[75].

Furthermore, S. 291 makes reference to the rights to present and future generations to enjoy a healthy environment. Licensed operators, particularly oil companies have obligations under international law to promote, respect, and protect all human rights, especially the right to a healthy environment.

Recommended Action:

1. Industry standards and recommended practices applicable in very specific country(ies) relevant to the determination of what constitutes "best practice" and "internationally acceptable principles" must be clearly indicated.

[75] (USA Environmental Protection Agency: http://www.epa.gov/osweroe1/docs/oil/spcc/guidance/7)

2. Putting a system-wide human rights policy in place will provide guidance on how to integrate and mainstream human rights into all aspects of oil industry policies and practices. It should systematically incorporate experienced, independent, and reputable organizations to verify the status of human rights in all relevant projects.

3. Training and capacity-building initiatives are needed to increase the capabilities of oil companies to respect and mainstream economic and social rights considerations into their EMPs, including the creation of mechanisms that enable communities to be part of the decision-making processes related to the environment and sustainable development.

4.13 Obligations of Licensee, Lessee and Contractors

Extract 13 | Obligations of Licensee, Lessee & Contractors - 292

Every company engaged in activities requiring a license, lease or permit in the upstream and downstream sectors of the petroleum industry shall:

(i) support a precautionary approach to environmental challenges;
(ii) encourage the development and use of environmentally friendly technologies for exploration and development in Nigeria.
(iii) comply with the relevant requirements of environmental guidelines and standards approved for the petroleum industry in Nigeria.

Within the context of using environmentally friendly technologies for petroleum exploration and development in Nigeria, a precautionary approach denotes that environmental issues should be considered as part of a comprehensive assessment and management program for minimizing project-specific risks and potential impacts. Along these lines, oil companies and licensed operators have a responsibility to accurately provide full and accurate information regarding prospective project(s), the project location, proposed activities, the existing environment, potential impacts and proposed mitigation strategies. A Social Impact Assessment should be carried out alongside the EIA, to consider the inter-relationships with local livelihoods, cultures, indigenous groups and communities many of which may depend on the local natural resources.

Companies involved in upstream and downstream petroleum operations must develop maintenance and monitoring programs to ensure the integrity of well field equipment, and ensure that their personnel are adequately trained in oil spill prevention, containment and response. This is consistent with the obligation of compliance with environmental guidelines and standards.

4.14 Duty to Restore the Environment

Extract 14 | Duty to Restore the Environment Part - 293

(1) Any person engaged in activities requiring a licence, lease or permit in the upstream and downstream petroleum industry shall:
  (a) manage all environmental impacts in accordance with the licensee or lessee's environmental management plan or programme, as approved by the Agency.
  (b) as far as it is reasonably practicable, rehabilitate the environment affected by exploration and production operations, whenever environmental impacts occur as a result of licensees and lessees operations:
    (i) to its natural or pre-existing state before the operations or activities as a result of which the environmental impact occurred; or
    (ii) to a state that is in conformity with generally accepted principles of sustainable development;

(2) Subject to subsection (1) of this section, the licensee or lessee shall not be liable for, or under an obligation, to rehabilitate where the act adversely affecting the environment has occurred as a result of sabotage of petroleum facilities, which also includes tampering with the integrity of any petroleum pipeline and storage systems.

(3) Where there is a dispute as to the cause of an act that has resulted in harm to the environment, the licensee, lessee or any affected person or persons shall refer the matter to the Agency for a determination and the determination of the Agency shall be final.

(4) Where the act referred to in subsection (3) of this section is found to have occurred as a result of sabotage, costs of restoration and remediation shall be borne by the local government and the State governments within which the act occurred

Clean-up-your-mess is the main message encoded in S. 293! The polluter should, in principle, bear the cost of pollution by taking steps to restore, remediate and rehabilitate the environment whenever environmental impacts occur as a result of licensees and lessees operations. The National Oil Spill Detection and Response Agency (NOSDRA) reports that in 2012, there has been 619 oil spills and the effect of the degradation of the surrounding environment has caused significant tension between the people living in the region and the multinational oil companies operating there.

Also implied in the "duty to restore" is a corresponding obligation to carry out preventive equipment maintenance programmes, monitoring end-of-pipe emissions levels and adopting other preventive safety procedures. Companies and operators are exonerated from this "duty to restore" only when it is established that the harmful activity resulted from sabotage or vandalization. In this case, the costs will be borne by the local or state government within which the act occurred.

Points to note: First off, Section 118 (5) of the Bill stipulates that cost of repair of petroleum facilities damaged by acts of vandalism, sabotage within a host community shall be paid from PHC Fund entitlement unless it is established that no member of the community is responsible. When read together, S. 118 (5) and S. 293 (5) suggests that facility or environmental damage resulting from sabotage would borne by either the local and state governments, or would be deducted from the PHC if a member or members of the community is/are responsible.

While it is true that some oil spills could be attributed to sabotage, experience has shown that oil companies greatly exaggerate the frequency of sabotage to avoid compensation payments for damage caused by spills resulting from corrosion or other preventable causes. Court actions in Nigeria such as Shell v. Isaiah (1997) have reached similar conclusions. By section 204, disputes regarding the causative factors of environmental damage shall be referred to the Agency for a determination and the determination of the Agency shall be "final".

Is the Agency's "final" decision an usurpation of the powers of the courts? It appears so, as it tends to preclude the courts from scrutinizing purely administrative decisions made by the Agency. The Nigerian legal system is replete with unresolved compensation claims by aggrieved victims and communities. The contention here is that courts should not be prohibited from intervening should the Agency transgress the constitutional rights of the parties to fair hearing.

Recommended action:

1. Beyond the duty to clean up the environment, this section should create an obligation for oil companies to initiate and undertake post-remediation monitoring programs in which affected communities are partakers. Such monitoring projects will help to define the status and condition of resources and services. Investigations should include uncover whether communities are recovering, whether restoration activities are successful, and what factors may be constraining recovery of resources and services injured by the spill. Monitoring programmes could also determine when recovery has occurred or detect reversals or problems with recovery.

2. The decision of the Agency in matters of disputes regarding the causative factors of environmental damage shall not be final. Objections to the Agency's decisions shall be referred to the courts.

4.15 Development Programmes

Extract 15 |Development Programmes - 294

From the Effective Date, the Agency shall undertake an annual comprehensive review of the impact of development programmes and practices by petroleum companies in all sectors of the industry since the inception of the petroleum industry in order to identify potential areas of conflict or areas that may lead to possible unrest in the areas of operation.

The Agency (DPRA) has a duty to take stock of the practices and community development initiatives initiated by oil companies since the inception of the Nigerian oil industry in the 50s. This duty takes effect from the date the PIB comes into force.

Oil company development programmmes are already discussed in Chapter Two above. The exclusion of local communities in decisions regarding when and where to locate development initiatives have sparked violent clashes among communities and between communities and oil companies. This stock-taking represents an attempt to identify potential conflicts and restiveness that may result from such exclusionary practices.

Points to note: Public consultation and community participation are an integral part of an effective development programme. Consultation with local communities helps industry operators to understand and respect social and cultural values, needs and wishes, and to use this local knowledge to develop programs that respond to mutually identified problems.

Despite being a major cause of conflict among communities, oil company-initiated development programmes have the propensity to yield social license for oil operators to work without obstruction in their host communities. Besides fostering good communications and relations between oil companies and host communities, such programs have helped addressed local concerns, further supporting employment and services such as healthcare and schooling.

It must be stressed that development programmes by oil companies should not substitute for good corporate citizenship and the remediation of the environment. Neither should state bodies be exempted from their primary responsibility of initiating, overseeing and attending to the health and progress of the citizenry. That said, oil corporations have an important obligations and capacities that corresponds to the nature and tenure of their involvement in oil-rich communities. In practice, oil companies often deny responsibility for problems that they caused and then institute a development project as though it is a form of charity for affected communities. This approach is dysfunctional in several ways. By evading accountability, victims and communities who have suffered environmental abuses are deprived of justice or restitution.

4.16 Utilisation of Good Oil Field Practices

Extract 16 | Utilisation of Good Oil Field Practices - 295

Every licensee, lessee and contractor engaged in petroleum operations in the petroleum industry shall utilise good oil field practices in the course of their operations within the country.

The phrase, “good oil field practices” used frequently in the Bill lacks a clear definition or set of guidelines to aid recognition. Such ambiguity could provide considerable legal uncertainty especially in a country like Nigeria with a confounding judicial arena where achieving corporate accountability is an uphill struggle. While it is true that phrases such as "internationally acceptable best practice" and "good oilfield practice" are used to allow the legal system to incorporate changes in technology in the oil industry, determining which practices are or should be generally accepted as "best practice" are particularly difficult in reality and could susceptible to the subjective interpretations of vested parties.

Recommended action:
The actual practices of international oil companies, such as community engagement and waste disposal methods, vary from company to company and across jurisdictions, making it difficult to identify which practice could be considered as the best. Therefore, injecting some specificity into the meaning of “good oil field practices” would significantly provide guidance on minimal standards of performance expected from oil companies. For instance, the requirement for companies to use products that comply with API, ISO and IEC standards is an example of such specific description of “good practice”.

4.17 Responsibility over the Environment

Extract 17 | Compensation – 296

(1) The holder of a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease shall, in addition to any liability for compensation to which the holder may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of the surface of the land or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands, in accordance with written guidelines issued by the Agency.

(2) The rates of compensation contained in the guidelines referred to in subsection (1) of this section shall be arrived at through a consultative process and the Agency shall update the guidelines issued annually to reflect rates of inflation and any other relevant factors.

Just like S. 199 of the PIB, this section obligates oil companies and licenced operators to pay fair and adequate compensation for any disturbance of the surface of the land, including social and economic losses connected therewith. Victims of oil operations damage can elect to pursue their claims either under Section 199 or S. 296 of the Bill.

Who is entitled to compensation?

By virtue of section 296 of the PIB, "any person" in lawful occupation of licensed lands is entitled to compensation for any loss or disturbance of the surface of the land. In this connection, "any person" includes anyone or entity living or located within or near wellheads, oil prospecting and production sites, and oil installation facilities that has suffered loss or damage to their properties. Assets qualified for compensation include houses, crops, farmlands, fishing equipment, boats, venerated objects, water sources and installations, trees, domestic animals or any other property or activity that takes places "on the surface of the land". Under this section, certified persons will be recompensed for property and economic losses resulting from oil operations disturbances. Claimants may be private individuals, communities, companies or public bodies (including federal and local government authorities and agencies.

What does disturbance mean?

The use of the word "disturbance" merits a broad interpretation. Naturally, it encompasses all quantifiable disablements. As such, compensation for total destruction and partial damages to property is not limited to the costs of cleaning or replacing contaminated or destroyed fishing gears, mariculture installations, agricultural produce, crops, natural vegetation and industrial water intakes. Compensation is also payable for economic losses resulting from inability to farm, contamination of cultivated ponds and other economic activities prevented by the disturbance in question.

A unique aspect of this section is that it does not set time limits for pursing compensation claims, ostensibly taking into account the time lag between when an incident occurs and it coming to the notice of the appropriate authority. However, beyond stating that compensation should be fair and adequate as determined by a "consultative process", this section again fails to define what amounts to "fair and adequate" compensation. A plethora of judicial authorities have tried without success to attempt a generally acceptable definition of a phrase that has seen many communities denied justice on technical grounds. The Supreme Court's decision in Shell Petroleum Development Company of Nigeria Limited v. Ambah[76] is one such example of a situation

[76] In that case, the High Court entered judgment for the plaintiff against the defendant [Shell Petroleum Company] for the sum of N300,000:00 being special damages and/or compensation for the wrongs suffered by the plaintiff and members of his family when the defendants by their agents and or servants destroyed fish ponds, creeks, lakes and channels lying and situate at Asesaoba near the Beniseide oil fields in Brute Local Government Council Area, Bendel state of Nigeria. Dissatisfied with the judgment, the defendant company appealed to the Court of Appeal. The appeal was dismissed, although the court slightly reduced the amount awarded by the trail judge from N300,000 to N270,000 being special damage for the economic losses incurred during the period 1976-1987 . Again, the defendant company being satisfied with the outcome of their appeal further appealed to the Supreme Court – the final appellate court in Nigeria. The court held that the plaintiff/respondent was undoubtedly

where a genuine claim for compensation for oil operations damage was virtually 'lost' by the victim on technical grounds. The court's ruling generated outrage for its failings to award "fair and adequate" compensation.

For effective consultation to take place, it is valuable to build the capacity of community members to work effectively with systems and agencies. The active involvement of the people affected by the oil operations damage requires their improved understanding on how to access, interpret, and analyze data. Potential claimants need to understand the criteria for determining compensation sum, the time frames and language used and the protocols of engagement at every phase of the evaluation process.

Another unique feature of S. 296 is the obligation on the Agency to review the compensation guidelines annually to reflect rates of inflation. That directive is imperative and would potentially cure the defects in SPDC Vs. Ambah line of cases where the Supreme Court held that in claims for total destruction of property, the measure of damages will be the value of the property at the time of its destruction, regardless of the length of time it takes to reach a resolution.

4.18 The Special Investigative Unit

Extract 18 | The Special Investigative Unit – S(41)

(1) For the effective conduct of its functions, the Inspectorate shall have a Special Investigation Unit.
(2) The Special Investigation Unit or an officer authorised on its behalf shall have powers, with respect to matters under the authority of the Inspectorate in this Act, to:
  (a) investigate acts which may constitute offences under this Act;
  (b) collaborate with other government agencies and persons in relation to the detection or prosecution of offences under this Act;
  (c) keep surveillance on oil and gas installations, premises and vessels where it has reason to believe that illegal petroleum operations are going on;
  (d) enter and search any premises or carrier including vehicles or any other instrumentalities whatsoever which is reasonably believed to be connected with the commission of an offence;
  (e) seize any item or substance which is reasonably believed to have been used in the commission of an offence under this Act;
  (f) arrest without warrant any person who is found committing any offence under this Act or any regulations made under this Act and hand over any person so arrested to a police officer immediately; and
  (g) in conjunction with the Nigerian Police and other relevant law enforcement agencies arrest with a warrant obtained from a judicial officer, any person reasonably believed to have committed an offence under this Act;

entitled to compensation, but only for the value of the property he claimed to have been "permanently destroyed" and not for loss of income or continual annual loss of catch. The compensation sum was therefore reduced to N27,000!

The Inspectorate is empowered to establish a Special Investigation Unit (SIU) with the mandate to investigate violations of the Act, and to keep surveillance on oil and gas installations (S.41). It is instructive to note that SIU's functions as stipulated in the PIB overlap with the statutory responsibilities of certain agencies such as the National Oil Spills Detection and Response Agency, NODSRA, state and federal ministries of environment and, National Environmental Standards and Regulations Enforcement Agency (NESREA). In the same vein, two ex-militants were recently awarded marine contracts to carry out similar surveillance activities.

UNEP[77] found that overlapping authorities and responsibilities between ministries and a lack of resources within key agencies has serious implications for environmental management on the ground, including enforcement.

The creation of a new entity with duplicated roles sharply contrasts with the federal government's plans to shrink the bloated costs of governance through the merger of parastatals and agencies. The Stephen Oronsaye-led Presidential Committee on the reform of government agencies recommended the reduction of statutory agencies of government from 263 to 161, the abolition of 38 agencies, merger of 52 and reversal of 14 to departments in ministries. It is submitted that giving more powers to an existing agency like NOSDRA to assume the roles of the proposed SIU is a more productive path to follow. In addition, it is equally imperative to put robust mechanisms in place for increasing cooperation and coordination among regulatory and environmental monitoring agencies.

4.19 Publications

Extract 19 |Publications – 297

Every year, all licensees, lessees and contractors and service companies in the upstream petroleum industry shall publish the criteria used for the location of community development projects and other social investment initiatives within their respective areas of operation.

Companies and licensed operators in the oil and gas industry are facing increasing pressure to disclose information regarding their social performance and investments in communities where industrial activities take place. Such reporting must clearly explain why certain development projects are located in certain areas, and the impact projects have had on intended beneficiaries. Reporting is also crucial to enhance transparency in the companies' public administration, including with regard to their organization, functioning and decision-making processes where appropriate.

[77] UNEP's Environmental Assessment of Ogoniland, 2011 @ 2

Some other reasons why companies must make its reports publicly available are:

- To demonstrate corporate accountability for the social and environmental impact of operations;
- To simplifying administrative procedures and regulations, allowing members of the general public to obtain information about formal decision-making processes and competent authorities;
- To satisfy community and individual "right to know" requirements; and
- To improve company performance in social and environmental areas by publicly reporting on their contributions to sustainable development.

4.20 Penalties & Sanctions

Extract 20 | Penalties & Sanctions – 298

Any person or company who violates the provisions of this Part is liable to sanctions, including payment of fines as prescribed by the Inspectorate and the Agency in consultation with the Minister.

This is another vague provision in dire need of clarity and precision. The complete range of sanctions and fines for regulatory non-compliance must be clearly spelt out for certain environmental offences. Legislative clarity is needed to help businesses stay on the right side of the law, whilst contributing to a better environment for all.

Available sanctions include fixed and variable monetary penalties and notices to indicate compliance, restoration and freezing of works. Although sanctions often serve as alternatives to criminal prosecution, retaining criminal prosecution as an option for the worst offences is pragmatic. The timelines for complying with sanctions, including payment of fines must be clearly specified and must be within the unilateral control of the regulator. On the other hand, this section should include a requirement for regulators to publish details of such sanctions, penalties or any enforcement action taken. This could have reputational and commercial implications.

5

What is a Host Community?

Several provisions of the Petroleum Industry Bill (PIB) make reference to host communities, especially 116 – 118, establishing the Petroleum Host Community Find (PHC) Fund. However, there is no clear definition of the highly loaded term, “host community”. The interpretative section of the Bill (S. 362) provides little or no real guidance on the definition of “host communities”, nor does it indicate which groups or settlements qualify for this status and the criteria for that selection.

What, then, is a host community? Who and who should benefit from the 10 per cent of all oil and gas earnings reserved for the oil producing areas through the Petroleum Host Community Fund (PHC) created by the new Petroleum Industry Bill (PIB)? What features should a community have to earn the title of a “host community”? In what way(s) would the Fund benefit the host communities?
The current absence of consensus on what a 'host community' is will undoubtedly affect implementation of several provisions affecting vaguely defined group. It is important to resolve this ambiguity. Parliamentary deliberations on the PIB reveal that the PHC Fund and other provisions related to community development and environmental sustainability have been subjects of intense controversy among Nigerian lawmakers. Leading the opposition to the PHC Fund's establishment are northern lawmakers who insist the Niger Delta is already benefitting from a plethora of similarly-crafted initiatives aimed at facilitating the rapid and sustainable development of the region. Largely described as unfair, critics allege “an additional 10 per cent for oil producing states was one revenue stream too many as such states already enjoyed seven other special sources”[78]. Therefore, introducing one more initiative – the PHC Fund – will confer undue economic advantage on oil producing states, predominantly in the Niger Delta region, to the detriment of other underdeveloped, less-endowed states in Nigeria.

It was on the above premise that Spaces for Change organized a Stakeholders' Roundtable[79] to forge mutuality in the exploration of answers to the identified gaps in the oil reform bill. The roundtable offered important feedback and contributions from oil and gas experts, civil society leaders, legal practitioners, media executives, former senior executives of international oil companies and representatives of oil-producing communities. The initiative was carried through with the hope that the proffered recommendations would enrich the parliamentary debate and decisions affecting host communities.

In strong disagreement with the typically northern position on the PHC Fund, an energy expert[80]and long-term employee for oil majors (including Shell) asked rhetorically, “If they oppose PHC Fund today, what would they do if oil is discovered in Borno and Sokoto tomorrow?

---

[78] Senator Bukar Abba Ibrahim, representing the Yobe East constituency at the Nigerian House of Senate.

[79] The Roundtable was held on January 22, 2013 in Lagos. It was supported by the Open Society Initiative for West Africa

[80] Dr. Bala Zakka. He is also a Chartered Accountant and currently an MPhil/Phd student in Petroleum Engineering at the University of Ibadan. He is a Member of the Society of Petroleum Engineers (SPE), the Institute of Chartered Accountants of


Spaces for Youth Development and Social Change
SPACES FOR CHANGE (S4C)
With support from
Open Society Initiative for West Africa (OSIWA)
invites you to the roundtable
ENHANCING COMMUNITY PARTICIPATION AND ENVIRONMENTAL PROTECTION IN THE PETROLEUM INDUSTRY BILL (PIB)
Time: 10.00 a.m.

Would they ask for the amendment of the PIB? Or start a new agitation against regional marginalization?" The respondent was of the opinion that the PIB is not about giving money to the Niger Delta, but about opening up the economy to opportunities that will benefit all the regions and all Nigerians. Emphasizing the link between community participation and security stability in industry operations, the lead paper[81] argued that "the current PIB cannot become a law without selfless sacrifices, shifting of grounds, tolerant and accommodation of uncoordinated logics and sometimes, disgusting philosophies".

Perception is growing that the opposition to the PHC Fund is divisive and politically motivated[82]. The recent calls for the Fund to be expunged from the Bill have not been accompanied by an accurate analysis of the social, economic and environmental realities prevailing at source communities. As the second presentation elucidated, expunction will only breed further discontent and a feeling of marginalization – possibly leading to otherwise avoidable conflicts. In effect, "[t]he PHC Fund should be retained considering the level of devastation endured by oil-bearing communities"[83].

The third paper presentation[84] detailed the woes of oil-bearing communities in the Niger Delta region where people reportedly drink water coated with as much as 8cm of oil. Most water wells are polluted. In Ogoni land for instance, the only light source in most of the Niger Delta communities at night are gas flares from oil installation sites nearby. Poor enforcement of regulatory standards has paved way for corporate impunity to flourish, as oil multinational companies operating in the region unceasingly act with scant regard for environmental safety and sustainability. One such oil major, the Shell Petroleum Development Company (SPDC)[85] has been accused of devastating the ecosystem of the delta upon which Ogoni farmers and fishermen depend, through a combination of oil spills, forest clearance for pipelines and the burning of gas from oil-wells known as gas flares. Several years after Shell was forced to leave the community, devastated habitat and the ecosystem are gradually regaining lost greenness[86].

While it is true that deteriorating social and environmental conditions in the Delta have reached horrendous levels, the arguments against the creation of additional palliatives, such as the PHC Fund are not without merit.

Nigeria (ICAN), Nigerian Institute of Management (NIM) and a limited member of Council of Petroleum Accountant Societies (COPAS), in the United States.

81 Dr. Bala Zaka delivered the lead paper.

82 Public affairs analyst and oil and gas legal expert, Mr. Ikechukwu Ikeji

83 Ikechukwu Ikeji, ibid

84 The paper was delivered by Celestine Akpobari, Head, Social Development Integrated Centre (Social Action), Port Harcourt Rivers State

85 Shell's started oil exploration in the oil-rich Niger delta as far back as 1958. It remains the largest oil business in Nigeria, owning some 90 oil fields across the country.

86 The Ogoni people began non-violent agitation against Shell from the early 1990s, under the leadership of Ken Saro-Wiwa and his organisation Movement for the Survival of the Ogoni People (MOSOP)

As the table[87] below indicates, the allocation of billions of petrodollars to the Niger Delta states has failed to achieve the goal of transforming the region, but rather, has fattened the private pockets of a few self-styled "leaders of the region".

Main oil-producing Niger Delta states	Population (2006 Census)	2008 Allocation	Percentage of total population	Percentage of total population
Akwa-Ibom	3.9 million	N157.2b ($1.3b)	2.8	7.7
Bayelsa	1.7 million	N117.4b ($978m)	1.2	5.9
Delta	4.1 million	N115.7b ($964m)	2.9	7.9
Rivers	5.2 million	N251.7b ($2.1b)	2.7	12.6
Cumulative	14.9 million	N642b ($5.4b)	10.6	34.1

The unprecedented corruption, the total dearth of transparency and accountability in the management of regional initiatives like the Niger Delta Development Commission (NDDC) cast a shadow of pessimism on new initiatives, feared to go down the same way as its predecessors. To date, local communities and grassroots movements[88] in the Niger Delta remain very critical of the NDDC, stating that the Commission's current structure is not designed to work. The statement below vividly captures the mood of advocates and communities in the Delta:

> *"The youths are frustrated that years after graduation they have no jobs, communities are frustrated by years of neglect and valuable resources from their land are taken away ... The oil companies are frustrated that their contributions to the Commission and community development have not secured them the expected social license. These frustrations reinforce perceptions—the communities see the NDDC as an agency of government dispensing patronage, whilst government see the communities as trouble makers.[89]"*

The continuing mismanagement of resources, coupled with the lack of effective processes for resolving the political, economic and security problems fuel doubts that the 10 percent reserved for oil-producing areas will ever trickle down to the devastated poor communities, but would rather provide a conduit pipe for thieving politicians to fatten their already-exploding bank accounts. Not only that, the PHC Fund, as currently constituted would pave way for a fratricidal war in the Niger Delta[90]. Much of the unrest operates on a logic that is already inseparable from how oil wealth is shared in the region[91]. Unless the Fund's structure is better clarified and loopholes for embezzling funds are plugged,

---

87 Aaron Sayne and Alexandra Gillies; Oil-to-Cash Initiative Background Paper, Center for Global Development, October 2011 @ 7

88 For example, Movement of Survival of Ogoni People (MOSOP)

89 Presentation by Ledum Mitee, MOSOP President, "Civil Society and Implementation of the Master Plan," presented at the Niger Delta Stakeholders Network's Workshop on the Implementation of the Niger Delta Regional Development Master Plan. November 11-13, 2007

90 Professor Aiyegbeni A.A. Omonhinmin, an energy analyst who has also participated in the design of several Niger Delta-focused initiatives such as the Amnesty program

91 Aaron Sayne and Alexandra Gillies; Oil-to-Cash Initiative Background Paper, Center for Global Development, October 2011 @ 16

any new initiative designed for the benefit of Niger Delta communities could as well be a total waste of time.

Restructuring of the Fund could take the form of a trust fund that empowers the oil-producing communities as opposed to one that presents a fertile ground for more intense hostilities between communities. One way for the Fund to achieve the goal of empowerment is by turning into an Equity Participation Fund that allows named "host communities" to draw from or take revolving loans from the Fund for specific social and economic development projects[92].

Having explored the merits and demerits of having a PHC Fund, the question remains: What is a host community? Of the several definitions attempted by participants, three provoked further debates. Consider the following definitions:

i. A host community is a community where the oil is extracted from, and houses the facilities for the exploration and extraction of oil [93].
ii. A community refers to a community that is impoverished as a result of exploration of petroleum products. The petroleum companies and facilities may not be resident in that community, but they are affected by the activities of the company and of those facilities[94].
iii. A host community is a community and a contingent community where extraction of hydrocarbon takes place[95].

The first definition is quite common and seems to be the prevailing standard used by oil majors for its community engagement and development assistance programs. The second definition however leans towards a controversial interpretation. If that definition is anything to go by, communities in Ejigbo (Lagos) and Ilorin who have pipelines criss-crossing their backyard can lay claim to being host communities even though they have no drop of oil underneath their soil. In fact, that definition makes more than half of Nigeria "host communities".

The last definition was more technologically compliant, as it takes into consideration, the technological advancements in drilling operations which enable oil companies to drill oil from a location that is far off from where the resource is anchored. "Horizontal drilling offers more targeted access to oil wells and reserves under places oil operators might not want to disturb, such as a town, forest or venerated local shrines[96]"

Claims that Shell is currently using the horizontal technology to continue its drilling operations in Ogoni provoked another debate about its activities in the Niger Delta as well as the impacts the horizontal drilling technology would have on host communities.

---

92 Aiyegbeni ibid
93 Pamela Braide, a communication specialist who was involved in the implementation of the Niger Delta Amnesty Program
94 Joy Eke, the senior advocacy officer of the Legal Research and Resource Documentation Center (LRRDC), Lagos, took a different view.
95 Professor Alyegbeni
96 Dr. Bala Zakka

It was perceived that such high-profile technological interventions would make the PHC Fund meaningless in the nearest future. If such technological innovations remain unchecked, it would soon be practically difficult to ascertain which communities fit the description of host community and those that should be accorded priority on the PHC benefit scheme.

Despite the flurry of sharply-contrasting opinions and stimulating discussions about the PHC Fund, participants agreed on one basic fact: communities deserve a special attention – at least for the sake of the raw deal endured as a direct result of oil exploration and production activities. The structure and character of the attention granted to communities still needs to be worked out. It also became clearer why the drafters of the PIB deliberately avoided specifying the administrative structure of the PHC Fund. Obviously, that omission was deliberate due to the complex and extremely sensitive nature of both inter-community and oil company-community relationships, notwithstanding the powerful confluence of forces that would be wangled through to achieve a compromise.

Spaces for Changeis of the opinion that forging a consensus on an issue, especially a complex issue like the PHC Fund would be an uphill struggle. The organization believes that locating common grounds on specific provisions in the PIB is a starting point towards the goal of galvanizing stakeholder support for the passage of the Bill. In this connection, participants unanimously adopted the motion that all criticisms against the PIB should be welcomed with an open mind and that a bi-partisan approach should be adopted in negotiating the interests of different stakeholders in the PIB.

In unison, participants rejected the discretionary powers of the president to grant oil licenses, recommending that that provision should be expunged from the bill. Likewise, the discretionary-permit granting for gas flares by the Petroleum Minister was roundly rejected, and should be expunged from the reform bill. There was not a single person in the room that did not agree that the powers of the minister under the PIB required review. Uncontrolled decision-making power is often prone to misuse and abuse, mainly because it is impossible to see into how decisions are arrived at and also disguises accountability. A strategic and sustained awareness creation on the PIB, including the sensitization of oil-producing communities about specific provisions of the Bill that would potentially impact on their welfare was another resolution that received overwhelming support by participants.

A PIB Campaign Action Group, comprised of civil society leaders, industry experts, researchers, community advocates, policy analysts and media representatives, was constituted during the discussions, with a mandate to begin the groundwork and map out a strategy for driving a cohesive multi-stakeholder advocacy on the CPE provisions of the PIB. Going forward, the Action Group will work together to implement the roundtable resolutions, primarily driven to monitor, review and recommend advocacy actions throughout the legislative process.

6

International Mechanisms of Accountability

6.1 Voluntary Principles for Security & Human Rights in the Extractive Sector

The United Nations Voluntary Principles for Security and Human Rights in the Extractive Sector were developed to guide businesses to maintain safety and security of their operations within a framework that ensures respect for human rights. They apply wherever the company operates but have no monitoring mechanism, making it difficult to evaluate companies' adherence. Some oil companies operating in the Niger Delta, including Shell and Chevron (CVX), have taken on board the Voluntary Principles for Security and Human Rights for companies in the extractive sector.

Under pressure to demonstrate social responsibility, in recent years companies have signed agreements with communities called Memoranda of Understanding, often promising to provide schools, health clinics and other social services. In some cases, services were delivered where none previously existed. In others, the services failed to function or were unnecessary. Despite these efforts to smooth corporate-community relationships, these agreements have often divided communities and increased levels of violence. In many cases companies have acted arbitrarily and without transparency, or simply failed to live up to their promises. Violence has erupted as impoverished people competed for land, influence with local authorities, access to oil company royalties, jobs, contracts and development assistance.

Other circumstances have led to a rise of violence and tension in the Niger Delta, further exacerbating regional instability in the absence of effective governance and law enforcement. Large-scale theft of oil has led to a proliferation of small arms in the Niger Delta and to their increased use for criminal activities, including in attacks on rival communities or factions. Following the execution of the “Ogoni Nine,” many leading companies started to address human rights within their own operations and spheres of influence through voluntary codes of conduct. One effect of the executions has been that companies now recognize the need to adopt human rights policies and to look beyond the fence that separates them from the surrounding communities.

Due to the lack of enforcement and monitoring there is essentially no additional cost placed on oil companies when it fails to adequately compensate communities, or when it reneges on agreed-upon MoU terms or chooses to respect human rights. In some ways signing such a document represents a net gain, regardless of the oil companies' human rights conduct. It can gain a reputational benefit from having accepted the voluntary principles without having any fear of enforcement. Though companies are obligated to adhere to the human rights standards, without the power of enforcement or international pressure, the reality is that many company decisions will continue to be made based on profit maximization.

Another major failing on the part of oil companies is their attempt to offer cash to communities as a means of placating them and as a substitute for genuine development efforts. Finally, development initiatives by oil companies have been thwarted by a lack of synergy with government agencies, often leading to misallocation of resources, such as duplication of unnecessary infrastructure in some areas and total neglect of others.

6.2 The UN Global Compact

In a historic move, the UN Global Compact was launched by the United Nations Secretary-General at the 1999 annual meeting of the World Economic Forum. This initiative challenges corporations and businesses to support and respect the protection of international human rights within their sphere of influence. Its nine principles within the areas of human rights, labour, the environment and anti-corruption provide guidance to companies on how to ensure that human rights are respected, serving also as a basis for ensuring effective systems of accountability. Crucially, it offers the possibility of responding in a coordinated manner to the multiple pressures placed on international corporations today to embrace a host of voluntary initiatives and codes covering various issues and which often lack uniform definitions and adequate representation or accountability[97].

While it is clear that governments are chiefly responsible for ensuring the implementation of international standards, the Global Compact asks corporations to embrace the nine principles directly, in order to contribute to the wider implementation of standards in the area of human rights, labor and environmental protection. To give effect to this, corporations are encouraged to translate the Global Compact principles into company policies and practices. The integration of Global Compact principles into company policies is a step forward in the development of effective systems for monitoring their efforts to implement the standards and for reporting their progress to shareholders, customers and the wider public.

One advantage the program has over other initiatives is that it has an advisory board, which meets once every June[98]. Other than African Petroleum[99],, Shell (SPDC) is the only Nigerian oil operator participant in the UN Global Compact and has been a member since the 6th of June, 2006[100].

A major criticism against this initiative is its growing perception as a public relations stunt rather than an initiative that benefit of the community and businesses[101]. It is a way to disguise the actual profiteering goals of the companies.

---

97 Business and Human Rights: Office of the United Nations High Commissioner for Human Rights; www.unhchr.ch/doc/ @ 16

98 Global Compact Governance, online: United Nations, Global Compact <http://www.unglobalcompact.org/AboutTheGC/stages_of_development.html>.

99 Participant Search Results, online: United Nations, Global Compact <http://www.unglobalcompact.org/ParticipantsAndStakeholders/search_participant.html?submit_x=page>.

100 Ibid.

101 Supra note 106.

is the voluntary nature of this initiative and absence of sanctions to regulate corporate activities of signatory companies. The resulting ineffectiveness is evident in the track record of minimal and discretionary compliance[102]. Critics also doubt the initiative's potential to offer concrete benefits to developing countries considering that most of its members are from the developed world. Again, the Global Compact failed to outline how companies are going to be held accountable in the communities where they work. Lastly, the involvement of the UN at face value in what seems like private sector-dominated businesses could possibly feed fears about UN's neutrality in issues involving corporate misconduct by global transnational corporations.

6.3 Alien Tort Claims Act

The US Alien Tort Claims Act, which is still a new area of litigation, holds strong prospects for demanding corporate accountability. In 2004, the Supreme Court ruled that it was possible for the non-US citizens to bring lawsuits under the Alien Tort Claims Act[103], for particular rights abuses, such as crimes against humanity and forced labor. So far there has been no successful case brought against a multi-national corporation. In National Coalition Government of Union of Burma v. Unocal, Inc.,[104] an oil company was accused of using slave labor in the construction of its Burmese pipeline. This case was settled out of court through a privately negotiated compensation. In June 2009, Shell settled a case for $15.5 million that was being litigated under the Alien Tort Claims Act regarding the death of Ken Saro-Wiwa. It was alleged that Shell conspired in the execution of Ogoni leader, Saro-Wiwa, who was hanged in 1995. Shell denied any responsibilityin his execution, alleging that the settlement was a “humanitarian gesture” towards the Ogoni community.

6.4 International Treaties

International treaties of which Nigeria is signatory include:(1) Vienna Convention on the Protection of the Ozone Layer, 1985; (2) Montreal Protocol on Substances that deplete the Ozone Layer, 1987; (3) Washington Convention on International trade in Endangered Species of Wild Fauna and Flora (CITES), 1973, (4) Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, 1989; (5) Convention on Biological Diversity, 1992; (6) Convention on Climate Change, 1992;(7) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution damage 1971; (8) Convention on the Prevention of Marine pollution Damage, 1972; African Convention on the Conservation of Nature and Natural Resources,1968; and the International Convention on the Establishment of an International Fund for the Compensation for Oil Pollution Damage, 1971.

---

[102] Ibid.

[103] 28 U.S.C.S. 1350

[104] 176 F.R.D. 329 Unocal

Adedeji O. H., Ibeh, L. and Oyebanji, F. F.; (2011) Sustainable Management of Mangrove Coastal Environments in the Niger Delta Region of Nigeria: Role of Remote Sensing and GIS; Proceedings of the Environmental Management Conference, Federal University of Agriculture, Abeokuta, Nigeria; P 10

Agwu M. O., (2003) Community Participation and Sustainable Development in the Niger Delta; P 22

Amanze N. Fire Guts (June 4, 2007), SPDC's Yorla -16 Well in Ogoni Land; Thisday Newspaper; P 25

Balogun W. (Oct 3, 2012) Pipeline vandalization: The unstoppable racket; Sun Newspapers; P 34

Donald O. and Shittu S. (Feb 11, 2013), 'Northern Senators set to kill PIB', Daily Independent; P 8

Egwemi V., (May 08, 2010), From Militancy to Amnesty: Some Thoughts on President Yar'adua's Approach to the Niger Delta Crisis; P 19

Emmanuel O., (Sept 2012) Reviewing the PHC Fund, Business Day, P 33

Hector I., (Sept 26, 2006); Oil well fire rages in Ogoni 42 days After; The Vanguard, P25

Mitee L. (27 March 2007), Oil Exploitation and the Challenges of a Non-Violent Struggle in Nigeria's Niger Delta; P 12

Petroleum Industry Bill (PIB) (2012), Available from: http://issuu.com/spaces.for.change/docs/petroleum_industry_bill_-_16th_july__2012_pg_turn_

UNDP (2006) Niger Delta Human Development Report, Perfect Printers Ltd. P 14

United States Energy Information Administration, P 7

Sayne A. and Gillies A.; (2011) Oil-to-Cash Initiative Background Paper, Center for Global Development, October . P 10, 63, 64

Stigliz E.J.; (2002) Participation and Development: Perspectives from Comprehensive Development Paradigm; Review of Development Economics, Blackwell Publishers; P 14

United Nations Environmental Program (UNEP) (2011) Environmental Assessment of Ogoniland; UNEP; P 60

Wawryk A. Dr. (2006), International Environmental Standards in the Oil Industry: Improving the Operations of Transnational Oil Companies in Emerging Economies, Cambridge University Press.

Annex 1: List of community representatives that participated in Spaces for Change's community engagement meeting on the PIB held on February 26, 2013 at Bori, Ogoni, Rivers State

S/NO	Name of Representative	Community Represented
1.	Engr. Teate A. Nomkia	Kedere Gokana L.G.A
2.	Dick Ch Bakika	Kpean Town
3.	Chief B. Nwibana	Kpean Town
4.	Friday Nkoi	Goi Community
5.	Amabana Nkpigine	Nonwa Uedume Itai L.G.A
6.	Hon. Morgan N.	Bori
7.	Leekaaga N	Nweol Gokana
8.	Chief Mrs. Rose Zoranen -Micheal	Lewe Town Goi
9.	Nwidoh Charity	Bori
10.	Nwanam Gloria	Wiiyaakara
11.	Nkinamee S.	Sogho
12.	Zite F.M.	Kabangha
13.	Meekor Joseph	Bori
14.	Sampson N. Barisi	Port Harcourt
15.	Gbaranawae Saro Kabari	Luegbo
16.	Fyneface D. Fyneface	Kabangha
17.	Adamgbo Sylvanus A.	Luukoh Zaakpon Bori
18.	Kabari Burabari	Bodo
19.	HRH Suanu Baridam	Banga
20.	Peter James	Port Harcourt
21.	Porole M.A	Gakora
22.	Gideon A.	Eleme
23.	Chief Karikpo Hopskana	Gokana
24.	Evan. Friday Niekawo	Tai
25.	Fred N.	Lubara
26.	Kpugisiwa Nwineeta	Sii- Town
27.	Torunbari Gbarabodo	Kpor
28.	Isreal Sor	Sure village
29.	Badom Baridwe	Bodo City
30.	Jack Gbogbara	Kabangha
31.	Asigur Chris	Tem Lueku
32.	Nkpordee Basil	Bori
33.	Nkpah Young	Bori
34.	Ferry Barineka Gberegbe	Bori
35.	Kelvin Nwidoh	Bori
36.	Friday Nkpelo	Bori
37.	Funmi Fakeye	Spaces for Change
38.	Atim Uba	Spaces for Change
39.	Victoria Ibezim	Spaces for Change

Annex 2: On February 27th 2013, Spaces for Change team presented the draft Handbook to the following agencies in Port Harcourt, Rivers State:

- Hydrocarbon Pollution Restoration Project (HYPREP)
- Shell Petroleum Development Company
- National Human Rights commission
- Trade Union Congress, Port Harcourt, Rivers State
- Rivers State Ministry of Environment
- National Environmental Standards and Regulations Enforcement Agency (NESREA), Port Harcourt Zonal Office
- Mr. Ledum Mitee, Chairman, Board of the Nigerian Extractive Industries Transparency Initiative (NEITI)

Draft report was presented to the following persons and agencies between March 26 - 27, 2013 in Abuja, Federal Capital Territory:

- Chair, House of Representative Committee on the PIB;
- Chairperson, Senate and House Committees on the Environment;
- Chairpersons, Senate and House Committees on Petroleum (Upstream and Downstream)
- Ministry of Environment, Ministry of Petroleum Resources
- Ministry of Niger Delta Affairs
- National Human Rights Commission, Abuja