

2018

Memorandum on the Petroleum Host & Impacted Communities Development Bill 2018

Memorandum submitted to the House of
Representatives' Adhoc Committee on the
Petroleum Industry Bills

AOPC

Submitted by

Akwa-Ibom Oil Producing Communities

Ibena | Eket | Esit-Eket | Ikot-Abasi | Onna | Eastern Obolo

INTRODUCTION

Ibendo, Eket, Nsit-Eket, Onna, Ikot Abasi, Eastern Obolo and Esit Eket local governments in Akwa-Ibom State hold vast amounts of oil minerals and accordingly, host a variety of petroleum facilities and installations ranging from wellheads, pipelines, rigs, marginal fields, storage tanks, offshore and onshore acreages, production and export terminals among others. For instance, Ibendo local government hosts the Qua Iboe terminal operated by ExxonMobil, who holds 40% interest in the field production mix with the Nigerian National Petroleum Corporation (NNPC) having the remaining 60%. Exxon Mobil's oil production currently averages 400kbd, held in about 9 crude oil storage tanks with a total capacity of 4.5 million barrels, loading at about 50,000 barrels per hour.

The state of development in the oil producing communities in Akwa Ibom State does not correspond to the enormous national revenue earnings generated from the huge mineral deposits in the state. From Nkit-Eket to Onna to Ibendo to Ikot Abasi, public infrastructure and other indices of development are glaringly absent in the localities that have hosted —and also impacted by— exploration and production activities for more than four decades. Youth and women unemployment is rife. Green vegetation, farmlands, water sources and aquatic life contaminated and devastated by petroleum operations persist. This situation continues to fuel local discontent and social tensions between communities and the companies operating there.

In view of the state of affairs in our communities and local governments, Akwa Ibom oil producing communities welcome the Petroleum Host & Communities' Development Bill 2018. It is hoped that the Bill, when passed, will help to tackle the challenges that have continued to plague our communities for too long. We commend the leadership of the 8th National Assembly for bringing up this important legislation for consideration at this time and hope that our recommendations will be taken into consideration to make the law effective for our communities.

INPUTS OF AKWA-IBOM OIL PRODUCING COMMUNITIES IN THE DRAFT BILL

The Petroleum Host & Communities' Development Bill 2018 has three objectives:

1. To provide a legal framework for the governance of host communities development
2. To provide direct economic benefits from petroleum operations to host communities
3. To improve peaceful coexistence between host communities and oil companies (also known as settlers) involved in petroleum production.

In line with the above objectives, Akwa-Ibom Oil Producing Communities (AOPC) hereby makes the following inputs into the Bill:

1. To provide a legal framework for the governance of host communities development

The Bill requires oil companies, called settlers, whose areas of operations are within the radius of an oil producing community to incorporate the Petroleum Host Communities Development Trust (PHCDT) for the benefit of the community or communities in its area of operation. The oil

companies will also determine the communities to be regarded as host communities within their area of operation. The settlors will also appoint members of the Board of Trustees (BOT) who will register the trust at the Corporate Affairs Commission on behalf of the community. And the trustees need not be indigenes of the host community.

Our observations: This type of arrangement proposed under the Bill is not acceptable to oil producing and impacted communities in Akwa-Ibom State because it excludes host and impacted communities in decision-making regarding the disbursement of the benefits accruing from the extractive activities in their localities. The proposed framework for delivering Community Development Trusts is neither empowering nor beneficial to oil producing communities. It not only relegates host and impacted communities to the role of mere spectators in the management of the Trusts, but also overlooks the existing community structures, the traditional institutions, including cultural and statutory organizations that have historically been responsible for undertaking community development in our communities. In fact, the provisions of this Bill, as presently framed has yet to offer a beneficial arrangement for host-communities.

We therefore recommend as follows:

1. Oil companies should not be obligated to incorporate Trusts for oil producing communities.
 2. **The Board of Trustees should be replaced by a Community Development Committee (CDC) to be comprised of a traditional ruler in the host community, one elder statesman in the community, the local government chairman or caretaker, one representative of the oil company operating in the host community, one representative of a civil organization operating in the community, one representative (or leader) of the women and the youth organization in the host community.**
 3. The above named offices and traditional stools are exist community structures in all the host and impacted communities across the country. Relying on these existing structures will not only strengthen community participation in the management of the Community Development Trusts, but also obviate the high costs, bureaucracy and politics associated with selection of trustees or community representatives.
 4. **The CDC will register the Trust at the Corporate Affairs Commission on behalf of, and in the name of the host community and not the oil companies.**
 5. **All members of the CDC shall be members or indigenes of the particular host community.**
 6. **The CDC will appoint its own Secretary and constitute an Advisory Committee which will comprise of experts drawn from any part of Nigeria**
 7. **The CDC will draft the Constitution of the Trust in line with the host and impacted communities' development priorities, their cultural values and social heritage.**
 8. **Only the Local Government Councils and the Department of Petroleum Resources (DPR) or any other body that will take over its regulatory functions will have the authority to determine the communities that are within the Settlor's area of operations.**
2. **To provide direct economic benefits from petroleum operations to host communities**

The Bill provides that Community Development Trusts will be funded by an annual 2.5% of the profit after tax accruable from the settlor's operations in the particular area. The Constitution of the Community Development Trusts is to contain provisions empowering the Trustees to take charge of the responsibility for managing and supervising the application and utilization of the annual contributor of the settlor and other sources. The Constitution will also establish an Endowment Fund and Capital Funds to be applied for the benefit of the host communities in the following ways: infrastructural development, employment opportunities, education, empowerment

programmes, healthcare etc. The Bill also creates new offices and sub-committees such as Fund Managers, Management Committee (with executive and non-executive members), Advisory Committee etc.

Settlers' contributions shall be deductible for the purposes of Petroleum Income Tax and Companies Income Tax. (Section 22). Other sources of funding for the PHCDT include donations, grants, honorariums that are given to the PHCDT for the realization of its objectives; incomes derived from profits, the reserved fund and any other income granted to the Trust for the attainment of its objectives. (Section 7). The funds of the PHCDT in general will be exempt from taxation (Section 21).

Our observations: Oil producing communities do not usually know the basis for oil company tax calculations and deductions. Details of the amount of mineral resources extracted from communities, and the annual operating expenditure of oil companies are not typically within the reach of the host communities. The locals many also lack the skills to forensically examine financial records of oil company expenditure and earnings from their community. Therefore, external assistance is necessary to assist communities in accessing this information, enabling them make an independent assessment of the actual amount accruing to the Community Development Trusts.

Finally, deducting settlers' financial contributions to the Community Development Trust looks like giving to communities with the right hand and taking it back from the government with a left hand. The contributions to the Community Development Trust is profit AFTER TAX. Deducting settlers' contribution again from the Companies Income Tax and the Petroleum Income Tax enables economic free-riding while transferring a larger share of the tax burden to individual tax payers who play minimal economic roles in the host communities. Deducting settlers' contribution from the Companies Income Tax and the Petroleum Income Tax will introduce a differential tax treatment which favors oil companies over the smaller indigenous businesses who also render community development assistance in the host community, but excluded from benefitting from the tax deductions.

We therefore recommend as follows:

1. The settlers' contribution to the Community Development Trust should be increased from 2.5% to 10% of profit after tax, as this is commensurate with the quantum of revenues they generate from the host and impacted communities.
2. Tax revenues are the livelihood of the social contract, vital to the development and maintenance of physical infrastructure. Deducting settlers' financial contributions to the Community Trust from the Companies Income Tax and the Petroleum Income Tax should not be allowed.
3. Citizens, groups or organizations operating in the host community or any part of Nigeria, shall have the right to demand and obtain information from the Federal Inland Revenue Service regarding the actual operating expenditure of a settlor or settlers in any particular host community and the actual tax accruals and remittances.
4. Citizens, groups or organizations operating in the host community or any part of Nigeria, shall have the right to demand and obtain information from the Nigeria Petroleum Regulatory Commission regarding the actual amount of oil and gas mineral resources extracted, produced, processed or exported from any particular host community.
5. In addition to the 10% of the settlers' profit after tax, other sources of funding to consider include: royalties paid by companies for petroleum production, gas flaring penalties, 5% of the derivation fund, and quarterly federal allocations etc.

6. The sharing formula of the Community Development Trust funds between upstream, midstream and facility communities should be clarified and spread out in the following manner:
 - Upstream (points of mineral extraction and exploration): 50%
 - Midstream: (including points of mineral production and processing terminals): 35%
 - Downstream and facility communities: 15%
 7. The Community Development Committee will be responsible for managing and supervising the application and utilization of the annual contributions of the settlor and other sources.
 8. The Community Development Committee shall draft and determine the provisions of the Constitution of the Community Development Trust in that particular community only.
 9. The Community Development Committee shall determine the nature and functions of the Funds, officers and sub-committees needed for the effective utilization of the Funds. These offices, processes and sub-committees shall not be prescribed in advance, as needs and priorities may vary from one host or impacted community to the other.
 10. In drafting the Constitution however, certain requirements must be present:
 - periodic consultation of specific groups (such as traditional institutions, women and cultural organizations, youth groups, civil society and the local government authorities) before the disbursement of funds for projects,
 - transparency in the contract awards,
 - monitoring by independent organizations including non-governmental bodies,
 - inclusion of women and youth groups in decision-making and
 - establishment for a forum for discussing challenges and interacting with the participating oil companies.
- 3. To improve peaceful coexistence between host communities and oil companies (also known as settlers) involved in petroleum production**

The Bill sets different timelines for the incorporation of the Community Development Trusts according to the nature of the licenses of the settlers. Oil prospecting licence (OPL) holders have different timelines from holders of oil mining license (OML), and operators of marginal fields, downstream facilities etc. Failure to incorporate the Trust shall be a ground for the suspension of operating license. The National Petroleum Regulatory Commission (the Commission) is empowered to resolve disputes arising from the management of the Trust.

Furthermore, where an oil company that has established a community trust transfers a whole or part of its legal and equitable interests in the midstream or downstream operations to another company, the rights and obligations of the transferor in relation to the Trust shall be deemed attached to the property of the transferee and such other rights and obligations of the transferor, shall mutatis mutandis, be stated for and provided in the transfer deed or other instruments. In other words, when a new company takes over wholly or a part of an existing company that has already established a Community Development Trust in the Community, the new buyer will inherit the obligations under the Trust and continue the relationship with the host communities.

Our observations: Majority of oil producing communities in Akwa Ibom State are hosts to two or more petroleum companies operating within the community. This means that all the different companies will be required to incorporate and manage Community Development Trusts at different times for all the communities within their areas of operation. Having different timetables and different operational guidelines for vastly-different Community Development Trusts in one

single community will not only lead to a carnival of company-initiated initiatives, but also present coordination challenges. If there is no coordination, all the companies may initiate programs that are similar, leaving out other important development needs of the community. The duplicity and coordination difficulties will bring about monitoring confusion, with implications for the enforcement of standards and compliance. It is doubtful whether this arrangement will improve harmonious coexistence between oil companies and their host communities.

On the hand, the transfer provisions will ensure continuity of the Community Development Trusts and the initiatives delivered thereunder. It will ensure that the Community Development Trusts are unaffected by management changes. The requirement to codify the transfer of obligations in the deed of transfer will afford legal protection to communities, availing them with the legal tools to challenge any dereliction of corporate responsibility. Finally, codifying the transfer of obligations removes the shield of voluntariness from Community Development Trusts and replaces it with a binding legal obligation.

We therefore recommend as follows:

1. Every community in Nigeria hosting or impacted by the operations of holders of oil mining licenses, existing oil prospecting licenses, existing upstream licenses and with licenses of designated midstream and downstream assets shall constitute a **Community Development Committee (the Committee)** with the mandate to incorporate Community Development Trusts in the name of that community.
2. All oil companies with existing oil mining licenses, existing oil prospecting licenses, existing upstream licenses and with licenses of designated midstream and downstream assets **shall within twelve months of the passage of the Act, register their participation in the Community Development Trusts incorporated by the Committee.**
3. Those with upstream licenses and licenses of midstream and downstream assets to be granted pursuant to the provisions of the Petroleum Industry Administration Act shall before obtaining their Field Development Plans, or the commencement of commercial operations as the case may be, register their participation in the Community Development Trusts incorporated by the Committee.
4. Registering with the the Community Development Committee means assuming a legal obligation to remit their 10% of their post-tax profits to the central purse of the Community Development Trusts.
5. All remittances by oil companies operating in the host community shall be pooled in the central purse of the Community Development Trusts, and managed by the Committee for that particular community.
6. The Committee shall serve as the coordinating mechanism for all the initiatives delivered under the Community Development Trusts.
7. In managing the Trust funds, the Committee shall have the power to set up sub-committees and appoint officers or advisors that will assist it in coordinating the disparate corporate programmes and objectives of the participating oil companies.
8. The provisions relating to the transfer of obligations associated with the Community Development Trusts should be retained.
9. The dispute resolution provisions in the Bill should be retained.
10. The bill should include provisions for protecting the environment, including the payment of compensation for individual and community losses, and for remediating the environment in event of pollution.

Conclusion:

We, the leaders of Akwa-Ibom oil producing communities once again, commend and support the efforts of the leadership of the 8th National Assembly for bringing up this important legislation designed to improve community participation in the oil and gas industry in Nigeria, as well as our improve relations with oil companies that have settled in our communities to do business. There is still room for the improvement of the present draft of the Petroleum Host & Communities' Development Bill 2018. We hope that our recommendations will be taken into consideration to strengthen the draft legislation, and in turn, improve the living, social and economic conditions in the host and impacted communities.

Signed:

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| High Chief Williams Mkpah ----- | Ibena Local Government Area |
| Chief Udoinyang B. ----- | Ikot-Abasi LGA |
| Rt. Honorable Francis Udoyok----- | Eastern Obolo LGA |
| Honorable David Lawrence----- | Eket State Constituency |
| Usoro Akpausor----- | Esit-Eket State Constituency |
| Nse Essien----- | Onna State Constituency |