

NIGER DELTA BUDGET MONITORING GROUP



MEMORANDUM ON THE PETROLEUM INDUSTRY BILL (PIB) 2009

The Chairman
Senate Joint Committee on PIB 2009
National Assembly Complex
3 Arms Zone - Abuja
Attn: Senator Lee Maeba

The Chairman
House Committee(s) on Petroleum Resources
Upstream/Downstream
Senate Committee(s) on PIB
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INTRODUCTION

“Corruption” is a notoriously broad term with multiple meanings. The newly adopted United Nations Convention against corruption, for example, avoids a definition altogether. Recent studies which focuses on two narrow areas of corruption: the bribery of public officials by multinational corporations in resource-rich countries and laundering of these bribes and/or stolen proceeds arising from natural resource sectors, generally in third world countries. Collectively, these processes amount to “Spoliation” – that is, the sale or use of natural resources for the benefit of Private actors, rather than, for the public good.

As canvassed by the promoters of this Bill, Nigerians are informed that this Bill is a collective aggregation of all(?) the Law(s) in the Extractive Sector consolidated together in an attempt by Nigeria to bring sanity to this sector which is enmeshed in riotous enactment and contradiction to the obligations of even the Nigerian Constitution. Moreover, Article 21 of the African Charter on Human and People’s Rights (ACHPR), for example, asserts that, all those living in signatory States (Nigeria inclusive) “shall freely dispose of their wealth and natural resources, and that disposed people have the right to the recovery of their property and compensation”. It further states that “each state has the obligation to avoid foreign economic exploitation that would prevent its people from fully benefiting from the advantages derived from natural resources”. But “foreign economic exploitation” cannot be isolated from exploitation of the resources of the oppressed in the Niger Delta, which equitably, this Bill should address. This Bill is trying to address” foreign economic exploitation” of the Nigerian State only and without critical inter-aligning to addressing the Niger Delta Question and contrary to Article 21 of the African Charter on Human and People’s Right. The two forms of exploitation must go together.

There is also a growing move to recognize individuals, mostly by the Rome Statute of the International Criminal Court (ICC). Article(s) 75, 77 and 79 of the Rome Statue together allow for forfeiture of proceeds, property and assets derived *directly or indirectly* from crime, and for these forfeited assets to be placed in trust funds for victims. Victims of extractive atrocities are therefore crying for justice in the Niger Delta and, on an occasion like this, should not be lost to remind the world.

While it is doubtful if the PIB is an embodiment towards extractive salvation, we have listed below some of the most urgent Laws in the sector that must go with the PIB. There are a few others still dwelling on split interventions within the sector that should also be considered for amendment:

- (1) The PPTA Act of 1959
 - (2) The Petroleum Profit Tax Act, Chapter 354 of 1990
 - (3) The Harmful Waste (Criminal Provision) Decree of 1998.
 - (4) The Abatement in Industries and Facilities Generating Waste Regulations Decree of 1991
 - (5) The Petroleum Act of 1969
 - (6) Petroleum Technology Development Fund Established Act No. 25 of 1973
 - (7) The Oil and Navigable Waters Act of 1969
 - (8) The Oil Terminal Dues Act of 1969
 - (9) The Petroleum Drilling and Regulating Act of 1969
 - (10) The Territorial Waters Amendment Act of 1971
 - (11) The Petroleum Amendment Act of 1978
 - (12) The Inland Waterways Decree 13 of 1993
 - (13) The Inland Waterways Decree of 1977
 - (14) The NNPC Act, CAP 320 of 1990
 - (15) The Land Use Act of 1978
 - (16) The Oil Pipeline Act of 1965
 - (17) The Associated Gas Re-injection Amendment Decree of 1985
 - (18) The NDDC Act of 12th July, 2000
 - (19) The EIA Decree 86 of 1992
 - (20) The National Environmental Protection Management of Solid and Hazardous Waste Decree of 1991.
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- (21) The Nuclear Safety and Radiation Protection Decree 19 of 1995.
 - (22) The NEITI Act 2007.

Furthermore, Nigeria cannot continue to shy away from looking at legislations which other nations have enacted as part of their responsibilities to addressing “resource curse” and “spoliation”.

Some of such laws internationally are:

- (1) The United States Foreign Corrupt Practices Act of 1977.
- (2) The United States Alien Tort Claims Act (ATCA)

- (3) The Council of Europe Recently adopted Instrument on the Civil Law Convention on Corruption which entered into force in November 2003.
- (4) The Council of Europe's Group of States Against Corruption (GRECO), created in 1998.
- (5) The 1997 OECD Anti-Bribery Convention.
- (6) The International Anti-Bribery and Fair Competition Act of 1998
- (7) The Spanish Penal Code, Article 445 – makes bribery of foreign officials an offence in Spain.

- (8) The August 2001 Southern African Development Commission (SADC) adopted protocol against corruption.
- (9) There are others in Austria, New Zealand, etc.

THE PIB AND MATERS ARISING

Part 1 (1) on *Fundamental Objectives* of this Bill is generationally conflicting. It states “property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf shall vest in the sovereign state of Nigeria for and on behalf of the people of Nigeria”. We see this as generationally oppressive, as Nigerians should not see issues of Oil and Gas as concerning Niger Deltans only. Tomorrow it could be any other part of Nigeria. Therefore, communities should be allowed to take ownership of extractive resources and taxes payable to the centre. The expected constitutional amendments should capture this, or a generational roadmap towards this - for futuristic stability.

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Accordingly, NDEBUMOG, being a member of the Coalition for Accountability and Transparency in Extractive Industries, Forestries and Fisheries of Nigeria (CATEIFFN), hereby makes the following interventions on this Bill, though inexhaustible:

1. Section 5 of the Bill encapsulated the principles of the NEITI Act. While this is commendable together with (1) – (3) of this section, it must however, be emphasized that for these principles to move perfectly, then; Section 3 (d) and (e) of NEITI Act should be amended since the said Section in NEITI's Act would hamper what this Bill is trying to achieve, if passed.

2. Section 12 and 13 (b) of the PIB is highly commendable and should not be tempered with. Section 13 (i) - (iv) should reflect the realities of the Fiscal Responsibility Act and the Medium Term Sector

Financing (MTSF) as related to budget of the National Petroleum Directorate (NPD), and all other entities.

3. Section 30 (2) allows the Directorate to accept gifts but not for their personal use. We see this as a window towards corruption and should be rephrased to add – provided, such gifts shall not encourage corruption or under-disclosures. Such should also apply to Section(s) 56, 94, 131, 166, 193 and 238.
4. Section 38 (a) – (e) should encompass maintaining a super-fund (as in U.S.A) for environmental clean up, remediation; (etc) which shall be accessed by relevant environmental agencies of government, and communities, for clean up of impacted communities, provided such is carried out in line with relevant laws and practices.
5. Section 39 defines the technical regulatory functions of the Nigerian Petroleum Inspectorate in the Bill. It is our opinion that, the Nigerian Petroleum Inspectorate should continue to be the Technical Regulator of the Petroleum Industry from Upstream to Downstream as encapsulated in (S) 39 (a) of the Bill. However, the Inspectorate needs to be adequately strengthened to have operational viability, which must be matched by inter-line oversight from the legislature.
6. Section 89 (a) – (u) should embody – liaising with other relevant agencies to carry out environmental audit from time to time.
7. Chapter Five – 115 (f) addresses the issue of “royalties” but without capturing percentages of royalties and should be rephrased to capture *reasonable percentages of royalties*. Still on royalties, Section 279 (2) should also capture the percentages of such royalties which shall be paid to host communities and monetarily ventilative to cover other catchment areas in accordance to any MoU which may agreeably come into force before commencement of prospecting in the catchment areas or communities. This section should also cover the sharing formula of the Royalties as shall apply to the Communities, States and Local Governments.
8. Section 148 which is on “Nigerian Petroleum Research Centre” and 148 (h) states thus “collect and collate independent data from Research Institutes and Universities locally and abroad”. This 148

- (h) should be rephrased to include – *and the Organized Civil Society.*
9. Also, Section 200 (2) a – I, lists representatives/institutions that shall constitute membership of the Board of Petroleum Equalization Fund. This Section should be widened to cover representative(s) of NEITI and another from a Civil Society Organization working in area of transparency and accountability.
 10. Chapter X (S) 223 focuses on the PTDF. This Section should include a clause that activities of PTDF must, at all times, benefit Nigerians, but with emphasis on areas and communities where extractive activities are executed. Equally, this Section should also stipulate that the Head Office of the PTDF must at all times be located in a Geopolitical Zone where vast extractive activities are carried out in Nigeria. If (C vii) 148 (3) about the “Nigerian Petroleum Research Centre” should be so situated, it is unfair for the PTDF to be so isolated from the communal reality towards equity, environmental justice, extractive rights and privileges for host communities. Today, it is the Niger Delta; tomorrow it could be any other part of Nigeria.
 11. Section 227 (1)2-a to (f) 3-4 is on the membership of PTDF Board. The Section should be widened to comprise, at least, two members from a Civil Society Organization working in the area of EITI and the media.
 12. Section(s) 246, 249, 255 and 256 if allowed in its present form shall continue to generate unimaginable conflicts from Oil Producing Communities. These Section(s) should be re-worked with provision(s) which allows Oil Producing Communities to be allotted, owned, participate and Bid for Blocks in the JVs and also sharing profits and dividend thereto. Every community having a pipeline criss-crossing it should have a participatory stake in the JVs/PSC. This is outside provisions in this Bill on Corporate Social Responsibility, Royalties and Rents. It is a provision which should be purely commercial and one of the ways for the communities to see pipelines as pipes of oppression without integrity.
 13. Section 259 1, 2, 3 and 307(b) is on “Confidentiality Clauses” and negates the very essence of transparency, which the promoters of this Bill want Nigerians to believe. Any legislative framework

about public disclosure in Nigeria without the passage of the FOI Bill raises more questions than answers.

RECOMMENDATIONS

- Constitutional amendments necessary to give communities right of participation and control over their resources.
- Section(s) of the Bill contradict one another on transparency and accountability, dampening expectations over the Bill and should be corrected.
- Host communities should have shares of the Extractive Industry Companies (EICs) and should be qualified under such entities (EICs – JVPs) to participate in bidding processes.
- Submission in this memo on PTDF should not be overlooked.
- Percentages about Royalties sharing should clearly be disaggregated and encapsulated in the Bill.
- Consolidation of Extractive industry laws into the PIB not total and should be revisited.
- Establishment of a Super-fund necessary for a total clean-up, remediation of impacted site(s) and as a standing fund for environmental remedies to host communities as applicable in U.S.A.
- Civil Society/Media inclusion in some of the Board is vital.
- DPR should continue to be the Petroleum Industry's Technical Regulator from Upstream to Downstream. The Legislature should strengthen its operations to deliver effectively and independently, with adequate oversight by the legislature.
- Legislative integrity in this process must be respected. Our expectation is that, the National Assembly is working with only one version of this Bill.

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