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RESEARCH | POLICY | CITIZEN ACTION

NATURAL RESOURCE AND BENEFIT-SHARING NEGOTIATIONS BETWEEN HOST COMMUNITIES AND EXTRACTIVE COMPANIES:



A Case Study of Assa North & Ohaji South
[ANOH] Gas Development Project



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Executive Summary



Assa North & Ohaji South [ANOH] Gas Development Project

Nigeria's enormous oil mineral and gas deposits have neither translated to economic developmental progress nor energy security leaving 40% of the population either without access to electricity or facing acute energy shortages. Unstable access to electricity supply persists because volumes of gas deposits are flared rather than being channeled into the electrification of end uses and affordable power systems. About 8.1 billion cubic meters of natural gas was flared in 2014 alone, releasing carbon (CO₂) emissions into the atmosphere which contribute to climate change, acid rain, and harms to local communities. If managed efficiently, the huge gas and mineral deposits could change the trajectory for Nigeria's energy future.

Located in Ohaji/Egbema Local Government Area (LGA) of Imo State, the \$700 Million Assa North and Ohaji South (ANOH) Gas Development Project—operated by Shell Petroleum Development Company (SPDC) and Seplat Petroleum Development Company—is one of the one of the seven critical gas development projects (7CGDP) initiated by the Federal Government to reverse Nigeria's energy poverty and close the demand-supply gap in the domestic gas market while complementing the federal government's objective to meet the target of generating at least 15 gigawatts (GW) of electricity by 2020. ANOH Gas Processing Company Limited (AGPC), operated by Seplat Petroleum Development Company, was incorporated for the purpose of processing future wet gas production from the upstream unitized gas fields at OML 53 & OML 21 located in Ohaji/Egbema LGA. When completed, ANOH's 4.3 trillion cubic feet (TCF) field will produce 600 million standard cubic feet (mmscf) of gas per day, the energy equivalent of about 2,400 megawatts which will provide uninterrupted electricity to about 2.4 million homes. The ANOH project is also intended to feed the existing eastern, western, and northern gas pipeline systems of Nigeria.

Extractives projects of this magnitude operate like double-edged swords. On one hand, they attract huge revenue accruals to the national treasury which can be used to provide efficient transport systems, good road networks, constant power supply, functional educational and healthcare system and create jobs. On the other hand, experience has shown that large-scale extractive investments often fail to translate into long-term sustainable development for the country, especially for the host communities who bear the brunt of the high-risk and often-hazardous nature of mineral resource extraction.

Why this research?

This Ford Foundation-supported report titled, **Natural Resource and Benefit - Sharing Negotiations between Host Communities and Extractive Companies: A Case Study of Assa North and Ohaji South [ANOH] Gas Development Project**, examines the effectiveness of stakeholder engagement practices and benefit-sharing negotiations between ANOH project operators and their host communities. The Global Memorandum of Understanding (GMOU) is the most popular instrument for codifying the negotiations and agreements between the extractive companies and host communities. The GMOUs clarify what the host communities are entitled to, as their own share of the resource extraction activities taking place in their ancestral fields. Like a mixed bag of lollies, this report captures both the good practice and ongoing challenges arising from the negotiation of costs and benefits between ANOH operators—SDPC and Seplat—and the host and impacted communities. It examines whether the GMOUs are enforceable contracts that transfer real benefits to host

communities and whether local stakeholders engaged the operators during these negotiations from a place of empowerment. Real benefits are determined by assessing whether local communities can overcome the power asymmetry characterising the relationship between them and the extractive companies and hold investors accountable to their commitments.

Structured into four chapters, Chapter One appraises the local energy context of Nigeria, the nature and scope of the ANOH gas development project, the operators and promoters, the licensing and contractual terms, financing arrangements and the activities of other extractive companies operating in Ohaji/Egbema LGA. Chapter Two identifies the host communities and other communities affected by the ANOH gas project. Researchers used three indicators to gauge the effectiveness of community engagement practices adopted by ANOH project investors: the land acquisition and compensation arrangements, the extractive companies' consultation and benefit-sharing mechanisms and the operators' level of compliance with environmental regulations. Chapter Three takes a deep dive into the outcomes of the community engagement practices and relations between ANOH operators and the host/impacted communities. Building on that finding, it delves deeper into the benefit-sharing provisions in ANOH project GMOUs and uses the three indicators to test whether the negotiations meet the criteria for free, prior and informed consent. Chapter Four wraps up the report by taking stock of the significant impacts (both positive and negative) the ANOH gas development project is currently having on the socio-economic, health and environment of the local communities.

This report is based on the findings of fact-finding missions and townhalls convened by a team of in-house and external researchers at SPACES FOR CHANGE | S4C in thirteen (13) local communities in Ohaji/Egbema Local Government Area of Imo State either hosting or impacted by the oil and gas production activities in the area. In addition to garnering useful information from publicly available databases, websites, media reports, S4C leveraged on its access to institutions, agencies, and officials to obtain documents that operators did not provide upon request. These documents enabled researchers to gauge operators' level of compliance with legally-mandated environmental and social impact assessments and other applicable national and international legal standards governing corporate accountability.

During this research, S4C researchers conducted community-wide surveys using structured questionnaires, key informant interviews with community leaders (including traditional rulers, cabinet chiefs, elders, women, and youth leaders) and other community members, and followed up with targeted engagements with government departments and extractive companies to clarify conflicting information, communicate host community concerns and advocate for better deals for local communities. They conducted further outreaches in Imo's oil and gas producing communities to facilitate cross-community learning exchanges and sensitize locals on the provisions of legal regimes and oil statutes regarding land compensation, environmental impact assessment, and due process requirements associated with oil and gas exploration projects.

What this research has done is to generate empirical evidence and pedagogical resources for bolstering the capacity of mineral-rich communities to initiate constructive engagements and skillful negotiations that can transform natural resource wealth into tangible developmental progress and improvements in social and economic conditions of the local communities. We hope that the findings and recommendations from this report will enable local communities to get their fair share in natural resource extraction in their domains. The potential for social conflict is reduced when problems are detected and mitigated early to prevent tension from rising to a level that would be too difficult to repair.

SUMMARY OF FINDINGS

1. Evidence of Good Practice:

- SPDC and Seplat recognize that stakeholder engagement and community development are crucial to the achievement of a stable climate for extractive activities. The concept of 'participatory partnership' reflect their acknowledgement of the mutual benefits arising from community participation, cultural preservation, environmental sustainability recognizing the needs of host communities as well as the maintenance of cordial relationships between host communities and extractive companies

2. Due Process Concerns:

- Series of on-site inspection visits by S4C, including interviews with numerous community leaders and representatives disclosed significant deficits in the company's handling of community relations. There were also heightened due-process concerns regarding the handling of important issues around land, resettlement, compensation and livelihoods in the community. ANOH project promoters (SPDC and Seplat) did not respond to numerous S4C's queries regarding the challenging aspects of the community consultation and negotiations.

3. Non-Disclosure of Critical Information:

- Technical knowledge of oil and gas development, processing, transmission and especially the environmental impacts, is low within communities, meaning that local stakeholders may indeed attend meetings convened by extractive companies, without understanding what is being discussed. Limited access to information and absence of third-party supervision and legal representation shaped communities' capacities during the negotiation of benefits encoded in the GMOUs. Huge capacity-building deficits among locals must be urgently reversed to increase their ability to negotiate better deals and fairer benefits from extractive companies.

4. Parallel Structures of Community Engagement Causing Tension:

- One major factor fueling tension in the host communities is the parallel structures of community engagement created by the extractive companies such as the CEMB, CDCs, CDBs. These oil company mechanisms discounted the preexisting leadership structures or the traditional modes of community engagement such as the Eze stool, Eze's cabinet, town unions, traditional prime ministers. In essence, the new mechanisms are polarizing communities, deflating community bonds and fueling restiveness. Factional groups attached to the feuding parallel structures not only pose significant constraints to meaningful civic and political engagement with extractive companies, but also lowers the quality and outcomes of benefit-sharing negotiations.

5. Companies Unilaterally Drafted GMOUs:

- A huge gap exists between the ANOH project's consultation and negotiation processes and the requirements espoused in global frameworks setting standards and guidance for conduct meaningful consultation with indigenous communities. The GMOUs are drafted and presented to communities to sign without their input or the opportunity to seek expert guidance before signing. This means that in spite of companies' good intentions, the negotiation of the benefits did not follow a process that meets the criteria for community participation, consultation and free, prior and informed consent.

6. Companies' Spending on Communities Unmonitored and Unverified by Independent Parties:

- There is need for adequate disclosure, independent verification and monitoring of extractive companies' spending on capital and non-capital projects in local communities. Effective enforcement and monitoring of GMOUs are needed to ensure the reported pay-outs to host communities match actual development on the ground.

7. Insufficiently-Negotiated Compensation for Land:

- Insufficiently-negotiated compensation paid for 'unknown' size of land grants is another source of local discontent in the host communities. Women are rarely part of the conversations around land acquisition, compensation, negotiations, and membership of the constituted committees. This means that decisions and agreements reached between operators and local communities hardly take into account, the socially-determined roles for men and women, their differentiated experiences in resource extraction zones, and the needs and responsibilities which derive from social and historical constructs.

8. Activities of Extractive Companies Devastating to the Local Environment:

- Recent fire explosions, leaks and spills in ANOH project host communities evince that extractive companies are importing the environmental bad practices in the Niger Delta into locales of new oil finds in Imo State. Companies' robust commitment to sound environmental principles and best practices publicized on their websites have not been followed. The recent fire explosions, leaks and spills prove that cosmetic statements and performance rhetoric are not enough to guarantee compliance with environmental regulations. Except Chevron Nigeria Limited (CNL), the oil companies operating in Ohaji/Egbema LGA, including the ANOH project, have not only failed to comply with international oilfield practices, but are also unwilling to provide the information needed to independently verify corporate claims of environmental excellence.

9. Weak Government's Regulatory and Enforcement Mechanisms:

- Government's regulatory and enforcement mechanisms, especially as regards environmental compliance and land compensation, are weak and ineffective. This is partly because the government is an active player and a regulator in the ANOH project, resulting in a conflict-of-interest situation. The low environmental compliance records of the extractive companies operating in Ohaji/Egbema LGA can wreak havoc on the local environment if the destruction of farmlands, aquatic life and traditional livelihoods continue.

10. Loss of Traditional Livelihoods:

- Fears about imminent loss of farmlands and displacement from their ancestral lands are widespread, fueling anger and resistance. From community to community, the locals who are predominantly subsistence farmers, demand among other things: protection for their traditional livelihoods and opportunities to participate and benefit from the huge economic activities going on around them.

11. Potential for Violence is High:

- ANOH host communities share borders with oil-producing communities in the Niger Delta ravaged by violence and environmental devastation linked to oil and

gas exploration activities. Because of this proximity to violence-ravaged locales in the Niger Delta region, ANOH project operators can avoid the deterioration of the current tensions into full-blown violence by maintaining the safety and security of their operations within a framework that ensures respect for human rights.

12. Negotiations Between ANOH Operatives and Host Communities Do Not Meet the Requirements of Free, Prior, and Informed Consent (FPIC):

- Until SPACES FOR CHANGE's intervention, host communities signed GMOUs without having external contacts with other organizations and institutions that could help them to access sound legal advice and alternative information that can enrich the quality of negotiations with extractive companies. S4C's sensitization and capacity-building initiatives are reversing this trend, by equipping communities with the information needed to contest given information and strengthen their bargaining power. More recently, host communities that have benefited from S4C's empowering initiatives have declined to sign GMOUs foisted on them without meaningful consultations and negotiations.

13. No Legal Frameworks Governing Companies' Community Engagement:

- There is no legal framework at the national and federal level for organizing and conducting meaningful consultations and negotiations for securing communities' informed consent and participation in extractive operations and for ensuring that best practice requirements are followed and respected. There is growing perception that the Petroleum Industry Bill (PIB) currently under consideration by the federal legislature will among other things, accelerate the delivery of direct economic benefits from petroleum operations to host communities and improve peaceful coexistence between host communities and extractives companies.

The community development projects financed by oil and gas companies are not in use, overgrown with weeds, and the few that are in use are uncompleted and are in a state of disrepair. The disuse of these facilities also reflects the quality of the needs assessments that preceded them.



CONCLUSION

The violence resulting from oil exploration in the Delta may be used as an example in other contexts to convince operators of the ANOH project that good environmental practice and quality community remediation is within their best interest. The cost of the Delta crisis to an extractive company can be measured in terms of foregone profit due to attacks on oil installations, sabotage, oil bunkering, increased risks and unpredictability which raises the cost of investment, staff kidnappings, restricted staff movement etc. Even though extractive companies do not always feel a legal obligation to meaningfully engage and ensure fair benefits to host communities, follow environmental standards strictly and fairly compensate communities when operating in Nigeria, it may still be in the company's best interest to do so. Ultimately the costs of maintaining good community relations by way of adequate compensation may be lower than the cost of the violence associated with enraged and desperate communities.

RECOMMENDATIONS

1. Governments (both federal and state) and/or their agencies and ministries should;

- Set the legal framework for information disclosure, community consultation and engagement processes in large-scale infrastructure projects.
- Ensure that extractive companies conduct environment and social impact assessment (ESIA) of all development projects and enlighten local communities on the impacts of extractive activities.
- The timely passage of the Petroleum Industry Bill is imperative, to accelerate the delivery of direct economic benefits from petroleum operations to host communities and improve peaceful coexistence between host communities and oil and gas companies.
- Ensure companies' full adherence to the provisions of the Nigerian Oil and Gas Industry Content Development (NOGICD) law by oil and gas companies.
- Work together with civil society organizations to ensure that mitigation measures proffered and approved in the ESIA reports should be monitored for full implementation and the ESIA reports made available to local communities.
- Put in place accessible grievance mechanisms for the peaceful resolution of disputes between companies and their host communities. Lack of access effective remedies for individuals and communities who suffer human rights abuses directly or indirectly as a result of business activities, paves the way for militancy and hostilities to fester.

2. Extractive Companies should;

- Revisit all cases of unfair or insufficiently-negotiated compensation for acquired communal lands, and particularly satisfy legal requirements applicable to land previously used for agricultural purposes. Treating local communities as major stakeholders in the extractive process and paying fair compensation for land acquired for extractive development projects are examples of major ways of

providing real benefits to communities.

- Benefit-sharing agreements or GMOUs executed between extractive companies and the communities must be accompanied by community access to sound legal representation, independent legal advice and bargaining processes that are representative, inclusive and perceived as fair. Companies must periodically review and ensure full implementation of their obligations set out in the agreements entered into with local communities.
- Conduct regular and extensive engagements with local communities to discuss costs and benefits; educate them on the nature, scope, scale, and environmental, social, and health impacts of extractive activities, and institute a system of fair and equitable remediation.
- Full disclosure of payments to the government as well as investments in local communities must reflect local demands in MoUs with the communities.
- Consultation/engagement is a two-way or multi-way process of negotiation, leading to the integration of local knowledge in development planning and greater community participation in decision-making processes
- Good environmental practice and quality community remediation is in the companies' best interest. Strict adherence to environmental standards, prompt remediation of degraded environment, fair compensation for negatively-impacted communities and taking care of the waste in a humane way are some of the ways for preventing social and environmental problems in the area.

3. Host Communities should;

- Seek expert's guidance, including collaboration with civil society organizations, during the negotiation of benefit-sharing agreements with extractive companies.
- Demand inclusion, information disclosure, full implementation of commitments in signed agreements and fair compensation for land acquisitions and environmental damage.
- Beyond the clamour for joint solutions and joint decision-making about future development, host communities can propose alternative community development plans and present same to extractive companies for adoption and full implementation.

PROJECT TITLE: RENOVATION OF AWARA COMMUNITY HALL
PROJECT OWNER: AWARA COMMUNITY
CONTRACTOR: DIMCHUCKS NIG. LTD.
PROJECT DURATION: 90 DAYS
SUPERVISION / CONSULTANT: COMMUNITY DEVELOPMENT BOARD ASSA NORTH

The Shell Petroleum Development Company of Nigeria Limited
Operator of the NNPC Shell TEPN Agip Joint Venture



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