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POLICING THE NIGERIAN OIL POLICY

VOLUME 1

Policing the Oil Policy Series (POPS) is a compilation of S4C's quarterly-issued policy briefing papers. POPS uses the human rights paradigm to police and analyze oil and gas policies and programs of the Nigerian government.

Spaces for Youth Development and Social Change

SPACES FOR CHANGE (S4C)

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VOLUME 1

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Introduction

Policing the Oil Policy Series (POPS)

Policing the Oil Policy Series (POPS) is a compilation of policy briefing papers issued by Spaces for Change (S4C) every quarter. It uses the human rights paradigm to police and analyze various developments taking place within the Nigerian oil & gas sector. Within this framework, S4C leverages technology, using crowd-sourcing and pedagogical tools to conduct in-depth researches and analysis of national oil policies and ancillary regulations, evaluating their coherence with global standards and best practices in oil industry operations.

Consistent with our primary goal of bridging the knowledge gap in oil policy development and institutional reformation, POPS is one of the numerous vehicles we use to empower citizens and other industry stakeholders to actively participate in the promotion, evaluation and setting of strategic policy directions on specific energy and natural resource governance issues. Our analysis takes a cross-sectoral approach by focusing on decisions and initiatives that specifically address the social, political and legal issues that impede access to energy and environment resources.

Volume 1 of POPS comes from our detailed analysis and clarification of several provisions of Nigeria's latest oil regime, the Petroleum Industry Bill (PIB). The new oil policy, currently under legislative consideration by the Nigerian parliament, is being driven by the necessity to effect regulatory, commercial, institutional and fiscal reforms in the oil & gas sector. The various policy papers contained in this edition review the semantic pitfalls that complicate citizen engagement and propose amendments to some provisions of the bill that could potentially undermine transparency and accountability in oil sector governance.

Building on research findings and recommendations outlined in this report, we will capitalize on our convening and advocacy power to continually engage and remind policymakers, regulators, oil operators and stakeholders in general, what it will take to design and remodel best practices and sustain them. Most importantly, we will continue to work with our partners (civil society, oil-producing communities, the media, the Nigerian parliament and international development organizations) to provide resourceful data and share knowledge on new technical solutions, towards the development of a more locally-grounded, rights-based and sustainable national oil policy.

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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

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The Petroleum Industry Bill: Achieving Its Intended Reform Objectives?

This policy brief examines the 2012 Executive Draft Petroleum Industry Bill (PIB) to determine whether the Bill achieves its intended reform objectives. It analyses the PIB vis-à-vis Government's reform objectives as contained in the National Oil and Gas Policy as well as best practice from other jurisdictions. It concludes that overall the PIB falls short of its objectives and makes recommendations on what can be included in the Bill towards achieving its goals.

Background

In a bid to liberalise and restructure the oil and gas sector, government inaugurated the Oil and Gas Implementation Committee (OGIC) under the National Council on Privatisation (NCP) to coordinate and monitor all activities relating to the reform and privatisation of the sector. The OGIC developed a policy document covering all aspects of the industry with emphasis on securing maximum sustainable value to the nation[1]. Key among the reform objectives are:

- The need for separation and clarity of roles of the agencies operating in the industry
- Reduced government participation and increased private sector involvement in the industry
- The need for improvement in energy planning and implementation of such plans, policies and regulations
- The need for effective and efficient sector regulation
- The need for diversification into other sectors of the economy
- The need to create an appropriate economic climate to boost private sector involvement
- The need for clear and transparent processes which will engender confidence and attract sector investment

The reform objectives proposed in the Policy were subsequently captured in a draft Act, the PIB that not only provided the legal basis for the policy initiatives but also sought to harmonise existing laws.

Analysis of the PIB vis-à-vis its Main Objectives

The PIB also seeks to promote good governance, transparency and sustainable development in the management and allocation of petroleum resources by providing for:

- An orderly, fair and competitive system;
- Clear and effective legal and institutional frameworks for organising petroleum operations; and
- A fiscal regime that offers fair returns on investments while optimising benefits to the Nigerian people.

The PIB, which seeks to address the legal, institutional and funding challenges of the oil and gas industry, has the following objectives:

1. To create a conducive business environment for petroleum operations;
2. To enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
3. To optimise domestic gas supplies particularly for power generation and industrial development;
4. To establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimising revenues accruing to the Government;
5. To establish commercially oriented and profit driven oil and gas entities;
6. To deregulate and liberalise the downstream petroleum sector;
7. To create efficient and effective regulatory agencies;
8. To promote transparency and openness in the administration of the petroleum resources of Nigeria;
9. To promote the development of Nigerian content in the petroleum industry; and
10. To protect health, safety and the environment in the course of petroleum operations.

[1] See National Oil and Gas Policy (2004)

While the PIB is a laudable step towards achieving government's objectives of a transparent, deregulated and efficiently managed oil and gas sector the Bill appears to raise more questions than proffer solutions. Several analyses have been carried out on the provisions of the PIB vis-à-vis other jurisdictions, which concluded that there are issues that need to be addressed if the PIB is to achieve its intended goals.

Objective 1: To create a conducive business environment for petroleum operations

Findings from the various analyses revealed that this objective was not adequately addressed in the PIB.

The private sector is the primary engine for economic growth and Government. in its National Oil and Gas Policy, identified the need to foster an enabling business environment with minimal political interference[2].

Precept 10 of the Nigerian Natural Resource Charter (NNRC) recommends that Government should facilitate private sector investments at the national and local level for the purposes of diversification, as well as for exploiting opportunities for domestic value added.

Facilitating private sector investment requires the removal of constraints to private capital, guaranteeing an absence of political interference, improving access to financing, a clear legal and regulatory regime, and appropriate fiscal regime, among other things.

The Bill as currently drafted fails to put in place the necessary mechanisms for providing an environment aimed at boosting private sector investment. As such, in order to achieve this objective, the PIB has to adopt recommendations made in the other objectives below.

Objective 2: To enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people

Findings from the various analyses revealed that this objective was not adequately addressed in the PIB.

Precept 1 of the NNRC recommends that the development of a country's natural resources should be designed to secure the greatest social and economic benefit for its people. Where the revenues from resource extraction are properly managed, they can help to alleviate poverty, generate economic growth and develop the economy, thus sustaining a more prosperous future. One of the intentions of the PIB is to ensure infrastructure optimization[3] in the future profitability and ultimate hydrocarbon recovery in existing and future fields.

In order for this to happen, a comprehensive approach in which every stage of the decision chain is understood and addressed is required.

While the PIB[4] made extensive provisions for minimum work commitment (obligation imposed on a licensee to carry out certain exploration and development activities) to achieve this objective, an analysis of the provisions of the PIB based on international best practice revealed these provisions are inadequate. Further analysis revealed that the PIB provides limited information on infrastructure development initiatives as well as conditions under which existing infrastructure can be utilized to ensure marginal fields and fields lacking infrastructure are brought on stream. There are also no provisions in the PIB governing work program guarantees.

Given the dearth of infrastructure in Nigeria, which has hampered efforts to bring many fields on stream, it is important and strategic that this issue is adequately addressed.

The PIB does not provide for domestic supply obligations (DSO) or strategic supply obligations for crude oil. Considering the scarce nature of petroleum products in Nigeria and its socio-economic consequences the PIB would have been a useful avenue to encourage DSO for crude oil, to ensure availability of crude oil for local refining and distribution.

As such the PIB should:

- Include provisions for a bank guarantee to back the commitments being entered into by licensees because work commitment without a corresponding bank guarantee/performance bond may prove to be difficult to enforce.
- Reduce the level of detail in the PIB regarding work commitments and instead require in the Bill that a subsidiary legislation provide the necessary details. This would leave room for flexibility in the amendment of this provision especially since amendment of major legislations such as the PIB would require a lengthier process.
- Include provisions defining infrastructure optimisation and how the process for infrastructure development will be managed.
- Include provisions on DSO for crude oil as well as penalties for non-compliance.

Objective 3: To optimise domestic gas supplies particularly for power generation and industrial development

Findings from the various analyses revealed that while this objective was partly addressed in the PIB it could stand to be strengthened if the desire to create a competitive gas market is to be realised.

Precept 1 of the NNRC suggests that the development of a country's natural resources should be designed to secure the greatest social and economic benefit for its people. Also Precept 10 prescribes that government should facilitate private sector investments at the national and local levels for the purposes of diversification, as well as for exploiting the opportunities for domestic value added.

To achieve this objective, optimal use of oil and gas infrastructure in order to facilitate efficient and effective activity across the entire value chain is important. This is to guard against negative outcomes of oil and gas exploration and production, such as monopolistic use of certain oil and gas infrastructure (for example, gas pipeline networks). The PIB includes specific provisions applicable to the gas sector addressing requirements for the licensing of a transportation pipeline owner, transport network operator, gas suppliers, and gas distributors. Other matters covered include development of a Network Code, third party access, gas pricing and pricing principles as well as transitional gas pricing arrangements.

An analysis of the provisions of the PIB[6] revealed that this objective **is not completely addressed** in the PIB. Although there are numerous provisions concerning open access[7] to encourage the development of gas-to-power projects (also consistent with international good practice), this does not apply to future facilities.

[2] See National Oil and Gas Policy (2004)
[3] S. 15(1) (p) of the PIB 2012
[4] Ss. 178, 179 and 277 of the PIB 2012
[6] Ss. 230 – 283 of the PIB 2012
[7] See Ss. 222, 224, 249- 250 and 269-272 of the PIB

The PIB also does not provide clear references on how to determine the measurement point for the oil or gas produced neither does it provide guiding principles upon which such measurements or valuations are made. The PIB also does not include tariffs for gas processing and while it provides for DSO for gas, it lacks sufficient supply obligations penalties for non-compliance.

While provisions to address this issue can be incorporated in a subsidiary petroleum regulation (as is the case in other jurisdictions[8]), the PIB should:

- Provide a reference to a subsidiary regulation that would make provisions for a transparent mechanism through which the provisions on measurement and valuation of hydrocarbons are articulated.
- It will also prove useful to reconsider the detailed provisions from the PIB '08 pertaining to measurement and valuation of oil, gas and condensates. These provisions are consistent with good international practice and clearly set out the means of valuing the hydrocarbons, and define the measurement points for such valuation.
- Tariff provisions should be extended to gas processing
- Strengthen DSO provisions by reviewing S.272 (1)(b)(ii)[9] which opens the door to abuse by providing exemption from penalties for non-compliance.

Objective 4: To establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimising revenues accruing to the Government

Findings from the various analyses revealed that this **objective was not addressed** in the PIB.

Precept 3 of the NNRC states that *fiscal policies and contractual terms should ensure that the country gets full benefit from the resource, subject to attracting the investment necessary to realise that benefit*. Policies and contracts need to be sufficiently robust to meet changing and uncertain circumstances. Policies need to provide for strong fiscal structures capable of providing a reasonable rate of return and incentives while providing economically efficient signals to government and consumers regarding costs that consumption places on licensees.

An analysis of the provisions of the PIB revealed an absence of provisions for progressive fiscal elements. Rentals and royalties are to be determined by Ministerial Regulations[10]. Important provisions on Bonuses; Relinquishment requirements; Cost recovery limits; Profit oil or gas splits; DSO (except for gas) are either not mentioned or have been neglected. As currently drafted, the fiscal framework described in the PIB will ultimately be regressive if a flat or fixed royalty percentage is required as one of the bid items per Section 190 (2) (a) (ii). In addition, the PIB does not define sliding scales which means that the fiscal systems will have no real ability to respond to situations where oil prices rise or fall significantly, or if a discovery is made that's significantly larger than anticipated. Further, the absence of fiscal royalty provisions in the PIB coupled with inadequate taxation provisions adds significantly to investor uncertainty.

The PIB should provide greater clarity on the fiscal terms as well as clear distinctions with respect to fiscal terms between oil gas and condensate.

Objective 5: Establish Commercially Oriented and Profit Driven Oil and Gas Entities

Findings from the various analyses revealed that this **objective was not adequately addressed** in the PIB.

Precept 6 of the NNRC recommends that *nationally owned resource companies should operate transparently with the objective of being commercially viable in a competitive* environment. While the Bill makes provision for the commercialisation of NNPC it does not include details necessary to make the newly created National Oil Company (NOC) more profitable and efficient.

The Bill provides for partial privatisation of NOC and the National Gas Company (NGC without requiring a minimum level of privatisation) but does not mandate the partial privatisation of the Asset Management Corporation (NPAMC).

Analysis of twelve national oil companies (NOCs) and NNPC revealed[11] that the Bill is unlikely to significantly advance Government's objective of establishing a commercially oriented and profit driven oil and gas entities due to a number of gaps. The Bill does not provide clear provisions on shareholding rights of government neither does it address the composition of the NOC or NGC boards and exposes the companies to no direct legislative oversight. There are no clear provisions on how NOC and NGC would fund their operations neither does it discuss NOC crude oil sales that account for up to 70 percent of public revenue.

NPAMC and NGC are not subject to the upstream contract-disclosure requirement that means joint venture and gas contracts could remain opaque. The Bill does not mandate auditing requirements for NOC and NGC while NPAMC is required to publish only a summary of its audited accounts. Further, there is no clarity on core fiscal terms that could determine the commercial viability of the new NOC's upstream operations.

In order to ensure the commercial viability and autonomy of the entities, the PIB should provide for the following:

- Shareholding rights of government and clarity on NOC's fiscal obligations to Government
- Transition framework guiding how NOC will be commercialised
- Clear provisions on how the operations of the NOC and the Nigerian Gas Company would fund their operations along with a workable revenue retention model
- Appropriate level of legislative oversight and professional, independent boards for the companies
- Limit or clearly define NOC's non-commercial roles
- Public listing of NOC shares
- Improve corporate governance through the discipline of external debt financing

8 Angola and Brazil

9 Any supplier who does not comply with the DGSO as specified by the Agency shall not supply gas to any expoer project for the period that the supplier is not complying with the DGSO unless it can demonstrate to the satisfaction of the Agency that it has made reasonable commercial endeavours to make gas available.

10 S.197 of the PIB 2012

Objective 6: To deregulate and liberalise the downstream petroleum sector

Findings from the various analyses revealed that this **objective was partly addressed** in the PIB although some additional provisions are required to achieve this objective.

Precepts 7 of the NNRC prescribe *that resource revenues should be used primarily to promote sustained, inclusive economic development through enabling and maintaining high levels of investment in the country*. Also, Precept 9 suggests that *government should use resource wealth as an opportunity to increase the efficiency and equity of public spending and enable the private sector to respond to structural changes in the economy.*

To achieve this objective, PIB makes provisions for the creation of a deregulated and liberalised downstream petroleum market[12]. The PIB also proscribes anti-competitive market practices and provides for third party access to downstream facilities[13].

While the Bill contains numerous provisions guiding deregulation, further analysis revealed that there are no transition provisions nor are there clear provisions on the process for deregulation or an implementation regime post-PIB. The Bill lacks clarity over which institution will have operational responsibility for carrying out reforms both pre and post PIB and is silent on transitional arrangements for the new regime.

Accordingly, the PIB should make provisions for the following:

- Amend the Bill and mandate the process of reform pre – and – post – PIB should be carried out by the Bureau of Public Enterprises in line with the current Public Enterprises (Privatisation and Commercialisation) Act
- Include clear provisions on the process for deregulation as well as transition provisions on outstanding issues such as where liabilities will be domiciled following the transfer of assets and employees from NNPC to the National Oil Company, and how NOC will be commercialised.

Objective 7: To create efficient and effective regulatory agencies

Findings from the various analyses revealed that this **objective was not adequately addressed** in the PIB.

The Oil and Gas Policy recommended an industry structure under which the Minister would be responsible for broad policy initiation; formulation and development in the sector while the regulators would be responsible for technical and commercial regulation in the sector. However, the PIB 2012 permits the Minister of Petroleum Resources to exercise excessive discretionary powers over the licensing process for upstream activities, even though majority of licences and leases are expected to be issued through competitive bidding process[14]. The President of the Federal Republic of Nigeria is also granted unrestricted discretionary power under the Bill to award upstream licences and leases[15].

The Downstream Petroleum Regulatory Agency is vested with power to independently license all downstream petroleum operations, excluding specific downstream activities that are expressly reserved for licensing by the Minister[16].

Several analyses revealed that the Bill is lacking in specific provisions that would ensure transparency and non-discrimination in the award process for every licence, lease, permit or authorisation

Recommendations for improving the provisions of the Bill include:

- Limit the role of the Minister to Policy Issues/ Directives and Confer general powers to award licenses and leases on an independent regulatory body as is the practice adopted in United States of America and the Russian Federation.
- Remove provisions conferring discretionary power on the Minister over competitive bidding process and avoid the use of wording conferring omnibus power to the Minister to grant licenses and leases.
- Remove provisions granting the President discretionary powers to grant licenses and leases in special circumstances.
- Include clear rules guiding the exercise of the Regulators' power to issue licenses aimed at achieving non-discrimination and transparency. This provision should also include publication and widespread dissemination of (minimum) qualification requirements for each category of licenses, periodic mandatory audit of all issued licenses by NEITI or other like organizations, mandatory use of a competitive bidding process for appropriate categories of licenses etc.

- In order to preclude any debate on who the appropriate licensing authority is for typical midstream activities undertaken by upstream licensees or lessees for their own account, clear provisions should be inserted in the legislation confirming where that such licensing powers should reside.

Objective 8: To promote transparency and openness in the administration of the petroleum resources of Nigeria

Findings from the various analyses revealed that while this **objective was partly addressed** in the PIB it could stand to be improved.

Precepts 2, 4 and 6 of the NNRC suggest guidelines for achieving transparency and accountability in a resource rich country.

Precept 2 of the NNRC suggests that a successful natural resource management requires government accountability to an informed public. This involves government adopting transparent processes for taxing, collecting and managing revenues from the industry, among other things. Also, Precept 4 of the NNRC prescribes that *competition in the award of contracts and development rights can be an effective mechanism to secure value and integrity*. Precept 6 of the NNRC also prescribes that in order to yield best returns

11 See Aaron Sayne, Paasha Mahdavi, Patrick R.P. Heller and Johannes Screuder, "The Petroleum Industry Bill and the Future of NNPC" Revenue Watch Institute (October 2012) http://www.revenuewatch.org/sites/default/files/rwi_bp_nnpc_synth_rev2.pdf

12 See S. 221

13 Ss. 222, 257,262-264

for the country, *nationally owned resource companies should operate transparently with the objective of being commercially viable in a competitive environment.*

The PIB contains strong provisions to ensure transparency and non-confidentiality in the sector. However, based on findings from various analyses on this subject, this objective while partly addressed in the PIB[17] could be improved. The Bill also allows the new regulatory agencies to receive gifts of money or other property upon such terms and conditions as may be specified by the person or organization making the gift provided such gifts are not inconsistent with the objectives and functions of the agencies. This could compromise the integrity and objectivity of the agencies and weakens the transparency objectives of the Bill.

Furthermore, as discussed under Objective 7, excessive and wide ministerial discretion contained elsewhere in the Bill regarding its role and oversight of the regulatory agencies[18] in addition to the President's discretionary power will not only work against the transparency aspirations of the Bill but could eventually result in political manipulation.

To achieve this objective, the PIB should:

- To avoid revenue leakages- have a clear definition of what “petroleum income” entails for the purposes of the Act and state precisely which account such income should be directed into.
- Remove the provisions allowing the agencies to receive gifts
- Include provisions with strict stipulations of the time within which account such income should be directed into.
- Remove the provisions allowing the agencies to receive gifts
- Include provisions with strict stipulations of the time within which payment should be made into the federation account, which agency should be responsible for collecting which revenues and the process through which payments should be made.
- Provisions regarding all areas relinquished under s. 193 of the Bill should be amended to include that such areas should be re-awarded based on a competitive bidding process with clear guidelines governing the entire process.
- Introduce a regular fixed cycle for the licensing rounds.
- Introduce clear rules that would effectively bar the reissuance of a revoked Petroleum Mining Lease (PML) other than by an open, transparent and competitive bidding process.

Objective 9: To promote the development of Nigerian content in the petroleum industry

Findings from the various analyses revealed that while this **objective was somewhat addressed** in the PIB there is still room for improvement of the provisions.

The PIB highlights the importance of Nigerian content by requiring prospecting licensees to provide approved Nigerian Content Plan in line with relevant legislation[19] as part of their Development Plans further to a commercial discovery or significant gas discovery[20]. The import of this is that no drilling or appraisal work can commence without an approved content plan. **Part VI of the Bill** on Indigenous Petroleum Companies requires the Minister to issue regulations or guidelines for increased indigenous participation in the petroleum industry.

While the Bill does address Nigerian content, additional steps will need to be taken towards reviewing and amending the subsisting enabling legislation on Nigerian content, i.e., the Nigerian Oil and Gas Industry Content Development Act 2010, in order to ensure it adequately addresses all issues relating to Nigerian content.

Objective 10: To protect health, safety and the environment in the course of petroleum operations

Findings from the various analyses revealed that this **objective was not adequately addressed** in the PIB.

Precept 5 of the NNRC observes that *resource projects can have significant positive or negative local economic, environmental and social effects which should be identified, explored, accounted for, mitigated or compensated for at all stages of the project cycle*.

The PIB includes provisions on health, safety and environment in the petroleum industry. The sector regulators have responsibility in their respective sectors while the Ministry of Environment has overall responsibility over environmental issues.

The Bill adopts a precautionary approach to environmental challenges and requires every operator to adopt environmentally friendly technologies and comply with relevant requirements of environmental guidelines and standards approved for the petroleum industry. The Bill also requires prospecting licensees to submit Development Plans including Environmental Management Plans, acceptable Decommissioning and Abandonment Plans and providing for elimination of routing gas flaring[21].

Regarding gas flaring, the Bill specifically proscribes gas flaring and requires operators to provide gas flaring plans highlighting all flared gas resources along with gas utilization plans for gas to be utilized before gas flare out date. While the Bill provides for flare-out date as well as gas flaring offences and associated penalties, it requires the Minister to prescribe the flare-out day, gas flaring penalties and also allows the Minister to grant permits to operators to flare or vent gas. This discretionary permit of gas flaring has the potential to be abused and substantially

The PIB should:

- Proscribe gas flaring completely.
- Require insurance covers for environmental disasters as one of the requirements for the Development Plan.

Conclusion

While the Bill does not completely conform to its reform objectives, it provides a good opportunity to reform the oil and gas sector. Steps will need to be taken to address those outstanding issues if the PIB is to achieve its intended goals.

~~NOGICD Act 2012 or as may~~ be amended from time to time

14 S.6 (1) (g) (h); S. 172
15 S.191
16 S.6(1) (h)
17 Ss. 32 (4), 299 (3)
18 S. 6 (1) (g), 172(2), 13, 14, 43, 44,
19 S.178, 179
20 S.179 (3)(e)(f)
21 S.276, 277, 281, 282, 200

PIB: Corporate Governance and Institutional Framework

This policy paper outlines and appraises the roles and responsibilities of the new entities and structures that will be created pursuant to the Petroleum Industry Bill. It flags and critically reviews specific provisions related to corporate governance and institutional framework that could potentially undermine oil sector transparency and accountability when placed against global standards, and recommends actions for legislative engagement.

Prepared by: Temitope Adeyinka and Victoria Ibezim-Ohaeri

Introduction

The Petroleum Industry Bill (PIB) 2012 was forwarded to the National Assembly on 18 July, 2012 for consideration and passage into law. The PIB provides a legal, fiscal and regulatory framework for the Nigerian petroleum industry. The PIB was originally conceptualized to reform and repeal about 16 pieces of petroleum legislation in Nigeria and then aggregate all the laws into a single piece of comprehensive legislation. Upon enactment, the PIB will repeal the Petroleum Act, Associated Gas re-injection Act, Petroleum Profits Tax (PPT) Act, Deep Offshore and Inland Basin Production Sharing Contracts (PSC) Act and some other current laws governing the Nigerian petroleum industry.

The PIB was first presented to the sixth assembly in 2009, but efforts to pass it were hampered by vested interests, intense political intrigues, and the dearth of effective stakeholder consultation and citizen engagement. The Senator UdoUdoma-led PIB Technical Committee set up on January 17, 2012 reviewed the 2009 version of the Bill after an unprecedented uprising in January 2012 forced high-level probes and investigations into the administration of fuel subsidies, including massive shake-ups in national oil and gas institutions. The resulting draft is an aggregation of several legislations on the oil and gas industry,
with the primary objective of opening up the oil industry to privatization, optimization of domestic gas supplies, including the liberalization of the downstream sector.

Overall, the PIB introduces some positive developments including moves to unbundle and partly privatize the state-owned Nigerian National Petroleum Corporation (NNPC); address host community concerns; promote local content; optimize domestic gas supplies, particularly for power generation and industrial development; and the deregulation and total liberalization of the downstream sector, to end decades of government monopoly. It seeks to establish a fiscal framework that encourages investment and revenue inflow to the government, through the establishment of commercially oriented and profit-driven oil and gas entities. The passage of the Bill will catalyse a fundamental restructuring of the industry, and end the uncertainty which has prevented Nigeria from holding an oil licensing round for five years. It will also attract the much-needed investment into natural gas, and bolster energy security.

Stratification of Oil Industry Operations

The stratification of oil industry operations into upstream and downstream is sustained under the Bill.

Upstream operation is now exclusively limited to crude oil and gas exploration and production. S. 362 defines upstream as "all activities entered into for the purpose of finding and developing petroleum and includes all activities involved in exploration and in all stages through, up to the production and transportation of petroleum from the area of production to the fiscal sales point or transfer to the downstream sector". The Upstream Petroleum Inspectorate (UPI) will regulate technical operations and commercial activities of the upstream sector, and take over assets and liabilities relating to the upstream petroleum sector, which were hitherto vested in the Department of Petroleum Resources (DPR).

All other activities are categorized as downstream including the construction and operation of gas processing facilities, oil and gas transportation, natural gas transmission, natural gas transmission, product pipelines, tank farms and stations for the distribution, marketing and retailing of petroleum products, oil refining and so on. All these activities will be regulated by the Downstream Petroleum Regulatory Agency (DPRA), and will be vested with the functions, assets and liabilities of the DPR relating to the downstream petroleum sector as well as the functions of the Petroleum Products Pricing and Regulatory Agency (PPPRA).

Government Authority and Institutional Framework

The ownership and control of all petroleum resources in, under or upon any land within Nigeria, within its territorial waters or continental shelf and its exclusive economic zone are vested in the federal government. The Minister of Petroleum Resources is the regulatory head of the industry and is responsible for coordinating all activities and exercising general supervision over all institutions and operations in the petroleum industry.

A Petroleum Technical Bureau (PTB) will be set up as a unit in the office of the Minister to provide technical and professional assistance in the areas of formulating and developing strategies to implement government policies as well as monitoring the implementation of government policies in the petroleum industry. In addition, the Bureau will carry out the functions of the former Frontier Exploration Services of the NNPC.

The Petroleum Technology Development Fund (PTDF) and the Petroleum Equalisation Fund (PEF) will be re-established to continue in their normal roles although the PEF will cease to exist when the petroleum product market is deemed to have been effectively deregulated. A new Petroleum Host Communities (PHC) Fund will be set up for the purpose of economic and social infrastructure development in petroleum producing communities. Upstream petroleum companies will be expected to remit 10% of their net profit every month to the PHC fund.

The introduction of the Petroleum Host Communities Fund (PHC-Fund) is a positive development, and a new high in addressing the persisting agitations and concerns of oil-bearing communities. Under Section 118 of the bill, every company that is involved in oil and gas exploration and production is required to remit into the fund on a monthly basis, 10 per cent of its net profit, calculated by the adjusted profit minus the Nigerian hydrocarbon tax and minus the companies' income tax. In addition to the benefits of involving the oil-producing communities in the joint ownership of oil and gas assets, the Fund will be utilized for the development of the economic and social infrastructure in oil-producing communities. However, the manner in which the PHC fund will be distributed is not clearly stated and is left to the regulation of the minister. This can open the door to political interference and the possibility of non-transparency in the administration of the funds.

In line with industry best practice, the PIB has made provisions for standalone regulatory bodies for activities in the petroleum sector. However, it seems the institutional framework is not strong enough to ensure the independence of the regulatory agencies. Apart from having supervisory oversights over the UPI and DPRA, the Minister will also be the one to nominate individuals to their boards.

The Minister will also serve as the chairman of the boards of the PHC, PTDF and PEF. The current framework arrogates too much responsibility to the person of the minister rather than to independent institutions and this can easily give room to abuse of power, patronage and political interference. Participants at a stakeholders' forum on the PIB hosted by the Nigeria Extractive Industries Transparency Initiative also submitted that departments and agencies created under the PIB should be independent and autonomous, especially the regulatory agencies.

The Special Investigative Unit

The Inspectorate is empowered toestablish a Special Investigation Unit (SIU) empowered to investigate violations of the Act mandated to keep surveillance on oil and gas installations, among others things (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.

The creation of a new entity with apparently 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 enabling an existing agency like NOSDRA to assume the roles and functions of the proposed SIU's 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.

Government Participation and Commercial Institutions

The National Petroleum Asset Management Corporation will be incorporated to acquire and manage government's upstream petroleum investments. It will operate as a holding company and will have the National Petroleum Asset Management Company as a subsidiary. The corporation will maintain a fund for its subsidiaries and contributions to the fund will be primarily from the government and also from other sources in the course of normal operations. The National Petroleum Asset Management Company will be incorporated and vested with all government's interests in unincorporated joint ventures (UJV), excluding those that will be vested in the National Oil Company.

The National Oil Company (NOC) will be incorporated as an integrated petroleum company to be vested with NNPC's assets and liabilities, excluding interests in the UJVs and the Nigerian Gas Company. This presupposes that the NOC will be vested with NNPC's interests in incorporated joint ventures (including JOAs) PSCs - Production Sharing Contracts(PSCs),

Service Contracts (SCs) as well as Nigerian National Petroleum Corporation's (NNPC's) interests in subsidiaries such as Nigerian Petroleum Development Company (NPDC),Pipelines and Product Marketing Company (PPMC), National Engineering and Technical Company (NETCO), Hyson, National Petroleum Investment Management Services(NAPIMS), National Petroleum Investment Management Services (IDSL) and the refineries. The National Gas Company (NGC) will be incorporated and vested with NNPC's assets and liabilities in the Nigeria Gas Company Plc.

Apart from the NOC, NGC and Asset Management Corporation & Company that will emerge after the unbundling of the Nigerian National Petroleum Corporation (NNPC), the PTDF and the PEF are existing institutions retained by the new petreoleum bill. Created by the PTD Act of 2004, the PTDF is responsible for training Nigerians to qualify as graduates, professionals, technicians and craftsmen in the fields of engineering, geology, science and management and other related fields in the petroleum industry.” (S.74). PEF on the other hand, is a Fund set aside for the reimbursement of petroleum products marketing companies suffering loss solely and exclusively as a result of the sale of petroleum products at uniform benchmark prices throughout the country. (S.100)

The PIB has made clear cut provisions for the unbundling and commercialization of the NNPC. Corporate entities with solely commercial purposes will be created as against the former arrangement where the NNPC served both commercial and regulatory purposes. The new commercial structure may eliminate the perennial joint venture cash-call/funding inabilities of NNPC. However, it seems long-term funding capability is not guaranteed for the UJV interests of the management company, as the PIB only makes provision for 2 years of government funding for its work programme.

The new commercial structure also seems to be beleaguered with the concentration of power in the person of the minister. The minister is to serve as the chairman of the board of the National Petroleum Asset Management Corporation. It is however not clear how theboards of the management company, the NOC and the NGC will be constituted. The PIB only stated that the companies will be managed based on the provisions of their memorandum and articles of association.

Nigeria and the Fuel Subsidy Overhang: Alternative Actions

By Dayo Olaide and Victoria Ibezim-Ohaeri.

INTRODUCTION

The Federal Government of Nigeria abruptly removed subsidy from premium motor spirit (popularly known as petrol) on January 1, 2012 which saw the fuel pump price jump from N65 to N141. Higher prices were recorded in some parts of the country especially the hinterlands where prices averaged about N200. The government justified the sudden subsidy cuts, stating that it would block leakages and free important revenue for investment in critical sectors such as infrastructural provisioning, health education, and create jobs.

The removal sparked major protests and caused several deaths which are yet to be investigated. In addition to increasing popular awareness of the extent and depth of corruption, impunity and poor governance that pervade the management of the Nigerian economy, the protests propelled high-powered probes which exposed the unprecedented financial mismanagement and horrendous malfeasance entrenched in the administration of fuel subsidies. For instance, an estimated N1.32 trillion (about $8.25 billion) was spent on subsidies in the ten months to October 2011 or about four times the amount spent in the entire 2010, without a corresponding volume of fuel importation and supply for the same period.

Beyond the revelations of overwhelming rot in the oil sector and subsidy administration by the Farouk Lawan legislative committee that probed the subsidy regime, the committee's findings unearthedmassive departmental discrepancies characterizing the official subsidy calculations and economics.

It also confirmed popular contention by citizens that the explosion in subsidy expenditure owed to fraudulent practices. Nevertheless, the fuel subsidy quagmire has clearly demonstrated that the government can no longer ignore public views and participation in the design and implementation of critical social and economic policies and programs.

The propositions contained in this brief were informed by an e-conference, FUEL SUBSIDY REMOVAL: SOCIAL AND ECONOMIC POLICY IMPERATIVES organized by Spaces for Change (S4C) on December 10, 2011. The debate drew contributions from a diverse group of Nigerians across the globe, including North America, South America, Asia, Africa and Europe. This communication conveyed key recommendations and alternate options for an effective reform of the fuel subsidy regime with the hope that it would spark further engagement with the Special Committee of the House of Representatives that probed the fuel subsidies and President Jonathan's Economic team. Policing the Policy Series is a publication of Spaces for Youth Development and Social Change [SPACES FOR CHANGE (S4C)]

Global trend in fuel subsidy

Subsidizing fuel products is common practice the world over and especially among countries rich in oil and gas.The objectives are, in part, to ensure access to affordable products and influence consumption of particular products. The poor are often targeted but, as recent anti-subsidy campaigns and anecdotal evidence show, they receive the least benefits.

A combination of corruption and lack of transparency combine to increase the cost of subsidies and raise sustainability questions. In addition, subsidies are now blamed for 'wastages' in fossil fuel consumption and assumed to be increasing carbon emission and the threat of climate change. Hence the growth in global campaign against fuel subsidies led by the Global Subsidy Initiative, among others[1].

Removing subsidies has however proved difficult in many countries as a result of the economic hardships and socio-political costs. Based on the reality in many developing economies with low fuel consumption, a hurried removal of subsidy is likely to intensify economic hardship especially the poor and vulnerable groups, and spark political upheavals. Given the fragility across fledgling oil-rich democracies in Africa, including Nigeria, a careful and robust reform programme offers the biggest opportunity towards the establishment of free market in the downstream sector.

Reforming fuel subsidies: Examples from other jurisdictions

Reforming fuel subsidies is an arduous task. It holds political and economic implications which have proved too difficult to handle in many developing nations. Even developed countries are not spared of the difficulties. However examples of countries that have successfully reformed and cut-down fossil-fuel subsidies offer important lessons and guidance for Nigeria and others.

From the example of successful reform of liquefied petroleum gas in Senegal, coal in France and gasoline (petroleum or PMS) in Ghana, key success factors can be identified and adapted to local realities in Nigeria. In France, reform of coal subsidies (producers' subsidies) took more than 40years and several billions of Euros in structural adjustment and only ended in 2004 (GSI, 2010: pg.10). Ghana's effort is still ongoing after several failed efforts with the most recent component coming in a December 2011 announcement of price increase. Similar pattern is recorded in Senegal's effort, which began in the 1970s and continued to 2008, to reform subsidy for liquefied petroleum gas.

In all the examples, policy sequencing, research, effective communication, transparency and accountability have proved critical. Additionally, clear

[1] http://www.globalsubsidies.org/

definition of reform objectives and success parameters, clear transitional period, coherent policy environment, competent policy drivers, effective implementation (with clear political will and public support) and proper monitoring and evaluation are key. In the three cases, international assistance proved important as well but NOT the sole driver.

Subsidy reform in Nigeria

The latest probe by a Special Committee of the Honourable House of Representatives, headed by Hon. Farouk Lawan has confirmed popular perception of corruption and impunity in the subsidy administration.The protests and probe offer important opportunities for Nigeria to embark on a comprehensive reform of its oil and gas downstream sector.

In Nigeria, fuel subsidy is critical to economic wellbeing of a significant portion of the population. The absence of alternative energy means that every Nigerian, in rural and urban community, consumes petroleum products daily, in the form of kerosene, PMS or Diesel. With more than 90% living on less than $2/day, an increase in prices of fuel energy is bound to trigger corresponding significant increases in costs of goods and services. This makes removing and/or reforming fuel subsidies a sensitive venture[2].

Nigeria has four refineries with total capacity of 445,000 barrels per day. Anecdotal evidence suggests that, at installed capacity, the refineries could meet domestic needs for PMS, Kerosene and diesel. Unfortunately, the 'Nigerian factor' manifesting in the downstream sector as NNPC monopoly (which locks out free exit and entry of investment capital and competition), corruption, militancy and insecurity in the Niger Delta, derelict infrastructures (power, pipeline and storage networks) and political interference hobble development in the sub-sector.

The deficiencies observed in local refining capacity in West Africa (in spite of potential markets) offer additional economic justification for Nigeria to reform the downstream sector. Literature shows that Nigeria has taken several efforts to reform its downstream sub-sector, in part, to promote investment, competition and ultimately reduce the subsidy burden. These efforts have failed due to a number of reasons, chiefly, inadequate planning, lack of political will and commitment, absence of public support (in the form of fierce resistance by labour and citizens associations), poor implementation and weak penetration of monitoring and evaluation (particularly the failure of successive governments to learn from failed efforts and successful ones).

Reforming fuel subsidies in 2012

So far, suspicion and mistrust lace the current strategies and arrangements for withdrawing subsidies and reforming the downstream sector. Nigerians have argued that critical institutional, structural and administrative bottlenecks obstructing the development of the sub-sector have not been addressed.

Nigeria requires a robust reform programme for the downstream sector. This reform, must at a minimum, provide options and roadmap for restoring peace in the Niger Delta and cutting downthreats to stock-feeds necessary for existing local refineries. The plan must include a clear restructuring of the governance of the downstream, kick out political patronage that undercuts operations of existing local refineries, combat infrastructural decay (power, storage and pipeline networks) in the sector, legislative impediments (which currently compels the federal government to regulate fuel prices), corruption and widespread insecurity and their impacts on investment flow in the sector. More importantly, Nigeria must put in place critical policy, legal and institutional regimes for the effective regulation and environmental protection. Citizens' engagement is crucial throughout the process to reduce face-offs and policy resistance.

The government's reaction to the January uprising, especially its use of military force to suppress the protests is widely perceived as official unwillingness or unpreparedness for citizen engagement around the deregulation agenda. The rushed subsidy withdrawal, the hastily-conceived SURE[3] policy document, together with the blundering communication strategy are unlikely to resolve the growing risk of instability fuelled by the protests or assuage the loss of public confidence which President Jonathan and his administration must now work much harder to earn.

Nigeria's efforts in 2012 to reform fuel subsidies should, among other things, recognize and embed key success factors identified in the reform experiences of France, Ghana, Senegal and others andrespond to local realities in order to stand any significant chance of succeeding. Localized expertise to draw from abounds as well on the understanding that the federal government and its parastatals would demonstrate 'willingness' and 'openness' to consider new options.

- **Propositions by Spaces for Change**

Spaces for Change, an independent non-governmental organization, organized an e-conference on fuel subsidy removal and options for the federal government in December. The conference was led by 2 lead expert discussants in the development and oil and gas sectors. The debate drew contributions from a diverse group of Nigerians across the globe, including North America, South America, Asia, Africa and Europe. This communication is to convey key suggestions and options with hopes that it could spark further discussions with the Special Committee of the House of Representatives probing the fuel subsidies and President Jonathan's Economic Management team.

The key conclusion drawn from the 300 + comments and contributions by the 2 lead discussants and 75 participants emphasized the following:

- A phased approach of subsidy removal
- A comprehensive reform programme for the downstream sector.
- Subsidy removal or deregulation as currently framed will not address the critical institutional, legal, policy and administrative impediments that currently scare away investments and permit corruption and impunity in the administration of fuel subsidies.
- Nigeria cannot afford a hurried programme to remove subsidies. Subsidy removal must be implemented as part of an integrated programme dedicated to fostering investment, optimal local refinery, job creation and support re-industrialization.

[2] *Some commentators have equated it to 'public health' in UK and 'social security' in the United States both of which are so vital and sensitive that no politician wants to touch, even with a long pole. This, in spite of the burden they pose to economic and financial health of the countries.*

[3] Subsidy Reinvestment and Empowerment Programme (SURE): President Goodluck Jonathan and the Economic Management Team rolled up this new initiative as the vehicle for actualizing the benefits of the subsidy savings. An estimated N478 Billion is expected to accrue to the federal government from the policy.

In addition, important lessons and best practices must be sourced from other countries undertaking similar steps at phasing out subsidization of petroleum products. A fuller understanding of the linkages between fuel usage and the economy (at national and household levels); the actual fuel importation, consumption, and subsidy expenditures; and the relationships between the global oil price fluctuations and the domestic pricing regime are necessary, and must inform the design and implementation of a coherent oil sector reform policy.

The key conclusions above are further clarified in the following recommendations:

Recommendations 1:
Tying fuel importation and renewal of importation and marketing license to 'commitment to build and operate local refinery in Nigeria'.

A medium to long term (5-7 years) is necessary for consultations, negotiations, contracting, legislation, implementation and review (monitoring and evaluation). Complementary reforms in financing and investment (for the sub-sector), negotiation of existing subsidy, reform of existing management and governance structure and administration of subsidy are envisaged for this option.

Recommendations 2:
Giving incentives to promote local refinery is recommended. In this regard, setting a clear transition plan or deregulation plan/calendar is an important first step. The calendar will specify the timelines for fuel importers or refinery license holders to commit to building refineries over a definite period of time (3-5years), otherwise license will not be renewed. Secondly, the federal government's guarantee of credit for investors just as is being done in the agricultural sector would encourage investment and private participation in the industry operations.

Recommendations 3:
One of the palliative measures that may bring large benefits to the poor is **the subsidization of electricity tariffs** or differential pricing to lessen the pressure fuel dependency places on household income. Our welfare analysis indicates that significant reductions in electricity tariffs will bring about a much larger marginal social impact on the poor, and considerably cushion the effects of changes in fuel prices. Given the linkages between electricity generation, distribution and service delivery, it is imperative to reduce fuel dependency by expediting action, and calibrating the ongoing reform of the power sector towards a deliberate program of diversification of energy sources so as to replace declining hydro- and thermal plants electricity supplies with other domestically produced electricity sources.

Recommendations 4:
Further, **strict monitoring, compliance and sanction systems** are critical. This would require the establishment of independent monitoring or quasi-judicial mechanisms that give citizens a voice to speak out and demand redress when adversely affected by the implementation of the subsidy phasing out, or funds reinvestment strategy. The hasty, and unilateral approach adopted by the federal government have not allowed room for these concerns to be integrated or addressed by the Subsidy Reinvestment and Empowerment (SURE) policy framework. In addition, an independent accountability mechanism that is transparent will increase the confidence people hold in the project as a tool for their economic emancipation.

Additionally, the successful implementation of the fuel subsidy removal policy, the SURE program and the accompanying proposed palliative programs, requires periodic monitoring, evaluation and adaptability to new ideas and information. **Indicators and benchmarks that enable easy and independent assessment of program outcomes should be designed and stakeholder groups, including the civil society and non-governmental organizations should be involved in the monitoring process.**

Recommendations 5:
Concerted steps must be taken to **develop an across-the-board communications strategy** to educate citizens about the formation of subsidy expenditures, how costs and benefits are calculated, distributed and what the likely effects of its removal (both direct and indirect) will be. This will help assure stakeholders that their interests are being respected, and efforts are being made to create mechanisms that ensure transparency regarding subsidies and the reform process.

Recommendations 6:
The new committee set up to **expedite action on the passage of the Petroleum Industry Bill** (PIB) have social, legal and moral obligations to draw the attention of policy and lawmakers to existing gaps in the regulatory system; gaps that cause serious environmental and human rights problems in the Niger Delta. The proposed oil industry legislation does not deal with the social and human rights dimension of oil operations. Provisions that obligate oil companies or government agencies to consult and obtain prior consent of local communities, as well as establish adequate information disclosure measures for communicating the impacts of oil operations to communities, particularly data on fisheries, agriculture, health and livelihoods must be included in the PIB.

Conclusion
The current inefficient fuel subsidy regime constitutes major leakage on Nigeria's economy. The Farouk Lawan Committee report of the oil subsidy probe presents a compelling basis for citizens to demand for a comprehensive oil industry reform as would stimulate investment and affordable products and deliver significant gains to Nigerians. Government can borrow lessons from successful reforms and mobilize strong political buy-in to fastrack the reform process. Citizen's participation is critical throughout the process.

SPACES FOR CHANGE's e-conference discussions can be viewed via the link below:
http://www.facebook.com/groups/106878672727240/permalink/206111219470651/

PIB: Examining the Power of Regulatory Agencies to Receive Gifts

Sections 33 (1), S. 63 (1) and S. 139 (1) of the latest draft of the Petroleum Industry Bill (PIB) empowers the two regulatory agencies: the Upstream Petroleum Inspectorate (UPI) and the Downstream Petroleum Regulatory Agency (DPRA), including the National Petroleum Assets Management Corporation to receive gifts of money, or other property, from third parties. This policy briefing paper argues that such gift-giving may not only upset the pursuit of transparency and accountability urgently needed in the oil sector, but that gift cultures are also fraught with ambiguities and intrinsic susceptibility to corruption. Understanding gift practices within a regulatory context will allow Nigerian lawmakers in particular, policy leaders, stakeholders and the general public to pursue an appropriate strategy for embedding transparency, corporate responsibility and institutional accountability in the PIB.

Written by Victoria Ibezim-Ohaeri, executive director, Spaces for Change.

Introduction

S. 33, 63, & 139 of the PIB provide as follows:

Power to accept gifts

(1) *The Inspectorate/Agency/Corporation may accept gifts of money or other property upon such terms and conditions as may be specified by the person or organisation making the gift provided such gifts are not inconsistent with the objectives and functions of the Agency under this Act.*

(2) Nothing in subsection of this section or in this Act shall be construed to allow any member of the Board or staff of the Agency to accept gifts for their personal

From the above excerpt, the PIB did not specify situations in which such gift-giving to the UPI, DPRA or the Corporation may be allowed. Beyond the fractional obligation on the giver to specify the terms and conditions, the Bill is silent on the criteria for conceptually understanding the logic of the gift. And again, the one-part obligation ostensibly heaps the onus of proving motive on the giver, while absolving the receiving agencies from a corresponding standard of accountability. Although the proviso to S. 33, 63 and 139 prohibits members and staff of the named agencies from accepting gifts for their personal use, the PIB overlooks the practical difficulty in its officials, leaving the door open to the complex distinguishing between gifts to the agency per se, and that o maneuvers, obligation and reciprocity inherent in gift-giving.

As this paper will demonstrate, gift exchanges have historically been used to facilitate or cover up blatant graft, and more recently, have evolved into a frequent tool for bribery, tax evasion and money laundering. Consequently, many countries have been forced to draft new code of ethics for officials; overhaul gift regulations as part of their anti-corruption wars, and fix institutional loopholes that help mask gift-giving for illegal purposes.

Without doubt, there is a clear consensus among both industry regulators and stakeholders that anti-corruption must undergird the proposed oil sector reforms. The PIB is widely perceived as a reflection of the government's 12 year effort to introduce sweeping reforms in the oil and gas industry, with a view to making the sector less corruption prone, more transparent and accountable, whilst strengthening the institutional organs.

What is a gift?

Gifts may include cash or assets given as presents, and political or charitable donations to a corporation and, or its officials. In some cases, it involves acts of hospitality, which often include meals, hotels, flights, entertainment or participation in sporting events or other activities.

Outwardly, giving gifts appear harmless, as they are deeply rooted in cultural norms and familial ties across jurisdictions. In short, gifts are essential to nurturing and nourishing social relationships. (Godbout, The World of Gifts. Pg. 11).There is nothing intrinsically wrong with giving or receiving gifts or hospitality, as long as they are not bribes, are not intended to be bribes, and cannot be perceived as bribes.

What distinguishes gifts from a bribe or an illegal gratuity is the motive, which is quite difficult to prove because unmasking the real motive behind a gift is largely subjective. Bribery is defined as the offering, giving, receiving or soliciting anything of value to influence an official act. (Corruption and Fraud Audit Consortium (CAFAC), Ghana.

On the other hand, illegal gratuities are very similar to bribery schemes except that there is not necessarily intent to influence a particular business decision (CAFAC). The United States Illegal

Gratuities Statute prohibits any gifts given or received "for or because of any official act performed or to be performed." Put another way, the Illegal Gratuities Statute was intended to proscribe behavior that did not rise to the level of a bribe, but nonetheless gave the appearance of impropriety (CAFAC).

The Power to Receive Gifts under the PIB

Whereas the Bill empowers regulatory agencies to receive gifts, the provisos to sections 33, 63 and 139, prohibit staff and agencies from receiving gifts for their personal use. S. 32 (2)(e) recognizes gifts as a source of funding for the Inspectorate and the DPRA.

Noting that the Bill failed to impose controls or limits to the agencies' gift-receiving mandate, it would be safe to assume that monetary and realty gifts from individuals and institutions are welcome, including from the entities which they regulate. While the prohibition against receiving gifts for personal use is a proactive measure, the big question then is, “is a gift distinctly made to an agency capable of influencing its officials to perform acts that confer any undue advantage or benefits to the giver?

In practice, gifts or donations to agencies often aim to curry the goodwill of officials that work there, and often have the effect of prompting officials to do something, or perform an act in a particular way. From the standpoint of reasonableness, would a gift to the Inspectorate for instance, by a company bidding for an oil prospecting license be said to be free from any colourations of reciprocal exchange? Is there any probability that Inspectorate's receipt of a gift by an entity it regulates may spur the relaxation of its regulatory oversight towards the giver's environmental felonies?

These questions, among numerous concerns, propel the need to lower the incentives for corruption, check abuse and instill greater transparency in the gift-receiving mandate.

The historical deep-seated corruption in the Nigerian oil industry calls for the adoption of drastic measures and the prohibition of practices that stimulate corporate impropriety. Absent necessary controls, gifts may present an entry barrier to unscrupulous companies planning to obtain inefficient subsidies, monopoly benefits and regulatory laxness in the future. Not only that, pays-offs cloaked as gifts may find their way into the named regulatory agencies, bringing about a situation where contracts and concessions are not awarded to the most efficient bidders.

While the IOC internal enquiries defended gifts-giving and receiving as normal etiquette and custom, external enquiries criticized the practice as inherently fraught with expectations of reciprocation and obligation. Accordingly, critics demanded an overhaul of the IOC, “including the elimination of gift exchanges with its inherent biases, preferences, privileges, exceptions and exemptions”.

Aware of the profound corruption risks that belie gifts and donations, corporations across the globe are broadening the scope of their laws and policies on facilitation payments, corporate hospitality, charitable donations and gifts. While each matter will turn on its own facts, key considerations for assessing gifts et al are whether these are reasonable in the circumstances, for a purely business or professional purpose, and clearly documented. For instance, the UK Department for Energy and Climate Change strictly requires all gifts valued at above €140 to be documented and published on its website.

Gifts and Corruption: Global Trends

- BP Deepwater Horizon Oil Spill and Offshore Drilling (United States)

Dozens of state and senate hearings and investigations into the BP Deepwater Horizon Oil Spill lamented the unspeakable abuse laden in the gift culture which fostered the “close connection” that existed between the agency's inspectors and oil and gas industry employees to the extent that the MMS became inseparable from its regulated entities. Consequently, this closeness – which the Washington Post described as "cozy ties to industry" - is alleged to have precipitated MMS's lax efforts to oversee oil and gas production. The co-chairman of the National While the IOC internal enquiries defended gifts-giving and receiving as normal etiquette and custom, external enquiries criticized the practice as inherently fraught with expectations of reciprocation and obligation. Accordingly, critics demanded an overhaul of the IOC, "including the elimination of gift exchanges with its inherent biases, preferences, privileges, exceptions and exemptions".

Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling also affirmed that the MMS was "overly susceptible to industry influence, certainly outgunned and possibly captured". (Christopher Carrigan, Harvard University).

On the strength of the findings regarding how "cozy closeness"led to the relaxation of vigilance which facilitated the Gulf disaster, Secretary Salazar's Order 3299 disbanded and separated the components of MMS into three agencies, one focused only on collecting revenue, another on offshore management, and the third on safety and environmental protection (Salazar 2010).

• Sports: International Olympic Committee (IOC) Bids for the hosting of sporting events and other international competitions are another area beleaguered by gift-induced corruption. Massive allegations of graft which rocked the International Olympic Committee (IOC) in 1998, caused a major crisis, and spurred several internal and external enquiries. Chief among the cause of disagreements is the practice and function of giving and receiving gifts in the Olympic movement. A few examples highlight the potentials for fraud and undue advantages inherent in gift exchanges.

In a well contrived plot to bring the winter games to Nagano, Yoshiaki Tsutsumi, president of the Japanese Olympic Committee, arranged a US$20 million "donation" to the Olympic museum in Lausanne, a pet project of Juan Antonio Samaranch, the president of the IOC. Equally blatant was the Beijing Olympic Bid Committee. It gifted the IOC museum a priceless national treasure, a 2200-year-old terracotta soldier from the Ch'in tomb. Irrespective of their precise approaches, serious bidding cities clearly conceived their gifts in terms of obligation, reciprocation, and self-interest. Is the obligation inherent in the gift really tantamount to corruption? The Special Bid Oversight Commission suggested so. (Douglas Booth, 1999).

While the IOC internal enquiries defended gifts-giving and receiving as normal etiquette and custom, external enquiries criticized the practice as inherently fraught with expectations of reciprocation and obligation. Accordingly, critics demanded an overhaul of the IOC, "including the elimination of gift exchanges with its inherent biases, preferences, privileges, exceptions and exemptions".

Comparable to United States Foreign Corrupt Practices Act, U.K's Bribery Act of 2010 — enacted on April 8, 2010 — is intended to respond to the extremely broad range of ways that bribery can be committed. It applies not only to U.K. companies, but to all companies doing business in the U.K., regardless of where they are organized or the location of the misconduct. Thus, non-U.K. companies with offices, personnel or even agents in the U.K. are subject to the new statute regardless of where the bribery occurred.

Recognizing that hundreds of billions of dollars in business transactions have been influenced by bribery over the last decade, the UK legislation requires corporate and commercial entities operating in the UK to establish and disseminate appropriate standards for hospitality and promotional or other similar expenditures. UK's Ministry of Justice went further to develop six principles that commercial organizations wishing to prevent bribery need to put in place to prevent persons associated with them from bribing, especially within the context of hospitality. Principles 1,4,5 and 6 relating to development of proportionate procedures, top-level commitment, due diligence framework communication and training standards have propelled many corporate entities to develop strict official policies specifically relating to gifts and hospitality.

In addition to the varied country-level responses to gift-related corruption, global institutions such as the Organization for Economic Cooperation and Development (OECD), the United Nations, and several other international organizations have also responded volubly to the increasing corporate corruption around the globe. Through various conventions, declarations, instruments, - chief of which are the United Nations Convention against Corruption (UNCAC), the UN Global Compact (2004) - they have publicized their commitment to eradicating corruption, sending a strong worldwide signal that the private sector shares responsibility for the challenges of eliminating corruption.

The PIB and the Legitimization of Gifts: Total Ban Vs. Partial Prohibition The United States Senate Committee investigating the Olympic scandals, the Special Bid Oversight Commission attributed the bribery scandals to exchanges of gifts in a "kinship" and "familial" network that breeds hypocrisy, dependence, and obligation. Implicit in the Special Oversight Commission's recommendations however, was a view that the IOC should eradicate the gift culture on the grounds that it is inherently corrupt.

From the above, it is settled that gifts constitute a big source of worry to countries determined to wage war against corruption. Combating corruption has become an international priority with all governments maintaining a vigilant stance to weed out the corruption that has historically been endemic in international business practice.

(David M. Stuart 2010). Countries are now responding to gift-related corruption either through an outright ban on gifts and hospitality or thorough a partial prohibition.

Disturbingly too, the PIB's failure to establish necessary ethical and transparent monitoring controls that would limit abuse has very grave implications for the proposed oil sector reforms, in particular, the objectives of transparency and accountability promotion, which the Bill seeks to achieve. Also, the Bill does not require individual and corporate bodies interacting with the regulatory agencies and corporation to adopt and adhere to an appropriate corporate code of conduct.

> ***The United States Senate Committee investigating the Olympic scandals, the Special Bid Oversight Commission attributed the bribery scandals to exchanges of gifts in a "kinship" and "familial" network that breeds hypocrisy, dependence, and obligation. Implicit in the Special Oversight Commission's recommendations however, was a view that the IOC should eradicate the gift culture on the grounds that it is inherently corrupt.***

- **Total Ban**

Gifts raise questions about motives and interests. Marcel Mauss observes that while gifts are "in theory voluntary, disinterested and spontaneous," they "in fact" involve "obligation and economic self-interest. Echoing similar sentiments, the United States Senate Committee investigating the Olympic scandals, the Special Bid Oversight Commission attributed the bribery scandals to exchanges of gifts in a "kinship" and "familial" network that breeds hypocrisy, dependence, and obligation. Implicit in the Special Oversight Commission's recommendations however, was a view that the IOC should eradicate the gift culture on the grounds that it is inherently corrupt. (Douglas Booth, 1999).

In a PIB-focused e-conference convened by Spaces for Change on July 14, 2012, industry experts advocated for a total ban on gift-giving. Because of the difficulty in drawing a line between a gift and a bribe, a blanket ban on receiving gifts by any of the agencies is not only appropriate, but will go a long way in inspiring confidence in the proposed reforms. In other words, it was recommended that the newly-proposed entities: UPI, DPRA and the Corporation should eschew offering, making, soliciting or receiving any gift or

> ***Should the National Assembly opt for partial prohibition, such arrangement must be backed by strict corporate communication procedures detailing how the public, including other oversight legislative mechanisms can independently access, track gifts offered and accepted by officials of those agencies.***

hospitality to or from any person or organization who has had or could have any connection with the organization's business. Such a blanket ban appears to be a vital option considering that existing

anti-corruption mechanisms do not effectively prevent, detect or punish corruption.

It would be recalled that a plethora of independent private and public investigations into the oil sector activities disclosed horrendous levels of malfeasance entrenched in Nigeria's oil sector operations. The Deepwater Horizon explosion investigative reports vividly illustrate the risks associated with allowing regulatory agencies to receive gifts or property donations by third parties, especially entities that they regulate. With these examples in mind, allowing such sensitive (gift-receiving) provisions to stay in the PIB has strong potentials to open the door to an era of graft and corruption that would run out of control.

- **Partial Prohibition**

The other side of the argument is that a total prohibition will broadly "criminalize a range of harmless gift-giving and undercut an individual's legitimate right to curry general goodwill, keep doors open and try to influence government" (CAFAC). Thus, being able to set limits or strict controls on receiving gifts may be a more practical way of countering inherent risks. For instance, the Global Infrastructure Anti-Corruption Center (GIACC) recommends the setting up of a benefits register disclosing the details of any gift or hospitality given or received. The benefits register should be publicly accessible and routinely inspected by the organization's management and the appointed auditors. Towards the establishment of an anti-corruption corporate culture, a benefits register should be supported by the development and the implementation of a publically-accessible gifts and hospitality policy for promoting ethical behaviour on the part of officers and employees. Such a policy must specify very clear guidelines, conditions and circumstances in which political and charitable contributions, facilitation payments, gifts, hospitality and expenses, offered to agencies and its officials may be made. It is also imperative for staff of the named agencies to undergo periodic trainings on how to undertake market-focused risk assessments and due diligence on supply chain and third parties.

Having commenced legislative deliberation on this Bill, the National Assembly must show glaring determination to raise the stakes against corruption in the oil sector. Should the opt for partial prohibition, such arrangement must be backed by strict corporate communication procedures detailing how the public, including other oversight legislative mechanisms can independently access, track gifts offered and accepted those agencies. The circumstances and criteria for receiving political and charitable contributions, gifts, hospitality and related expenses must also be clearly specified.

Another important aspect is to ensure an effective documentation and communication procedure for disclosing gifts received. Annexed to this is the establishment of a secure, confidential and accessible means for internal or external parties to raise concerns about such gifts, and to provide suggestions for improvement of bribery prevention procedures and controls and for requesting advice. (UK Ministry of Justice, Guidance to UK Bribery Act 2010).

Finally, and most importantly, S. 4 of the PIB requires all agencies and companies established under the Act to be bound by the Nigerian Extractive Industries Transparency Initiative (NEITI) Act. That means that NEITI's supervisory role provides a robust window for an independent monitoring, identification and reporting of irregularities that may be associated with gift-giving and receiving. The inclusion of gifts as a funding source for the UPI and DPRA (S. 32 (2)(e) and 62 (2) (g) firmly situates gifts within the sphere of NEITI's watchdog functions.

NEITI is equally expected to ensure transparency and accountability in the application of resources from payments received from extractive industries and promotes conformity with the principles of the NEITI.

Conclusion

No doubt, gifts have routinely and historically been used to grease all kinds of connections, and to gain unfair advantages in commercial, social, economic and political dealings. Also, Nigerians have in unison, clamoured and insisted that transparency and accountability must be key priorities of the oil and gas sector reforms. Fresh in Nigerian minds are the mass protests opposing government attempts to abolish the subsidy on local fuel in January 2012. The protests propelled high-powered probes which exposed the unprecedented financial mismanagement and horrendous malfeasance entrenched in the administration of fuel subsidies.

This Policy briefing paper has presented global trends showing how gifts facilitate bribery and corruption. It has also proffered best practices from other jurisdictions for minimizing situations where innocent-looking gifts, donations and contributions are used as a subterfuge for bribery, while recommending a variety of options for legislative reconsideration and action.

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Making the Nigerian Sovereign Wealth Fund More Accountable: A Rights-based Approach

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This policy paper advocates that human rights offer a very effective framework for ensuring that the activities of the National Sovereign Investment Authority (NSIA) comply with Nigeria's human rights – social and economic rights - obligations, and the highest standard of accountability and transparency.

The propositions contained in this brief were informed by a robust online debate and discussions focusing on the recently-launched Sovereign Wealth Fund in Nigeria. A broad spectrum of young Nigerian professionals across the globe participated in the discussions on Spaces for Change's (S4C's) Discussion Forum on Facebook on August 29, 2012.

Introduction

In the context of a policy program aimed at achieving fiscal prudence, enhancing the management of oil wealth, and building a savings base for future generations of Nigerians, the Nigerian Government has established a Sovereign Wealth Fund (SWF), with an initial fund of $1 billion. Accompanying the SWF s launch is the establishment of an institutional foundation for the management of the Fund, called the Nigerian Security Investment Authority(NSIA), with a mandate to provide policy, technical and investment guidance for the NSIA’ s operations.

Describing the Fund as a far-sighted initiative, Nigeria's coordinating minister for the economy and Minister of Finance, Dr. Ngozi Okonjo-Iweala, stated that the Fund places Nigeria “firmly on the path to economic transformation”.

According to Investopedia, a SWF is a state-owned pool of money sourced from trade or fiscal surpluses, which can then
be invested in various financial assets.

Most of the existing funds have been traditionally associated with commodity wealth, but non-commodity funds now account for around 40% of total assets under management by SWF (Economic View, PWC, 2011). The need for prudency justifies putting money aside (by government) in form of a sovereign wealth fund for the rainy day. This can be funneled into investments with the proceeds used to pay for pensions, provide capital injections in times of financial crisis etc. It also serves the purpose of ensuring that future generations benefit from the wealth of extractive finite resources e.g oil and gas.

History of Sovereign Wealth Funds

Sovereign wealth funds have become increasingly popular in the last decade. Kuwait is the first country to establish the Kuwait Investment Authority in1953 to invest its budgetary surpluses and oil windfall. Kiribati, Abu Dhabi, Singapore, Norway and several nations, especially the members of the Organization of

Petroleum Exporting Countries (OPEC) followed, which has seen an estimated $5 Trillion invested in SWFs. According to Prequin, the Norwegian Government Pension Fund – Global is one of the best performing SWFs having passed the 3 trillion Norwegian kroner mark in 2010 ($537 billion), with an increase in assets under management of $75 billion. Until recently, Nigeria is the only OPEC member without a SWF.

Even though SWFs had been around for a while, its popularity soared in Asia, in particular, in 2007 when China announced it was setting up such a fund and planned to invest $3 billion in US private equity group, Blackstone. Having overspent its savings in a huge domestic overinvestment binge, China loosened on its "home bias" by exporting its savings abroad, on the understanding that that would keep not only ensure fast, export-led growth, but shelter its then weak financial sector from being exposed to damaging external pressure. Thereafter, China accumulated huge foreign exchange reserves, amounting to $1.9 trillion by the autumn of 2008. International investment activities, which the SWF represents, are now an important feature of the global economy, leading to the expansion of cross-border investments. Savings are now imperative for various reasons ranging from the lack of universal social security, pension provision, together with huge infrastructural deficits. In the wake of the global financial crisis, sovereign wealth funds helped rescue struggling Western banks CitiGroup, Merrill Lynch, UBS and Morgan Stanley. The lessons learned from the global financial crisis have also forced nations to embrace fiscal prudence and strategic long term positioning.

"In the final analysis, SWFs are all unique – they represent different countries with different economic strategies, resources and proclivities. At the same time, they do have common features that provide a basis for comparison and a framework within which it is possible to understand what their future strategies may be", says, Dr. Alexander Mirtchev, founder and president of Krull Corp., a global strategic solutions provider, with a focus on new economic trends and emerging policy challenges.

The Nigerian SWF: How it operates

The SWF has three main aims: saving money for future generations, funding infrastructure and defending the economy against commodity price shocks. The SWF is created to invest excess crude oil revenues, and raise public investment spending without undermining service provision or macroeconomic stability. It will be jointly owned by the three tiers of government, local, state and federal government. Following an ostensibly transparent recruitment process, a top management team has been appointed to oversee the management of the Fund.

Comprised of renowned experts with decades of practical experience gained from working in national and global financial, investment and risk management institutions across the world, the NSIA Board was inaugurated on August 28, 2012 on the strength of the NSIA Act assented to by the president in May 2011. Members of the Board include Alhaji Mahey Rasheed, Mr Uche Orji, Mr Arnold Ekpe, Mr Jide Zeitlin, Mrs Bili Awosika, Barrister Bisi Soyebo (SAN), Alhaji Hassan Usman and Mrs Stella Ojekwe-Onyejeli. The NSIA under which the SWF was established has three components: a stabilization fund, a fund for future generations, and a domestic infrastructure fund. Based on projected excess crude oil revenue earnings, each of the three funds will receive at least 20 percent of the total excess amount disbursed into the NSIA and the Board will allocate the remaining 40 percent among the three funds.

Oil revenues earnings in excess of the budget benchmarks are currently channeled into the Excess Crude Account, (ECA) another initiative launched by the present finance minister during her previous ministerial assignment under the Obasanjo administration. As an initiative anchored on the Excess Crude Account (ECA), the SWF will provide a framework for taming the surge in recurrent spending and adhoc disbursements from the ECA. Despite world oil prices and domestic oil production well in excess of the budget benchmarks in 2010 and 2011, savings in the ECA are constantly depleted at a time when stabilization called for a rebuilding of ECA balances.

Now determined to correct this anomaly, Minister of State for Finance, Alhaji Yerima Ngama disclosed that ECA now stood at about $7.5 billion, and further deductions from the ECA will be suspended to allow it accumulate to at least $10 billion prior to further withdrawals. The essence is to upscale the ECA savings, and strategically position it to offer relief in the event of a fiscal crisis, such that it could even pay the states for three months in the event of any shortfall in future revenue.

SWF: Pressing Concerns and Challenges

It would be recalled that the proposal and efforts to establish the NSIA as a replacement for the current oil savings mechanism (ECA), was greeted with stiff opposition especially by the state governors. First off, the governors fear that the SWF portends fewer cash to share and spend. Secondly, the opposition primarily stemmed from the absence of constitutional backing for the initiative, and again, the increasing erosion of public trust in the financial resource management. Accordingly, the state governors who constitute the most vociferous critics of the SWF, instituted a lawsuit against the federal government seeking the interpretation and effect of Sections 80 & 162 of the 1999 Constitution, which obligates the government to maintain a special account to be called "the Federation Account " into which shall be paid all revenues collected by the Government of the federation. " Put simply, the governors argue that the Constitution "s non-provision for the Fund amounts to a prohibition.

At the international scene, the vagueness and secrecy of the investment strategies for managing SWF assets are among the key factors fuelling opposition to the SWF. In some cases, the strategies are
only known to the managers, but deliberately kept away from the public, making it virtually impossible to hold managers accountable for imprudent investment decisions. There are also fears that governments' direct participation in the management of assets are prone to political considerations and manipulations, as opposed to purely economic and financial considerations. Consequently, host-country jurisdictions are under increasing pressure to limit the scope of such investments, raising the specter of political confrontation and financial protectionism.

Although the SWF eventually came through after almost one year of navigating complex social, economic and political bottlenecks from many quarters, it is still very imperative that the above critical concerns that fueled initial resistance be addressed as a way of inspiring public confidence in the initiative.

ECA versus SWF

Although the SWF was conceived as a replacement for ECA, the Nigerian Finance Minister, Dr. Ngozi Okonjo Iweala reportedly stated that both funds would continue to function separately until Nigerians fully embrace the SWF. Due in large part to the absence of a solid fiscal framework enabling the ECA, and its savings operations, the ECA funds are routinely disbursed among various tiers of government based on very loose or informal agreements.

The management of the ECA is continuing to raise serious accountability questions as monies withdrawn from the ECA are shared between the three tiers of government for "undisclosed purposes". The most pressing shortcomings are related to inadequate tracking, monitoring and accountability for disbursed funds and ECA expenditures.

As Alexandria Gillies of the Revenue Watch Institute rightly noted, "…permissive governance structures have allowed extensive ad hoc withdrawals, reducing the ECA balance by almost 85%, or 16 billion dollars, in just 18 months…After an encouraging start (including the repayment of Nigeria's external debt), the ECA has failed to serve its intended purpose." Not only that, the federal government has limited information and control over the state and local governments ‟ spending and public expenditure priorities thereby making it difficult for it to play a stabilizing role by targeting a consolidated fiscal balance.

Constitutional restrictions often stand in the way of efforts to address these imbalances. Despite the many downsides of the ECA, it has also some bright aspects. For instance, a pragmatic saving of oil revenue earnings from high oil prices in 2006 pushed the ECA up to $20 billion. When the global financial crisis hit in 2008, causing global demand for oil to drop and prices to fall from $147 per barrel in early 2008 to $35 per barrel in 2009, the country was spared from debilitating budget deficits by the savings from the ECA. These savings helped stabilize the economy against the negative shock before oil prices rebounded after the 2009 downturn. On that note, it may be useful to allow the ECA to subsist in order to limit predatory recourse to the SWF. However, putting in place a more effective administrative and governance framework is necessary to discipline politicians' spending habits, and appropriately utilize excess profits.

Making the SWF more Accountable

- Integrating human rights principles

Historically, integrating human rights considerations into economic planning and investment decision-making is not popular among nations, especially developing countries. Nigeria is a signatory to wide-ranging human rights treaties and instruments, in particular, the International Covenant on Economic, Social and Cultural Rights (ICESCR). Consistent with Nigeria's legally binding human rights commitments, investments made under the SWF must be based on an explicit evaluation of their coherence with the country's social and economic human rights obligations to its citizens encoded in several human rights instruments that the country has voluntarily ratified. The human rights paradigm offers enormous potential to inform and enhance development efforts especially in a time of multiple and interlocking social and economic crises.

There is overwhelming evidence that importing certain human rights precepts - such as transparency, non-discrimination, participation and accountability – into the design and implementation of macro-economic development policies and programs significantly helps to direct attention to the poorest and most marginalized. For instance, the concept of progressive realization encoded in human rights law (Article 2 of the ICESCR) recognizes prevailing resource constraints, but commits governments to deploy available resources towards achieving the full realization of economic, social and cultural rights as expeditiously and effectively as possible, to the advantage of the most vulnerable sections of the population. The triumvirate human rights principles of transparency, participation and accountability simply mean that governments are obliged to provide mechanisms through which citizens can hold the state accountable; participate in policy making, and access the information required to do so.

Along these lines, both the government and the managers of the investment Fund (NSIA) have a shared obligation to ensure that the operations of the investment mechanisms are as transparent as possible. Depending on the type of mechanism, its size, and the scope of its activities, it is highly desirable to establish communication, engagement, monitoring and reporting guidelines with respect to the Fund's management. Such a standard would not only contribute to domestic financial stability, but also enhance international financial stability by increasing the transparency, accountability, and predictability of the operations of governments in managing their international investments and discharging their obligations to current and future generations.

- An information disclosure policy

An information disclosure policy is very critical to the enthronement of transparency. Joseph Stiglitz, the Nobel Prize winning-former World Bank President has consistently argued that greater transparency and information sharing between governments, businesses and citizens produce improvements in market efficiencies and public policy. In addition to engendering public trust in the government, openness underpins the good governance principles of accountability, and enables citizens to more effectively engage in the design, implementation and evaluation of the investment decisions. The triumvirate human rights principles of transparency, participation and accountability simply mean that governments are obliged to provide mechanisms through which citizens can hold the state accountable; participate in policy making, and access the information required to do so.

In a total departure from the recent controversy regarding the non-applicability of the Freedom of Information Act to the Nigerian National Petroleum Corporation's (NNPC's) activities, the SWF should be supported by substantial disclosure policy about its investment strategies, outcomes, and the nature and location of actual investments. By passing the Foreign Investment and National Security Act of 2007, countries like the United States have overcome this hurdle. This legislation allowed greater scrutiny of the fund's investments, particularly when a foreign government or government-owned entity attempts to purchase a U.S. asset.

- A communication strategy

Discussions around the design and implementation of macro-economic policies and programs are often left to industry experts, with minimal efforts to engage citizens or effectively communicate economic plans and decisions in a way that they understand. Lack of information, and the bureaucratic impediments citizens face when they try to engage policy makers are among the key facts fuelling popular resistance to economic policies. For instance, the outcome of the December 10, 2011 e-conference, *Fuel Subsidy Removal: Social and Economic Policy Imperatives,* convened by Spaces for Change showed that the widely-resisted removal of petro-subsidies and the establishment of a Sovereign Wealth Fund, were in fact, valid and necessary interventions. However, the widespread criticism that greeted the policies stemmed from the lack of effective communication and consultation with the full range of potential rights-holders/stakeholders that are likely to be affected.

Information disclosure is key component of effective economic planning. The SWF-implementing agencies - Federal Ministry of Fiancé Ministry of Petroleum Resources, Central Bank of Nigeria must take immediate action to develop communication strategies for disseminating information regarding its investments and earnings to the Nigerian public

In this interconnected information age, the combination of technology and easy availability and accessibility of the social media offers unprecedented opportunities to develop innovative communication strategies to provide local and foreign stakeholders and the general public with information regarding the objectives, investment strategies, and results of their management of the entities. For example, Norway's Pension Fund-Global provides the general public with information about its investment strategy, month-by-month returns and investment results on a quarterly basis. Kuwait Investment Authority and Singapore's Temasek Holdings have also followed this reporting and communication approach.

- A responsible auditing framework

Beyond stating that the NSIA accounts will be audited annually by an internationally recognized auditing firm, and that its Annual Reports and quarterly financial reports would be accessible to the public, the current SWF governance structures are not accompanied by independent monitoring processes and mechanisms for entrenching transparency, probity and accountability in the management of the Fund. The recent, shocking revelations of the connivance of “reputable” audit firms in massively fraudulent fuel subsidy calculations and audits clearly demonstrate the waning confidence placed on the watchdog capabilities of auditing firms.

Internationally, the collapse of Arthur Andersen auditing firm during the Enron bankruptcy disaster is another example. Weaknesses in transparency and disclosure practices of such auditing firms undermine the reliability of any data that they may present.

- Broad-based participation and multisectoral representation in governance structures

Finance Minister, Dr. Okonjo-Iweala assured that the enabling law setting up the SWF provides for the inclusion of governors, civil societies, and other reputable bodies to have input in how the fund is managed. Thus far, the newly-created structures do not reflect this multi-sector representation. Facilitating and strengthening multi-stakeholder participation in the investment decision-making processes expands the space for individuals, civil society and even lawmakers to engage more effectively in management of the Fund and ensure that their rights are protected and their legitimate interests promoted. Developing strategic alliances with the civil society in the management of the SWF is a critical strategy for embedding inclusion and independent monitoring of (i) macroeconomic and fiscal issues; (ii) expenditure and investment programming; and (iii) socialization of savings. Such strategic collaborations would strengthen cooperation and engagement as stakeholders work together and consult each other in order to increase capacity to make strategic investments based on their own independent research, experiences and monitoring activities.

- Passage of the Petroleum Industry Bill

A strategy to expand oil revenue base and improve the efficiency of revenue collection and savings has to be founded on a solid legal foundation. In this regard, the quick passage of the Petroleum Industry Bill is indispensable. Additionally, if passed into law, the Bill represents another critical mechanism for effectively regulating oil industry practices and operations; for enhancing fiscal discipline in oil revenue flow, and consolidating the gains of oil windfall re-investment. Stakeholders, especially the civil society must take concerted steps to ensure that iron-clad transparency and accountability provisions are included inthe Bill. Current fuel subsidy payment procedures are still characterized by controversial delays and procedural bottlenecks. While the current measures to accelerate the identification and resolution of revenue leakages entrenched in the administration of fuel subsidies are steps in the right direction, sustained action is necessary to upscale the progress made, especially in the area of strengthening pre-shipment inspection for crude oil and gas; conducting audits of all revenue generating agencies and those required to remit internally generated revenue to the treasury, among other measures.

- Rights-Realizing Investment and Public Expenditure

Expectedly, the SWF will be invested in high performing asset classes which can generate returns that can be utilized in infrastructural development. It bears restating that both SWF and the ECA investments and expenditures should be focused on social and economic programs that enhance the progressive realization of human rights to health, housing, education, work, food, water, life. Human rights also provide a normative framework for the negotiation and financing of trade and investment agreements. Safeguard clauses and flexibilities must be introduced into trade and investment agreements as a way of ensuring that states do not undermine their human rights obligations.

Developing countries are now, increasingly using tools that highlight costs to economic, social and cultural rights, as a means to bolster their negotiating positions high-level international agreements, such as in the World Trade Organization, the World Intellectual Property Organization and the UN Human Rights Council. By way of illustration, Brazil refers to the right to health in relation to proposed TRIPS reforms.

- Beyond the Santiago Principles

The NSIA's commitment to subscribe to the Santiago Principles is commendable. The Santiago Principles are a set of twenty four (24) voluntary guidelines designed to create trust in recipient economies, promote transparency and global best practice within National Sovereign Wealth Funds. The IMF “facilitated and coordinated” the creation of the International Working Group on Sovereign Wealth Funds in 2008, which was responsible for the Santiago Principles (also known as the Generally Accepted Principles and Practices or GAPP). The Principles are purely voluntary, and there is no authority that enforces them.

Independent studies establish that SWFs commitment to the Santiago Principles is deeply rooted in their owners' domestic political governance arrangements. In other words, absent clear benchmarks, indicators for measuring progress and a solid enforcement regime, the Santiago Principles are likely to suffer the same fate and challenges facing other voluntary instruments of accountability such as the OECD Declaration and Decisions on International Investment and Multinational Enterprises. Implementing these Principles in practice will remain a huge challenge, except deliberate policy, legislative and administrative measures are put in place to establish credible systems of public accountability, especially by transforming the Principles into locally enforceable guarantees.

- Conclusion

No doubt, the establishment of SWF will provide a solid legal foundation and framework for management of the country's windfall oil savings, which will in turn, help the economy absorb shock when world oil prices are volatile. In other words, the government's plan to institutionalize the stabilization of its oil revenue through the NSIA is a welcome development. We, however, hold the view that institutionalizing human rights within the NSIA fiscal consolidation and investment operations is in keeping with Nigeria's commitment to protect, respect and fulfill social and economic rights.

The challenge now lies in determining how to match the SWF's honorable intentions with a political will to take immediate steps, individually and “through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of social and economic rights” of Nigerian citizens.

JOINT CIVIL SOCIETY MEMORANDUM ON THE PETROLEUM INDUSTRY BILL

PIB: Civil Society Groups Develop Joint Agenda

- Spaces for Change
- Environmental Rights Action
- West Africa NGO Network (WANGONET)
- Enough is Enough (EIE)
- Human and Environmental Development Alternative (HEDA)
- Template Energy Designs
- Legal Research and Resource Development Center (Lagos)
- Civil Liberties Organization

Introduction

Independent energy experts and civil society groups working on environmental, community participation and security issues related to natural resources came together on July 16, 2013 in Lagos to identify and take a common position on key provisions of the oil reform bill requiring further legislative scrutiny and amendment. This memorandum conveys the key recommendations put forward by the participating organizations under the banner of the PIB Advocacy Working Group comprising: Spaces for Change, Environmental Rights Action, West Africa NGO Network (WANGONET), Enough is Enough (EIE), Human and Environmental Development Alternative (HEDA), Civil Liberties Organization and Template Energy Designs.

Summary of recommendations

After reviewing several analytical papers and oil sector reform projects undertaken
by various experts and organizations, the Working Group unanimously proffered the following recommendations to the Senate standing committee on the Petroleum Industry Bill (PIB):

1. **The power of regulatory agencies to receive gifts: S. 33 (1); s. 63 (1) and S.139 (1)**

We strongly recommend the removal of the above sections empowering the proposed industry regulatory bodies: Upstream Petroleum Inspectorate and Downstream Petroleum Regulatory Agency (DPRA) to receive gifts of money or other property from a wide range of sources, including agencies they regulate. Because of the thin line between gifts and bribery, gift-giving has great potentials to upset the pursuit of transparency and accountability, leaving the door open to the complex maneuvers, obligation and reciprocity inherent in it.

Should the Committee favorably consider the retention of the above provisions, we recommend that strong controls be put in place to check abuse. S. 652 of the United States Department of Energy Organization Act 1977 requires that all gifts must be deposited in the Treasury, and only disbursed on the orders of the Secretary. Likewise, the UK Department for Energy and Climate Change strictly requires all gifts valued at above €140 to be documented and published on its website. Other measures include specifying the times and seasons such as Christmas, Ei del Malud, Ei Del Kabir when gift-giving is allowed.

2. **S. 32 (e): The inclusion of gifts as a source of funding for the regulatory agencies**

We recommend that this section be expunged from the bill for the same reasons listed above. Regulatory agencies should be adequately funded and allowed to operate optimally

3. **S. 6: Powers of the Minister**

We take the view that the powers conferred on the Minister in the PIB are quite excessive. 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. The Minister will determine the administrative structure of the Petroleum Host Community Fund (PHC) and also serve as the chairman of the boards of the Petroleum Trust Development Fund (PTDF) and the Petroleum Equalization Fund (PEF). The minister is also empowered to make regulation regarding major fiscal terms such as fees/bonuses, royalties and the terms of Production Sharing Contracts (PSCs). In particular, the Minister's powers to appoint or recommend those to be appointed as Board members of most agencies to be created under the Act, and the power to make regulations at a future date, leave room for abuse and political interference. Transferring some of these roles to the National Assembly and the Federal Executive Council are examples of specific controls that could enhance transparency and accountability.

Secondly, the effective administration of the petroleum industry is anchored on expertise and technical knowledge of industry operations, which the petroleum minister, who is often a political appointee, may be incapable of undertaking. This makes the concentration of powers on the Minister a very unsafe practice for improving industry operations. 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. **S. 191: President's discretionary powers to award licenses and leases**

The president's discretionary powers to award licenses and leases should be expunged from the Bill to avoid the kind of abuse that took place during the past regimes. Leases and awards must be subjected to transparent and competitive bidding processes and the outcomes of such bids respected. The absoluteness of the president's power diminishes the transparency objectives of the Bill, in that it precludes both independent and public scrutiny of the character of such awards and their beneficiaries, thereby rendering oil and gas licensing prone to political patronage.

5. **Delete S. 118(5) of the Bill**

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. 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. Also, the sophistication, complexity and intensity with which organized crimes (e.g. pipeline vandalisation and theft of petroleum products) are perpetrated require very skilled security interventions often absent within the host communities. The implication of subsection 118(5) is that the Federal government appears to be outsourcing the policing and protection of oil facilities to “host communities”.

6. **Civil Society Representation on the Boards of the Proposed Agencies**

Key stakeholders in the oil and gas sector, particularly the civil society and host communities should be represented in the Boards of the agencies created under the new regime. This is comparable to the practice in appointing the Boards of the Police Service Commission and other agencies established by law. This is necessary to facilitate and sustain continuous stakeholder engagement and independent monitoring of industry operations and embed a culture of accountability in the new regime.

7. **S. 203: Disbursement of remediation fund should be vested in NOSDRA, and not the Inspectorate.**

The National Oil Spill Detection and Remediation Agency (NOSDRA) is statutorily mandated to undertake 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.

8. **Rewording of section 4 of the Bill**

Section 4 speaks to transparency and good governance in performing the functions and achieving the objectives of the PIB. In this regard, all companies and agencies are bound by the Nigerian Extractive Industries Transparency Initiative Act (NEITI) Act. This should be slightly reworded. The transparency stipulations should also cover “institutions”, companies and agencies and should not be limited to just companies and agencies.

9. **The Host Community Fund**

This Fund must be retained in the Bill as it is only index of reward that goes to the oil producing communities. 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 prospects of oil finds are potential beneficiaries of the PHC Fund. It is different from other initiatives such as the Niger Delta Development Commission (NDDC) in that it is not limited by geographic location. Therefore, the PHC Fund represents an intergenerational mechanism for addressing the environmental damage and infrastructure deficit in areas where oil is extracted.

10. **Definition of 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 We recommend the following definition: *A host community is a community where the wellhead is located, and hydrocarbon physically prospected and mined from the*re. The creation of a remediation fund in S. 203 of the Bill adequately caters for communities impacted by petroleum operations and products.

11. **Structure of the Host Community Fund – Host community representatives should serve on the Board/Structure that will be created or established.**

The bill is silent on how the fund will be administered, but empowers the Petroleum Minister to develop guidelines for managing the Fund. Most of the community clashes in oil producing communities in the Niger Delta region are linked to funds given to communities either by the government or oil companies. Therefore, postponing the establishment of an administrative structure for the Host Community Fund may potentially exclude intended beneficiaries in decision-making and pave way for internal strife among communities.

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. The National Assembly is urged to consider the creation of a community-based fund management structure, called the *Community Development Board*, to manage the PHC Fund. The proposed Community Development Board 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 – women,youth, traditional rulers, elders' council - within oil producing communities. 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 host communities can verify the actual sums that accrue to them from the Fund.

An information disclosure policy regarding the contributions into the fund as well the disbursements should be put in place.

12. S. 15, 45 and 297: Publications

We recommend for the insertion of the word "digitized" as part of the ways of publishing the statutory registers and publications about industry operations. We submit that the digitization of data regarding petroleum operations will facilitate information dissemination and expand the reach to wider audiences. Digitizing data will also tap into the great potential the new media offers to present and disseminate information with unprecedented power and speed.

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. Such policy will adhere to the limits prescribed by the Freedom of Information Act.

13. S. 200. Environmental Quality Management

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. Communities need to understand the contents of the Environmental Management Plans (EMPs) of various operators working in their communities, and how to use those standards to demand protection against environmental hazards.

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. We recommend the creation of a strict legal obligation on oil companies to involve oil-bearing communities in the design and implementation of the EMPs is very vital. 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.

14. Gas Flaring:

Section 275 prohibits gas from being flared - in any oil and gas production operation, block or field, onshore or offshore, or gas facility such as, processing or treatment plant - after a date (the flare-out date) to be prescribed by the Minister, except where the Minister permits.

The provisions relating to gas flares seem to give by one hand and take from the other hand. After banning gas flaring, it creates room for exceptions to be granted by the minister. That is not effectively different from what is happening under the current regime. It turns gas flaring into discretionary permit-granting. This should be expunged from the Bill.

Encourage gas usage: We submit that deadlines alone cannot stop gas flaring. The timelines set should be realistic and recognize the capital intensive nature of gas infrastructure. We recommend the use of policy to encourage investment in gas discovery, production and local usage. Just like countries that have used policy to encourage the use of gas domestically such as Qatar, Indonesia, Russia, Brazil etc, the Nigerian government should take similar steps to encourage the domestication and local usage of gas, to facilitate the transition from the use of firewood, kerosene and other non-renewable energies to gas.

Furthermore, it is not just enough to require oil companies to install measurement equipment for measuring the amount of gas being flared as contained in Section 201. This must be matched with a corresponding capacity of regulatory agencies to independently verify, track and measure gas volumes produced and flared.

Flaring penalties: There are no details on penalty fees and no specific timelines for a total flare-out date in the PIB. The penalty fees and flare-out dates are to be determined by the minister from time to time by regulation. 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.

15. S. 292: Obligations of licensee, lessee and contractors

Provisions requiring operators to hold due consultations to identify the needs of the community people is imperative, and should be recognized as part of the obligations of licensee, lessee and contractors set out in S. 292 of the PIB. Free, prior and informed consent of oil producing communities must be sought and obtained by oil companies and licensed operators before the commencement of oil production. We strongly recommend that provisions that obligate oil companies or government agencies to consult and obtain prior consent of local communities, as well as establish adequate information disclosure measures for communicating the impacts of oil operations to communities, particularly data on fisheries, agriculture, health and livelihoods should be included in the PIB.

16. S. 269: The domestic gas supply obligation (DGSO)

The DGSO makes no distinction between gas fields to be involved and the ratio of production to be allocated to the domestic market. This can be a potential source of problem since gas prices in the domestic market in Nigeria are very low and the domestic price may not support an economic production of gas from small/marginal fields or high cost deepwater field. There should be an optimized strategy to incentivize deepwater fields to supply the domestic market and possibly exclude small/marginal fields from the DGSO. In countries such as Egypt and Indonesia, a combination of domestic gas obligation and low domestic gas price have resulted in lower exploration activity and had negative effect on investment for further gas development. An optimized domestic gas supply strategy will ensure adequate supply to the domestic gas market as well as continuous investment in gas exploration and development.

17. S. 295: Utilization of good oilfield practices

The phrase, “good oil field practices” used frequently in the Bill lacks a clear definition or set of guidelines to aid uniform comprehension. The actual practices of international oil companies such as community development assistance, cleanup standards, waste disposal methods and so forth vary from company to company and across jurisdictions. Thus determining which practices are or should be generally accepted as "best practice" is particularly difficult in reality and could susceptible to the subjective interpretations of vested parties. 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.

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”.

18. S. 198, 199 and 296: Compensation for environmental damage, destruction of venerated objects

The process for the determination of compensation sums for trees and venerated objects destroyed during petroleum operations, including disturbances on the surface of the land outlined in S. 198, 199 and 296 of the Bill should be clearly outlined, recognizing landowners, female-headed households and communal land holdings. 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.

19. S (41): The Special Investigative Unit

We strongly recommend that s. 41 be deleted from the Bill. Under that section, 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, the Joint Task Force and the Nigerian Security and Civil Defence Corps(NSCDC) In the same vein, two ex-militants were recently awarded marine contracts to carry out similar surveillance activities. UNEP 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.

REPORT OF E-CONFERENCE PROCEEDINGS

The (Petroleum Industry Bill) PIB & YOU

Acknowledgements

This report conveys the key recommendations from a 3-hour moderated e-conference, **The (Petroleum Industry Bill) PIB & YOU**, held on Saturday, July 14, 2012. The e-conference's five lead discussants comprise an extractive industries expert, Jeremy Weate; representative of an oil multinational, Samuel Diminas (Chevron Corporation); a labour leader, Peter Esele (President, Trade Union Congress, Nigeria); an environmental justice advocate, Ledum Mittee; and an oil policy analyst, Opeyemi Agbaje. With a simultaneous live streaming of the key issues and highlights of the discussions on Twitter, using the #PIB and #PIBng, participants were drawn from all works of life, all sectors of the Nigerian economy, while steps were taken to ensure that key officials of government ministries, lawmakers (Senate and the House of Representatives), parastatals, oil multinationals and advocacy groups observed the proceedings.

Spaces for Change would like to thank all the lead discussants, and the 1, 600 members of the Spaces for Change's group on Facebook social networking site, for their invaluable contributions: presentations, legal analysis, questions, comments, debate, analytical paper, and feedback during the e-conference. Special thanks go to Kelechi Deca and Pamela Braide who moderated the e-conference discussions. Additional thanks go to Olusola Osineye, Chinedu Chiefsan-Akwuobi, Chyke Nwokedi, Madunagu Emeka, Dayo Olaide, Julie A Dee, Chetaala Ilo and Ann Ammishaddai Padua, Adesoji Adebisi for coordinating the conference modalities and facilitating the smooth flow of discussions. Victoria Ibezim-Ohaeri compiled the report of the conference proceedings, with inputs from the lead discussants.

Introduction

The e-conference, **The PIB & YOU**, aimed to promote awareness and citizen engagement on the critical provisions of the revised Petroleum Industry Bill (PIB), 2012. It featured analytical presentations and expert opinions by five lead discussants[4] with extensive knowledge and practical experience in the Nigerian oil and gas industry. The conference had a global reach, with participation recorded mainly from fifteen countries across six continents: Nigeria, United Kingdom, United States, Russia, Austria, Germany, Canada, Cyprus, Ukraine, Malaysia, Philippines, France, Senegal, Kenya and Ghana. A total of four (4) analytical papers, (24) queries and (5) commentaries on the Bill were received prior to the e-conference and widely disseminated to both the lead-discussants and a global audience using the organization's online portals and knowledge-sharing platforms on the social media. 30 additional questions were received on the conference day.

A technical committee which the Nigeria's petroleum minister, Mrs. Diezani Allison Madueke inaugurated on January 17, 2012 reviewed the current draft of the Bill towards accelerating its passage before the National Assembly. Since its introduction over 4 years ago, the PIB continues to face persistent setbacks to its passage despite the Bill's enormous prospects for improving technical, operational and regulatory efficiency in Nigeria's oil industry operations, and through enhanced efficiency expected to reduce revenue losses, corruption and environmental degradation. In addition, the new regulatory ethics offer systems and mechanisms that balance a wide variety of technological, economic, political and social interests with the goal of maintaining a forward-looking and broad-based environmental polity.

As one of the lead discussants noted[5], "the PIB is not a silver bullet to solve all problems in the oil and gas sector". Echoing the same sentiments, "what the industry needs now is a Bill, and clarity, not the best Bill in the world… But whatever its flaws, the benefits of having the legislation passed strongly outweigh the negatives", says Anthony Goldman, the Chief executive of PM Consulting London. Notwithstanding the optimism generated by the current Bill, a major finding from the e-conference is that certain provisions of the revised draft are vague, contentious and inadequate when placed against global standards, and as such, much room still exists for modifications and improvement to align with the transparency, accountability, environmental priorities urgently needed in the Nigerian oil industry operations. Across the board, the revised draft is widely perceived as a starting point towards the international best practices we seek even as it presents a unique opportunity to reexamine and support the innovative provisions, in the hope to improve on what exists.

Why the Petroleum Industry Bill (PIB)?

Nigeria is ranked Africa's number 1 and number 12th globally among oil-producing countries [in barrels per day], according to the United States Energy Information Administration[7]. Despite being among the world's top oil producers, regulatory inefficiency, massive oil theft, corruption, corporate impunity, with grave social tensions and environmental degradation continue to plague Nigeria's oil and gas industry. With the kind of technological advancements and innovative business strategies of the 21st

4 Jeremy Weate (Extractive Industries Expert), Samuel Diminas (Chevron Corporation), OpeyemiAgbaje (policy analyst), Peter Esele (national labour leader) and LedumMittee (environmental justice advocate)
5 Samuel Diminas (Chevron Corporation)
6 FINANCIAL TIMES, Xan Rice: Legislation: Flawed bill will bring clarity to frustrated industry, July 23, 2012
7 See site for further review http://www.eia.gov/countries/index.cfm (2011 statistics)

it further became obvious that the legal, institutional and governance structures driving Nigeria's oil sector were in dire need of a comprehensive overhaul. Legal standards and operational procedures put in place in the 60s and 70s – such as Petroleum Act (1969), the Associated Gas Re-injection Act, Nigerian National Petroleum Corporation (NNPC) Act (1977) - when the industry was still at its infancy had become obsolete and out of tune with contemporary global business realities.

Decades of oil revenue mismanagement have deprived Nigerians of the benefits from the sector, just as vested interests continue to block and stall important reforms. Reliable accounts for national oil and gas production are hardly available. Fresh in Nigerian minds are the mass protests opposing government attempts to abolish the subsidy on local fuel in January 2012. The protests propelled high-powered probes which exposed the unprecedented financial mismanagement and horrendous malfeasance entrenched in the administration of fuel subsidies.

The Nigerian oil industry is further afflicted by too many regulatory institutions with duplicated roles and responsibilities, ill-equipped to formulate and implement transformative policies and programs that will keep the sector at par with counterparts across the globe. Worse still, the laws governing the activities in the oil sector were dispersed in several pieces of legislation, coupled with the numerous amendments, policy statements and regulations. Not only were the maze of legal framework often difficult to locate, but the absence of a coherent legal regime posed huge obstacles to efforts at recurring compensation for oil spills, improving local crude oil refining, energy efficiency, reducing oil imports and pollution and environmental protection. An effective oil regime was necessary for Nigeria to achieve operational efficiency, productivity and viability.

The Birth of the Petroleum Industry Bill

The oil sector reforms started under former President Olusegun Obasanjo's administration, with the establishment of the Oil and Gas Sector Reform Implementation Committee (OGIC), mandated to harmonize the 16 legislations that governed the industry; produce a comprehensive legislation that would overhaul the oil and gas industry, and in the process, unlock billions of dollars of delayed investment. The Committee was inaugurated on the 24th of April, 2000 under the Chairmanship of Dr. Rilwanu Lukman (CFR) then serving as the Presidential Adviser on Petroleum and Energy. The Chairmanship later passed on to Dr. Edmund Daukouru, former Minister of State for Energy. The Committee comprising a wide spectrum of individuals from both the public and private spheres of the industry, worked for four years to produce the first draft of the Petroleum Industry Bill (PIB).

The PIB was first presented to the sixth assembly in 2009, but efforts to pass it were hampered by political intrigues, wrangling between the National Assembly and the executive, and the dearth of effective citizen engagement on the Bill's provisions. Lawmakers, citizens and industry stakeholders hardly had access to adequate information and resources on the basis of which they could make informed decisions and participation in the Bill's legislative processes. Low levels of awareness and the lack of public consultations fuelled popular resistance, consequently foiling a major 2009 legislative attempt to have the Bill passed.

A new version is now ready for consideration by the lawmakers. The new draft PIB is an aggregation of several legislations on the oil and gas industry. The new policy covers in a comprehensive manner, all the relevant aspects of the industry: upstream, downstream, gas, petrochemicals and many other industry related matters. The thrust of the new policy, however, is to ensure the separation and clarity of roles between the different public agencies operating in the industry, mainly through the unbundling of the national oil company, the Nigerian National Petroleum Company (NNPC). Equally of significant concern is the need to infuse strict commercial orientation in all the relevant aspects of the industry mainly by moving the control of the downstream oil and gas sector from government-controlled monopoly to private participation.

The scope and influence of the new PIB is wide, requiring intense citizen engagement to avoid 'politicisation' and "capture" of the legislative processes. Until the January uprising, minimal public interest or widespread apathy towards oil industry activities resulted in decades of under-reported and unchallenged corruption and impunity in the sector. The new PIB now offers a unique opportunity for citizens to participate and engage in the reform processes with the aim of sanitizing the industry of endemic sleaze, and freeing up resources that will be re-channeled towards infrastructural development and poverty eradication.

Initial commentaries however suggest that this version has been watered down to appease certain vested interests. Several provisions on transparency and accountability principles are believed to have been either removed or softened. Perception is also growing that the newly-created governance structures require some modification, and tend to give unfettered powers to some officials. These concerns, and many more informed the convening of the E-Conference, **The PIB & YOU***, summarized below.*

Summary of Analysis and Observations

The new version of the PIB seamlessly weaves some notably progressive initiatives with a number of contrasting provisions that require serious debate and reconsideration. The 223-page PIB includes plans to unbundle and list the state-owned Nigerian National Petroleum Corporation (NNPC) on the Nigerian Stock Exchange; increase taxation for deep offshore; and give the oil minister supervisory powers over all institutions in the industry. The bill proposes the deregulation of the downstream sector, total liberalization, and ending of government monopoly. What the current draft did is to establish statutory frameworks for the management of petroleum resources; for facilitating government/private/local/multinational participation; for enhancing environmental management; and put measures in place to address concerns of host communities in order to prevent restiveness and impediment to the smooth operations of the oil and gas (O&G) sector[9].

The Unbundling of NNPC[10]: In terms of positive contributions, opening up the oil industry to privatization, including the liberalization of the downstream sector are in fact, the main thrust of the new oil regime. The starting point is the unbundling of the law of the Nigerian National Petroleum Corporation (NNPC), into three companies – National Oil Company, National Petroleum Assets Management Corporation and National Gas Company. NNPC was established by Decree No.3 of April 1, 1977, "for overall control of the oil industry," and with additional responsibility of "exploitation, production, transportation, processing of oil, refining, and marketing of crude oil and its refined derivatives" Assailed by unprecedented corruption, inefficiency and bureaucracy, compounded by its multiple and conflicting roles, the Corporation lost direction, which

8 The new PIB 2012 was drafted by a new committee headed by Senator UdomaUdoUdoma, in collaboration with a technical sub-committee headed by the Director General of Department for Petroleum Resources (DPR), Mr. OstenOlorunsola.

9 Samuel Diminas

10 Comments by Peter Esele. Section 151 of the Reform Bill

11 Peter Esele

seriously undermined its oil exploration and production capacities[11].

Promotes Private Participation: When the Bill is passed into law, the Federal Government will be required to divest 30 per cent of its shareholding in the National Oil Company (NOC) and list the shares on the Nigerian Stock Exchange (NSE), to sell to the Nigerian public. Section 148 of the Bill authorises the Minister of Petroleum Resources to incorporate the NOC as a public company limited by shares. The Bill makes elaborate provisions for the transfer of NNPC's assets and liabilities to the NOC, to be created not later than three months after the enactment of the Act.

This new arrangement fuels expectations that the NOC will metamorphose into a viable, commercial oil company, and convert the NNPC from its current form as a cost centre to a profit centre such as Saudi Aramco, Malaysia's Petronas and Brazil's Petrobras. Reforming, streamlining and the involvement of public ownership and management of the proposed NOC, by implication would reduce corruption, inefficiency, lack of productivity plaguing the sector, while moving the control of the downstream oil and gas sector from government controlled monopoly to private participation[12].

Under the new regime, licensed oil marketing companies, bulk consumers of petroleum products or independent refineries are empowered to construct and operate independent pipelines, depots or jetties for their exclusive use.

Weak Transparency and Accountability Provisions[13]: The new Bill authorizes the newly created regulatory agencies to receive gifts, including money, “or other property upon such terms and conditions as may be specified by the person or organization making the gift provided such gifts are not inconsistent with the objectives and functions of the …Act. Because of the difficulty in drawing a line between a gift and a bribe, a blanket ban on receiving gifts by any of the agencies is not only appropriate, but will go a long way in inspiring confidence in the proposed reforms. Independent studies and probes - such as the KPMG report, the Farouk Lawan and the AigImokhuede fuel subsidy probes, including all the Nigerian Extractive Industry Transparency Initiative (NEITI) reports have shown that transparency and accountability are the principal missing links within the current set-up. Failing to tackle these two major concerns will leave a big question mark on the proposed legislation.

Emergence of New Structures and Regulatory Agencies[14]: The PIB provides for the establishment of nine agencies that will be answerable to the Minister of Petroleum Resources. Of the nine, there will be two regulatory agencies – Upstream Petroleum Inspectorate (UPI) and Downstream Petroleum Regulatory Agency; three major funds – Petroleum Technology Development Fund, Petroleum Equalization Fund, Petroleum Host Community Fund; three companies that will operate under commercial terms – National Oil Company; National Gas Company Plc and National Petroleum Assets Management Company; and a technical and support bureau – Petroleum Technical Bureau. The UPI will take over or replace the current regulator, the Directorate for Petroleum Resources (DPR) that is generally perceived as inefficient, corrupt and powerless. In addition to inheriting the assets and liabilities of the DPR, its main functions include regulating all technical aspects and commercial activities of the upstream sector and promoting the efficient, safe, effective and sustainable infrastructural development of the upstream sector.

The Downstream Petroleum Regulatory Agency shall be in charge of assets and liabilities relating to the downstream petroleum industry, and assume the functions of both the DPR and the Petroleum Products Pricing Regulatory Agency (PPPRA). The agency shall, among others, enforce compliance with the terms and conditions of all licences, permits and authorisations issued in respect of downstream petroleum operations.

The two new regulatory agencies, for the upstream and downstream sectorsrespectively, will be independently funded, and will be supervised by the Petroleum Minister. One of the biggest challenges facing the DPR is its high dependence on the government for its institutional funding, which continues to fuel doubts about the agency's partiality and the independence of its operations.

Establishment of the Host Communities Fund (HCF)[15]: The reference to a host communities' fund of 10% of net onshore profits, is another interesting provision, but the shine is dimmed by the silence on how the fund will be administered. Under Section 118 of the bill, every company that is involved in oil and gas exploration and production is required to remit into the fund on a monthly basis, 10 per cent of its net profit, which the reform bill defined as the adjusted profit minus the Nigerian hydrocarbon tax and minus the companies' income tax.

In the absence of an effective administrative framework, the potential divisiveness of the HCF, is not in doubt. A very larger proportion of community clashes in the region are linked to funds given to communities by oil companies. A fund focused on massive infrastructure development would be a more productive path. In other words, there are better ways to make the communities have a sense of belonging and benefit from such funds for their collective developmental progress. Bonny Island, for example, from where most of Nigeria's crude oil is exported is not accessible by road. Building a set of connecting bridges would go a long way in easing transport burden for both locals and industry operators. Construction of roads, schools; establishment of scholarships, job creation and training of low level employees or menial manpower are a few examples that would lead to the improvement in communities-oil companies' relations.

Lastly, the Bill does not indicate how this differs from the Niger Delta Development Commission (NDDC), except in terms of sources of funds[16]. By making provision for communities to be punished by withholding their entitlements under the fund in case of disruptions, this negates the very constitutional basis of criminal justice by dishing out collective punishment.

Vagueness of the term, “Host Community”[17]: The new Bill establishes the Host Community Fund, but does not define “host community' subjecting that term to numerous

12 Samuel Diminas
13 Jeremy Weate
14 Peter Esele
15 LedumMittee
16 LedumMittee recommends: On communities benefit from the resources of their land is to go back to the recommendations of the Technical committee I headed to the effect that $2 per barrel produced from each community be paid into the community Trust fund to be managed by them. This is to be complemented by arrangement to provide electricity and water from the flow stations to communities within 15 kilometers radius. In that case we tie the interest of the communities for electricity and water to that of the nation to get oil.
17 Jeremy Weate
18 LedumMitee
19 Jeremy Weate
20 LedumMitee
21 End of this year refers to December 2012 should the PIB be passed before then

interpretations. Among several questions asked, “Will "oil-bearing" and "oil-producing" be inclusive of communities through which pipelines travel even outside the Niger Delta region? Is it the community that has the facility or others that also suffer the negative consequences of the spills and pollution? Not only that, the vagueness is perceived as a real threat to peace in the Niger Delta, setting community against community in the fight to be defined as a 'host'.

By providing for the "economic, social and infrastructural development" of the "communities within the petroleum producing communities", the bill is set to be a source of conflict between communities especially as it fails to define communities for the purpose and communities within such communities. Not only that, by providing that the administration of the fund would be under guidelines by the Minister, it takes us back to the days of OMPADEC, and there is nothing to convince that it would be different[18].

A working definition of a host community, may presumably be defined in terms of proximity to the wellhead[19].

Weak Environmental Protection Laws[20]: The environmental protection provisions are very weak. 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 which has been the problem. For instance, the UNEP report on Ogoni found that Shell breached its own environmental guidelines as well as those set by government.

The provisions relating to gas flares gives by one hand and takes from the other. After banning gas flaring from end of this year[21], it creates room for exceptions to be granted by the minister. That is not effectively different from what is happening under the current regime. It turns gas flaring into discretionary permit-granting. Environmental justice advocates believe that the gas-flaring ban should be absolute. They also insist that operating companies should not only be made to get insurance covers to cover cases of environmental disasters arising from their operations and this should be a condition precedent to the operation of any license.

In a research report, the Organisation of Petroleum Exporting Countries (OPEC) ranked Nigeria as the second highest gas flaring country in the world - with volumes of 15.2 bcm in 2010, 11 per cent of the world total - raising fresh concerns about the Federal Government's commitment to achieve a 'Zero Gas Flaring' policy. The report, contained in the OPEC bulletin for February 2012, noted that though the federal government has taken practical measures to drastically reduce the waste, through a range of projects that could enhance utilization of its gas resources, its efforts have yielded minimal reduction[22].

The PIB provides for a transitional anti-gas flaring strategy phasing out plan. Nigeria has lost 1/3 of her gross domestic product (GDP) or $85 billion through gas flaring in the past 35 years. It is shocking enough that Nigeria flares more gas each year than Germany's total energy consumption. Therefore, advocating for another transition period in ending gas flaring seems to be of great concern to stakeholders, especially environmental activists. A stiffer anti-gas flaring regime will keep Nigeria at par with other oil producing jurisdictions where gas flaring is a thing of the past.

On the other hand the transitional strategy may be consistent with current realities and the dictates of practicability. Gas is a component of crude oil, and is always produced in every (production) activity involving crude oil. To stop gas flaring, facilities for gathering, storing and processing gas must be built, and the end products properly harnessed for onward distribution to consumers and the free market for it. All those do not exist and in the current legal framework. Oil companies are even barred by statutes from converting gas to energy as a source for gas utilization. The absence of storage and processing facilities for conversion of gas to cashable use, and the prohibition of oil companies and private firms from commercial energy production, makes the transitional approach imperative[24].

Renaming vs. Restructuring[25]: The new NOC will inherit the employees of the NNPC, in accordance with the provisions of Section 358 of the reform bill.A significant number of commentators have serious doubts regarding whether staff transfer amounts to restructuring, and whether a mere transfer of personnel translates to improved performance.In that regard, it is argued that the restructuring of NNPC as ensconced in the PIB is unrealistic and not likely to result in improved performance and accountability, except the executive grip on the NNPC is loosened. While the creation of new institutions represents anattempt to professionalize the oil industry - the Ministry of Petroleum Resources through conversion into a specialized Directorate - the Inspectorateand the National Oil Company, a lot of political maturity is required to make the institutions work.

Also the whole idea of combining the current DPR with existing NAPIMS to be part of the Petroleum Inspectorate is another move that has the potential to reduce the watchdog effectiveness of NAPIMS currently handling global standard upstream oversights currently.

Retention of the Petroleum

Equalization Fund: A Bill that seeks the deregulation of the downstream sector, and retains the PEF simultaneously is highly contradictory and defeats the core objectives of a deregulated regime, says industry experts[26]. Subsections (a) to (d) of Section 221 of the bill provides that the pricing of petroleum products in the downstream product sector is deregulated to ensure- “(a) a market-related pricing (b) adequate supply of petroleum products (c) removal of economic distortions and (d) creation of fair market value for petroleum products in the Nigerian economy”. These provisions sharply contrast with Section 100 of the PIB, which provides for the continued existence of the PEF, into which any net surplus revenue recovered from petroleum products marketing companies and such sums as may be provided by the Federal Government for the purpose of the equalisation fund shall be paid.

The PEF operates as a subsidy, set aside to reimburse petroleum products marketing companies any loss they might incur for selling fuel at uniform benchmark prices. Maintaining this subsidy invariably means that current levels of corruption that have been going on for decades, will be sustained under the new regime. Experts insist that cushioning oil differentials to ensure uniform benchmark prices of fuel throughout the country, is not feasible, as it is a natural market phenomenon for goods to cost less based on distance to production. But the markets on their own could

22 Zero Gas Flaring: Nigeria Still Shifting Target; The Economy
23 Magazine (February 2012 edition): The report admits, however, that domestic flaring volumes having fallen by one-third between 2004 and 2010, but the nation still remains the second largest gas flaring country. http://theeconomyng.com/news182.html
24 Jeremy Weate
25 Samuel Diminas
26 OpeyemiAgbaje

address it through construction of pipelines, new refineries across the country, especially in the north where anxiety is growing as a result of anticipated fuel prices hike post-PIB.

The PIB is Too Voluminous: The omnibus nature of the PIB casts serious doubts on the ease of its passage at the National Assembly, considering the different shades of vested interests, and underlying political intrigues. Putting all legislation relating to the petroleum industry in a single legislation was over-ambitious and vulnerable to too much political confusion[27]. One way to deal with the oil sector reforms in an effective fashion is to have one law dealing with unbundling of the NNPC, regulation and other institutional mechanisms; one with fiscal and other incentives; and a different one dealing with community, environment and related issues. That way, we would have easily passed those on which there was broad agreement, while others would follow subsequently.

Furthermore, some aspects of the Bill are perceived to be verbose, complex, lacking clarity with regard to its expected mode of implementation. The Bill's silence on the character and status of previous investments and existing contracts may also lead to enormous investor uncertainty.

The Powers of the Minister[28]: The new PIB vests enormous powers on the Minister of Petroleum Resources, particularly by placing all the newly created agencies and regulatory institutions under the control and supervision of the Minister. Section 5 of the Bill provides that the Minister of Petroleum Resources shall be responsible for the co-ordination of the activities of the petroleum industry and shall exercise general supervision over all operations and all institutions in the industry. There are calls for the review of the Minister's powers, as they may be subject to abuse.

A Non-Competitive Fiscal Regime[29]: The new fiscal regime has been accused of being onerous as joint venture (JV) agreements, high royalty rates and a higher aggregate tax burden introduced by the Bill continue to brew controversy, among industry stakeholders. The current JV oil terms are already one of the world's highest, and if implemented as it is, will significantly affect Nigeria's competitiveness. Nigeria currently has one of the highest government take (as a percentage of net revenue) at 94 percent pre-PIB, which is expected to move to 96 percent post-PIB. This compares with Ghana at 52 percent, Kazakhstan 61 percent, Russia 65 percent, UAE 77 percent, and Angola 83 percent. Despite there being an increased global supply of oil in the context of a global downturn, the price of oil will rise and rise over time. During high oil prices, governments have an opportunity to set more aggressive tax rates.

Licensing rounds, contract renewals and investments have been put on hold for about five years now pending when the new bill to regulate the oil and gas industry will be passed into law. Not only that, Shell had recently warned that about $6 billion is lost yearly to crude oil theft. The country is currently losing 17 per cent of crude oil production to theft and this translates to one-fifth of the oil revenue, according to statistics obtained by THISDAY[30]. The absence of a focus on a sound metering infrastructure that will render highly-organized illegal oil bunkering impossible, is another area of deficiency in the Bill[31].

27 OpeyemiAgbaje

28 OpeyemiAgbaje

29 The PIB draft discussed at the E-Conference prescribes a lower 20% tax rate for deep-offshore, appears lenient and very low. This sharply contrasts with the 90% tax rate for IOCs on deep offshore pegged by the Rilwanu Lukman-led OGIC. What needs to be done is an assessment of the Effective Tax Rate that the bill suggests - not just taking one tax in isolation from other benefit streams defined in the bill. In some quarters, 20% is not viewed as very low. As a matter of fact; deep offshore production in the GOM in the USA in areas unexplored is tax and royalty free. It costs billions of dollars and no guarantees of finding oil to explore in the deep offshore. These rates can and should be adjusted accordingly as an area moves from being incentivised to becoming a prolific production zone.

30 THISDAY: Alike Ejiofor; Fiscal Crisis Looms as Oil Theft Ravages Niger Delta; Published May 15, 2012

31 Jeremy Weate

Appendix ABOUT THE LEAD DISCUSSANTS:

Peter ESELE

A graduate of mass communication is the current President of the Trade Union Congress of Nigeria. Between 2006-2008, he was the president of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). He also served as a member of the Petroleum Industry Bill (PIB) Redrafting Committee inaugurated in January 2012 by the Minister of Petroleum Resources, Diezani Allison Madueke.

He has served on the Board of various state and federal government establishments, including Nigerian Extractive Industries Transparency Initiative (NEITI), the Petroleum Products Pricing Regulatory Agency, the Presidential Committee on Post-Election Violence (2011), the Presidential Committee on the Review of Outstanding Constitutional Issues (2012). He is married with four children.

Jeremy Weate is a creative thinker, writer and strategist. Jeremy has over twelve years experience in the public and private sectors. He has worked in Afghanistan, Iraq, Kazakhstan, Kyrgyzstan, Mongolia, Mozambique, Nigeria, Papua New Guinea, Sierra Leone, Tajikistan, Tanzania and the UK.

His work in the public sector has been as a development consultant, with a focus on institutional change and governance of the extractives sector. He has conducted a number of in-depth strategic institutional analysis reports for the governments of Afghanistan, Mongolia, Nigeria and Papua New Guinea. Jeremy is a Prince2 certified project manager.

He also has a sideline as a trainer, having led workshops and courses in organizational thinking, leadership, business creativity, effective business writing and screen writing. He is the author of a popular book on philosophy for children, "A Young Person's Guide to Philosophy" published in 1998 by Dorling Kindersley (and translated into 8 languages). He is currently writing a book on Nigeria. He has also been working for the past five years on two long-term philosophical book projects, one on memory, the other on invisibility.

Jeremy Weate is the co-founder of Cassava Republic Press, based in Abuja, Nigeria. He is also the author of a popular blog, www.naijablog.co.uk.

Samuel DIMINAS

A Petroleum Geoscientist at Chevron North America Exploration and Production Company, Houston, Texas. In the course of his career he has worked with BP Exploration, Sunbury, England; Nigerian Petroleum Development Company (NNPC) Exploration and production subsidiary. He is a founding director of Baysludge UK Ltd and Baysludge Nigeria Ltd.

He holds an MSc, DIC in Petroleum Geoscience from the Imperial College London and a BSc in Geology from the University of Port Harcourt. Absolutely dedicated to the empowerment of Nigerian youths, Diminas is actively involved in the formulation of organizational strategy and programs aimed at transforming young Nigerians into powerful agents of social justice and next generation of effective future leaders. On a variety of SPACES FOR CHANGE's social media platforms, he takes the lead in analyzing economic policies, and providing target groups with the information and tools to demand justice, accountability and transparency in governance processes and practices.

Through his involvement in many charities in Nigeria, UK and the United States, Diminas offers free mentoring and counseling services to young people, and helps them make important life changes in their academic, professional and career choices.

Opeyemi AGBAJE

is a policy analyst, strategy consultant and notable columnist. He is CEO of RTC Advisory Services Ltd (formerly Resources and Trust Company Ltd), a Strategy, Economic and Policy Consultancy.

Mr Agbaje holds first degree in Law from from University of Ife (now Obafemi Awolowo University) and was called to the Nigerian Bar in 1986. He also holds LLM from University of Lagos and MBA from IESE Business School, Spain. MrOpeyemiAgbaje worked in Banking from 1989 to 2004 and left as an Executive Director to found RTC. He is a director of CAP Plc and member of the board of trustees of Lagos State Security Trust Fund. He writes the influential "Economy, Polity, Society" column in Businessday and hosts the TV Show "The Policy Council".

Ledum MITTEE

is an Ogoni activist, born on May 3, 1957. In addition to running a successful law firm in Port Harcourt, he served as lecturer in business law in Sokoto State Polytechnic in 1981. He has served in various national and state level capacities, and is among the leaders of the campaign for environmental justice in the Niger Delta. He has held the following positions:

1. Member, Rivers State Community Development Coordinating Committee (1986-1988)
2. Member, Provisional Governing Council, Rivers State Polytechnic, Bori (1988-1990)
3. Chair, Civil Liberties Organization, Rivers State (1990-1992)
4. Legal Advisor, MOSOP ('90-'92)
5. Deputy President, MOSOP('93-'95)
6. Acting President MOSOP, ('95-'99)
7. President MOSOP (1999-2012)
8. Member, United Nations Int'l Campaign to mark the 50th Anniversary of the Universal Declaration of Human (1998)
9. Member, Rivers State Advisory Committee (1999)
10. Member, National Political Reform Conference (2005)
11. President, Unrepresented Nations and Peoples Organization, The Hague (2005-2010)
12. Member, Rivers State Advisory Economic Council (2007-2011)
13. Chair, Niger Delta Technical Committee (2008)
14. Member, Board of Trustees/ Fellow, Society for Peace studies and Practice. (2006-Date)

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