PETROLEUM INDUSTRY BILL AND THE CHANGE AGENDA
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About Environmental Rights Action/Friends of the Earth Nigeria, ERA/FoEN

Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN) is a Nigerian advocacy group dedicated to the defence of the human ecosystem in terms of human rights. ERA/FoEN is also the coordinating NGO for the Oilwatch International and the coordinating NGO for the Nigeria Tobacco Control Alliance.

The organisation's commitment to the struggles for environmental human rights won it recognition through awards such as the Sophie Prize for Excellence and Courage in the Struggle for Environmental Justice (1998) and the Bloomberg Award for International Tobacco Control (2009).

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Introduction

The Petroleum Industry Bill (PIB) was conceived as a conflict resolution Bill to address years of human rights violations, reckless environmental degradation and destruction of rural livelihoods by oil companies.

The Bill aims to curtail frequent oil spills and end gas flaring which started since 1956 when oil was discovered in the Niger Delta. Importantly, the PIB seeks to enhance transparency and accountability in Nigeria’s oil and gas industry operations and put in place reforms to address the impunity of oil companies. When it becomes law, the Bill will ensure local participation in the allocation and use of oil proceeds for rural development.

The Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN) and other civil society groups laboured hard to ensure the passage of the Bill in the last dispensation through awareness creation, technical presentations, seminars and conferences, policy briefs, memos and active participation in all the public hearings conducted by the Senate and the House of Representatives at the National Assembly in Abuja. ERA/FoEN also participated actively during the Zonal Public Hearings in Port Harcourt and Lagos between 2013 and 2014.

ERA/FoEN pushed for a people-oriented, environment and local livelihoods-sensitive PIB. Our conviction then and now is that a pro-people PIB must take into cognizance the interest of local communities and the protection and preservation of the Nigerian environment.

Unfortunately, debates on the PIB during the 7th National Assembly were politicized by some lawmakers. Others openly challenged pro-people provisions in the bill. Some of them became the mouthpiece of Shell and other oil companies that threatening to pull out of Nigeria’s oil and gas operations if the PIB was passed. They not only betrayed the wishes of the people but succumbed to cheap blackmail of the oil companies that the PIB would render the oil and gas industry unviable.

We view the last minute passage of the Bill by few members of the House of Representatives as a mockery of legislative process. The action was hypocritical and cosmetic and as such was condemned by all Nigerians. The bottlenecks strewn on the way of the PIB and the failure through self-censorship of the last Assembly clearly showed that there were behind the scene powers at play to keep our people down.

The basis of kick-starting yet another process in the 8th National Assembly is to ensure that the PIB is passed into law and this is hinged on the promises of the President Muhammadu Buhari administration to tackle myriad problems besetting the Nigerian environment especially the Niger Delta.
Clearly, the administration has shown good example with the $10 million take–off grant for the clean-up of Ogoniland as recommended by the United Nations Environmental Programme (UNEP) report 2011. We hope that the PIB will also get equal attention as an Executive Bill. The renewed call for the passage of the PIB is hinged on the present administration change agenda and its professed belief in sustainable development.

**OUR DEMANDS FOR PEOPLE-ORIENTED BILL**

The following are our demands to make the PIB more people-oriented and environmentally sound.

**Powers of the Minister**

On the overarching Powers of the Petroleum Minister, the PIB 2012 grants excessive and oftentimes unchecked powers to the minister of petroleum. We do not want a bill that will be referred to as the “Minister’s PIB” as this will defeat the key objectives of the bill in providing a level playing ground for all actors while creating efficient and effective regulatory agencies. We demand that the powers of the minister in Section 6 of the bill be properly scrutinized and that S.6 (k) be expunged in its entirety. Therefore, it will be expedient for the federal government to build institutions rather than individuals so that institutional capacity is enhanced in the petroleum sector.

**Metering Systems at Points of Extraction**

It will surprised the present government that the actual volume of oil produced in Nigeria is either unknown or undisclosed. While the official figures in the books hover around 2.4mbpd, the actual volume extracted is well over 4mbpd. ERA/FoEN advocates that the point of oil extraction, transport lines, flow stations and export terminals must be installed with real time digital metering systems as is currently the practice globally.

Concern that the volume of oil extracted is shrouded in secrecy prompted ERA/FoEN to launch the Publish What You Pump (PWYP) campaign in 2014. Meters at the point of extraction and at the loading terminals will expose the leakages and theft in the system and thus improve national revenue from oil. Doubtless, oil companies’ staff are often implicated in these oil theft shady deals hence their consensus opposition to the initiative.

**Environmental Protection**

Oil and gas exploration and exploitation activities have done unquantifiable damage to the environment. Frequent oil spills, gas flares, blow outs, unchecked and reckless operations of the oil companies over the last five decades have ruined creeks, mangroves and farmlands etc. These have led to loss of livelihoods.

In the light of the above, we recommended that the section of the draft bill with the heading “**Environmental Quality Management**” be bolstered with the insertion of a new section reading “Every licensee engaged in upstream petroleum operations shall before embarking on oil exploration liaise with the Inspectorate, the Federal Ministry of Environment and the affected local community to conduct a full cost benefit analysis of the value of the environmental resources available in the proposed exploration area to determine whether it would be more profitable to preserve the environment than to extract oil from it.”
Health, Safety and Environment

We recommended an amendment of this section to reflect that the Federal Ministry of Environment coordinate, develop and implement a holistic environmental policy for our nation.

The nagging gas flaring issue, especially the confusing drafting in the bill is worrisome by virtue of a subsisting Federal High Court judgment on Iwherekan community in Delta State since 2005 which declared gas flaring as illegal and a violation of the fundamental rights to a safe environment. In this regard, the minister cannot seek to exercise any powers regarding a gas flare out date or deadline. Besides, the 1984 gas reinjection law puts an end to gas flaring hence it need not wait for the PIB process. We reject the World Bank new proposed flare out deadline of 2030 as it is pro industry.

Community Participation

The recommended Petroleum Host Communities Fund with 10% equity from oil and gas receipts is a welcomed innovation and should be retained. However, rather than the fund to be administered by the Minister, there should be provision for local communities empowerment in the setting up of Community Trust Funds to administer this for rural development.

The PIB must clearly define the term host communities and state the criteria for inclusion. The definition of host community should accommodate host to oil facilities, oil field/well hosts and potential impact victims. In this regard everybody that is or will be affected will find some level of protection under this law. Host communities must not only be part of reception of funds. By the incidence of their 10% equity holding, they should be recognised as shareholders and accorded all the rights and privileges including participation in decision-making.

Environmental Justice, Remediation and the JIV Process

The Joint Investigation Visit (JIV) seek to ascertain the date, volume and cause of oil spill as well as damage, remediation and compensation. However, the oil companies involved in the spill are also the ones to mobilize to sites, ascertain the cause of spills and remediation hence they manipulate the process to minimized damage and costs to the companies involved. That this important process has been left in the hands of oil companies for so long explains the criminalization of local people.
The JIV process should be overhauled to allow the Federal Ministry of Environment and NOSDRA the resources to effectively carry out their statutory duties. Clean up funds and remediation should be established through the polluter pays principle.

It is time to change the biased formula of calculating arbitrarily the quantum of compensation on the basis of “surface goods” alone. This provision should be amended to reflect that “The holder of a petroleum exploration license, petroleum prospecting license or petroleum mining lease shall in addition to any liability for compensation to which the holder may be subject under any provision of this Act, be liable to pay fair and adequate compensation for disturbance of land, rivers, streams and personal health as well as for loss of revenues derivable therefrom, for the period that the effects of such disturbance would last; or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands.

To conclude, we hope that this present government and national lawmakers would pursue the PIB to its logical conclusion to ensure that the environment and livelihood of the people are protected.

**PROPOSED CLAUSE BY CLAUSE REVISION TO THE PIB**

Nigeria needs a PIB that spells out what constitutes offences and penalties as well as clear provisions for enforcement in case of violation of any provision, especially the environment, communities interest, security and health provisions.

**GOVERNANCE/INSTITUTIONAL ISSUES**

**Sovereignty and Ownership Question**

(a)That Section 2 of the PIB 2012 be amended by deleting the phrase “is vested in the government of the federation” at the end of the paragraph and insert in its place the phrase “is vested in the people of the Federal Republic of Nigeria”.

(b)Section 2 should now read “the entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters, or which forms part of its continental shelf and the exclusive economic zone, is vested in the people of the Federal Republic of Nigeria

(c)That a new S.2 (1) should be added that vests management and administration of petroleum resources on the government of the federation.

**TRANSPARENCY AND ACCOUNTABILITY**

**Discretionary powers of the president**

a)That S.191 of the draft PIB be expunged especially as it weakens the clear provisions of Section 190(1) and (2) which provides for award of oil blocks by open, transparent and competitive bidding processes.

b)That S.190(3) be amended by deleting the Phrase “except as provided under section 191 of this Act. S.190(3) should now read “There shall be no grant of discretionary awards.”
Overarching Powers of Petroleum Minister
(a) That the powers of the Minister in Section 6 of the bill be properly scrutinized and that S.6 (k) be expunged in its entirety.

Power to Accept Gifts
(a) That Sections 33, 63, 92 and 139 which entitles the institutions created by the PIB to accept gifts be expunged.

Information disclosure

(a) That the PIB should make provisions that all information will be publicly available unless there exists a legitimate reason for no-disclosure, such as commercial sensitivity, security-related issues or other well-established and reasonable grounds for non-disclosure.

(b) That all social and environmental impact assessments be made public, available and accessible as should studies that are conducted in the course of carrying out Social and Environmental Impact Assessments, and studies relied upon for such assessments.

(c) That Communities and other stakeholders should also have access to official inspections and investigation reports for all pollution-related events.

(d) That such information should be uploaded on a user friendly and interactive webpage where such could easily be downloaded and comments left behind.

Metering Systems
(a) That Section 304 of the bill on “Ascertainment of profits, adjusted profits, assessable profits and chargeable profits” be amended and a new Section 304(1) be inserted to read “notwithstanding anything contained in this section, the ascertainment of the value of any gas, oil, bitumen and condensate produced shall be done on the basis of a point of extraction metering system and a real time digital measuring equipment”.

(b) That the present section 304 (1) should be renumbered as section 304 (2)
ENVIRONMENTAL PROTECTION

Environmental Management
(a) That Section 200 of the draft bill with the heading “Environmental Quality Management” be amended by inserting a new S. 200 (1) to wit “Every licensee or lessee engaged in upstream petroleum operations shall before embarking on oil exploration liaise with the Inspectorate, the federal ministry of Environment and the affected local community to conduct a full cost benefit analysis of the value of the environmental resources available in the proposed exploration area to determine whether it would be more profitable to preserve the environment than to extract oil from it.

Financial Contribution for Remediation
(a) That Section 203 be amended by deleting all references to the Inspectorate and by inserting National Oil Spills Detection and Response Agency (NOSDRA) in the relevant portions in the section.
(b) That Section 203 (4) which authorises the lessee to carry out self-assessment for the purpose of determining its environmental liability and any future increase should be amended and in its place a new Section 203 (4) be inserted to

(b) That Section 203 (4) which authorises the lessee to carry out self-assessment for the purpose of determining its environmental liability and any future increase should be amended and in its place a new Section 203 (4) be inserted to read “the licensee or lessee and National Oil Spills Detection and Response Agency (NOSDRA) would appoint a mutually agreed independent assessor to determine the financial contribution of the licensee or lessee”.

Health, Safety and Environment
(a) That S.289 should be amended to ensure that the federal ministry of Environment is in charge of coordinating, developing and implementing a holistic environmental policy for the nation.

Gas Flaring Prohibition and Punishment
(a) That Section 275 with the heading “General Terms” should be amended by deleting “after a date (the flare out date) to be prescribed by the minister in regulations made pursuant to this part”

(b) That the amended Section 275 should read “natural gas shall not be flared or vented after the commencement of this Act in any oil and gas production operation, block or field, onshore, or offshore, or gas facility such as processing or treatment plant, with the exception of permits granted under subsection (1) of Section 277 of this Act.

(c) That Section 276 (1) be amended by deleting the phrase “shall within six months of the commencement of this Act” and by inserting the phrase “shall within 30 days of the commencement of this Act prepare a categorization of all flared gas resources (daily flare quantity, reserve, location, composition) and submit this data along with gas utilization plans to the inspectorate” in its stead.
(d) That Section 277 (2) be amended by deleting the exceptions “safety flaring and or inability of gas customers to off-take gas” These are vague terms that may be amenable to multiple interpretation under which companies may hide to continue gas flaring.

(e) That Section 277 (2) be further amended by restricting the me limit for the permit by the minister on the remaining three exceptions—that is to say start up, Equipment failure and shut down to not more than 30 days and thereafter if the flaring still continues the facility be shut down.

**Conduct of Operations**

(a) That Section 293 (2) of the bill be expunged as it excuses the oil companies from undertaking their duties of ensuring the safety and integrity of their facilities.

(b) That Section 293 (4) of the bill be expunged because, without any justification in law and fact, it criminalizes states and local governments

**COMMUNITY PARTICIPATION**

**Petroleum Host Communities fund**

(a) That Section 116 be divided into two parts thus: Section 116 (1) Establishment of the PHC Fund and Section 116 (2) Beneficiaries of the PHC Fund:

Beneficiaries of the PHC Fund shall include every community where any form of petroleum extractive activity(ies) takes place, where a petroleum extractive industry has its facilities, and communities that will directly suffer impacts of the petroleum extractive industry’s activity(ies) whether or not there is an activity going on there.

(b) That Section 118 (5) be expunged as it unduly criminalizes local communities and imposes on them an enormous burden that they cannot possibly discharge of providing surveillance for oil facilities.

(c) That democratically elected and independent community foundations should be empowered to execute their own development under the petroleum Host communities fund without official bureaucratic interference.

**Nationalizing Petroleum Product**

(a) That the PIB must address the critical concerns of the Northern and other States of Nigeria on mechanisms to guarantee a uniform price regime in the distribution of petroleum products under the law. After all, Petroleum has been identified in Nigeria as a national commodity.

**Compensation**

a) That Sections 199 and 296 be amended thus “The holder of a petroleum exploration license, petroleum prospecting license or petroleum mining lease shall in addition to any liability for compensation to which the holder may be subject under any provision of this Act, be liable to pay fair and adequate compensation for disturbance of land, rivers, streams and personal health as well as for loss of revenues derivable there from, for the period that the effects of such disturbance would last; or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands, in accordance with the guidelines issued by the agency.
ENFORCEMENT MECHANISMS

It is recommended that the following be included in the bill

(a) There shall be established out of the existing State and Federal High Courts in Nigeria Environmental Tribunals, in this Act referred to as the Tribunal.
(b) The Tribunal shall have and exercise exclusive jurisdiction over all causes and matters relating to the environment, in addition to any other jurisdiction that may be conferred on it by an Act of the National Assembly.

(c) The Tribunal shall be headed by a Judge of a High Court in Nigeria or a person qualified to be so appointed with 2 assistants who must have in-depth knowledge about environmental matters. One of the assistants must be a lawyer with at least 5 years post call experience.

(d) Notwithstanding anything to the contrary in the law of evidence, practice direction or any other enactment, any me environmental pollution, and or degradation is alleged, it shall be the duty of the defendant to show that he/she is not liable.
(e) The Tribunal, before whom an environmental pollution/degradation matter is pending, in awarding damages, shall take into consideration:
   (i) the nature, size, scope and worth of the area polluted and or degraded;
   (ii) the extent of the pollution and or degradation;
   (iii) the conduct of the defendant before and after the pollution and or degradation complained of; and
   (iv) The cost of livelihood sources existing in the damaged environment over the natural lifespan of such sources, whether plant, animal, equipment or other machinery or tool.
(f) In the case of unauthorized tampering with of petroleum production and distribution facilities, the jurisdiction to adjudicate shall be vested upon the High Court
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