

## **Reject PIB for Failing to Address Key Issues**

### **Nigerian Civil Society Position on the Petroleum Industry Bill**

The current version of the Petroleum Industry Bill failed to address community, economic and environmental concerns. We have convened this briefing and dialogue to review the state of our environment including the contentious PIB. Recall that only a few days ago, Nigeria's Federal House of Representatives passed the PIB. Their passage of the Bill was immediately followed by the passage of the same law by the Senate, howbeit with some differences.

Before proceeding, please permit us to remind you that the PIB is one of the oldest and perhaps most contentious Bills in Nigeria's legislature. The Bill was introduced to the legislature in 2008 and envisaged the emergence of new institutional frameworks to govern the operation of the oil and gas industry in Nigeria. These frameworks include the establishment of a more efficient national oil company, the adoption of improved transparency and accountability measures, as well as new and efficient regulatory institutions for the sector. The PIB aims to bring together about 16 existing legislations on Nigeria's petroleum industry into a single cohesive legislation to govern the industry from the upstream to downstream sectors. Overall, it aims to ensure improved benefits to Nigerians from the oil and gas sector.

From its first transmission to the legislature in 2008 as an Executive Bill, the PIB has passed through key adjustments, setbacks and controversies. In 2011, there were different versions of the Bill in circulation, each including or eliminating one contentious provision or the other. By 2012, a new version of the Bill was developed and presented to the legislature for consideration. The Bill was withdrawn from the National Assembly and replaced with a revised version in 2014. In 2015 the House of Representatives passed a version of the PIB amidst controversy that the version was heavily doctored to suit vested interests. Later in 2015, the administration of President Buhari split the PIB into four components - the Petroleum Industry Governance Bill dealing with reforms in the governance of the oil and gas sector, the Petroleum Industry Administration Bill (PIAB), the Petroleum Industry Fiscal Bill (PIFB) and Petroleum Host and Impacted Communities Bill (PHICB). In May 2017, the Senate passed the PIGB, and the House of Representatives followed in January 2018. A harmonized version was passed by both houses of the National Assembly on the 28th of March 2018, and forwarded to the President for approval. That effort came to nought as President Buhari denied his endorsement, citing '*constitutional and legal reasons*'.

The current efforts around the PIB began in September 2020, when the Presidency transmitted a comprehensive Petroleum Industry Bill titled **A Bill for an Act to Provide Legal, Governance, Regulatory and Fiscal Framework for the Nigerian Petroleum Industry, the Development of Host Communities and for Related Matters** to the National Assembly for consideration. Exactly 9 months after the National Assembly began work on the Bill, both Chambers have passed it, and are currently working towards a harmonization of the versions from both legislative chambers.

Ladies and Gentlemen, it is important to note that civil society organizations in the country, including those here today have historically engaged the PIB process in efforts to ensure that the final outcome reflects the popular thinking of Nigerians, not just on the economy of oil and gas, but also on the outlook of the country beyond oil. Indeed, we have engaged communities and the Nationally Assembly, presented Memos for consideration and produced detailed reports recommending adjustments to the different drafts that have been considered. It is pertinent to note that we did same in this recent effort. Unfortunately, it is regretful that our suggestions which emanate from a long history of work on the sector, engagements with stakeholders including oil producing communities, and established international best practices, have not been taken seriously in the Bills passed by both chambers of the National Assembly.

Ladies and gentlemen, we shall proceed to itemize the contentious key issues below;

### **On the Host Communities Trust**

The PIB makes elaborate provisions for the establishment and management of a petroleum host community development trust as a framework for the transfer of development benefits to petroleum host communities. However, the Bill specifically makes the incorporation of this trust the exclusive responsibility of the oil companies operating in the area, and gives oil companies overriding powers to decide who become members of the trust and other governance structures. Without doubt, the provisions for the establishment and governance of the Host Communities Trust downgrades the participation of communities, while overtly promoting the role of oil companies. The PIB gives the companies power to nominate all members of the Board of Trustees with only an obligation to 'consult' host communities.

Besides the paltry 3 of 5 percent earmarked for host communities, we consider this provision in the Bill a clear indication that the PIB intends to continue the historical treatment of host communities as oil colonies and sacrifice zones under the control of profiteering companies. It also indicates that the government still holds the erroneous and unfortunate view that communities where crude oil is extracted from do not have the capacity to direct their affairs. This is not only untrue; it is also insulting. It is our recommendation that in the harmonization of the PIB, the Host Communities Trust be incorporated and governed by members of each host community. We also recommend that contrary to what is in the PIB currently, the oil companies should not be the ones to determine who is a host community.

### **On Community Responsibility for Protection of Oil Facilities**

A key source of contention raised by civil society organizations and host communities, which has unfortunately been retained in the Bill passed is the placing of responsibility for the protection of pipeline and other oil infrastructures on host communities. According to the Bill, ***“where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host community, the community shall forfeit its entitlement to the extent of the costs of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year. Provided the interruption is not caused by technical or natural cause”***.

As you are probably aware, oil theft is the major reason for puncturing oil pipelines. This illicit activity is carried out mainly by armed cartels (and not poor community people), suspected to be working in close collaboration with oil company officials and the military stationed in those communities to protect oil installations. Placing the responsibility of protecting oil installations from armed gangs on unarmed communities is simply an unrealistic expectation. Again, this proposal stems directly from the erroneous view which has been peddled by oil companies that communities are responsible for sabotage on pipelines and oil theft. However, these are views that have been debunked by the NNPC and even the United Nations Environment Programme. Attempting to criminalize oil producing communities in this regard is an unfortunate and cunning ploy. If this provision is upheld it could result in consistent denial of benefits which could in turn engender regular conflicts. We therefore recommend a total deleting of this clause.

### **On Gas Flaring**

The PIB makes the flaring of gas illegal. However, it creates a series of exemptions which basically ensures that the same gas flare regime continues literally unchecked. The Bill identifies instances where gas flaring may be permitted. These include (a) in the case of an emergency; (b) pursuant to an exemption granted by the Commission; or (c) as an acceptable safety practice under established regulations. The Bill goes further to clarify that the Authority or Commission may grant a permit to a Licensee or Lessee to allow the flaring or venting of natural gas for a specific period -

- (a) where it is required for facility start-up; or
- (b) for strategic operational reasons, including testing.

The section however does not provide an explanation of what *'strategic operational reasons'* are beyond testing. It also does not state the timeframe allowed for flaring in the case of facility start up or for strategic operational reasons. These provisions could be easily abused and turned into a license for unchecked environmental and health damage to communities. Additionally, the Bill proposes that ***'moneys received from gas flaring penalties by the Commission pursuant to this subsection shall be transferred to the Midstream Gas Infrastructure fund for investment in Midstream Gas Infrastructure within the Host Communities of the Settlor on which the penalties are levied'***.

Clearly, the Bill proposes the utilization of gas flare fines in more income yielding investments without any special consideration for the communities who suffer the impact of gas flaring. Evidently, the PIB considers gas flaring a waste of economic resources which should be paid for, and not as an abuse which is impacting the climate, the health and livelihoods of communities.

Ladies and Gentlemen, for emphasis, it is also important to note that Gas flaring has been illegal in Nigeria since 1984. In 2005, a Federal High Court in Nigeria reaffirmed the illegality of the practice and held that gas flaring amounted to a violation of the constitutional right to life and dignity of the people. Since the 1970s, the Nigerian government has put in places several deadlines to end gas flaring. The last flare out date was 2020 which was again shifted in favor of a 2030 deadline. As routine practice, deadlines to end gas flaring are shifted as the targets approach. The PIB does not place any definite flare-out date, presenting the impression that the practice will continue indefinitely to the detriment of host

communities who continue to bear the dangerous consequences. The PIB does not appear to consider Nigeria's climate change pledges as contained in the nation's Nationally Determined Contributions (NDCs).

We strongly recommend the introduction of a clause which affirms the outlawing of gas flaring and requires that offenders pay the full economic cost of the flared gas as well as the related health and environmental costs. It should ensure that gas flare fines are invested in the host communities funds and an Environmental Remediation Fund. It is recommended that the discretionary powers given to the Commission to determine how much is paid as penalty for gas flaring be removed. The regulations should clearly peg the fines for violation as stated above.

It is also recommended that the PIB places a definite date to end gas flaring, and provide a framework to review each company milestone towards achieving the flare out target; as well as establish definite 'non fines' sanctions for violations of milestones. It is equally recommended that grounds for exemption on gas flaring should be made more explicit, including for such reasons as 'strategic operational reasons. Timeframes for such exemptions should also be expressly stated.

### **Frontier Basins**

Ladies and Gentlemen, perhaps the most contentious issue in PIB is the proposal for the utilization 30% of NNPC profits for oil exploration in so-called frontier basins mostly located outside the Niger Delta. While the PIB expects the NNPC to become a profit-making enterprise, it already dedicates a hefty chunk of its expected profit into the search for additional crude oil. It is interesting to note that Nigeria has for decades invested heavily and futilely in the search for crude oil in the same basins. Indeed, it is reported that as much as \$3billion may have been spent in this effort. The fact that public resources have to be spent in this effort is indicative of the fact that oil companies around the world do not consider this a worthwhile investment. Rather than spend so much of the expected profits of NNPC on exploring for oil in unlikely places, we propose that the government considers investing the same percentage of NNPC profits in generating clean and affordable energy for Nigerians, or even supporting an environmental remediation fund aimed at remediating years of pollution, livelihood losses and health impacts of oil extraction. We strongly hold the view that this will be a far more worthwhile investment. We note here that even the remotest, profit, is nebulous in a situation where the exact quantity of crude oil extracted is unknown.

### **Climate Change and Changing Times**

Sadly, it is noteworthy that the entire PIB expresses no intention for moving Nigerian away from dependence on fossils. At a time when the world is moving away from crude oil, the PIB is planning to make more investments in that regard. This indicates that the government is not keeping in tandem with global trends. The provisions and proposals in the PIB are also indicative of the fact the Nigerian government is unperturbed by concerns of global warming and climate change. Ironically, Nigeria is emerging as one of the most impacted countries globally by the effects of climate change. The shrunken Lake Chad, increased desertification and the regular floods around the Atlantic coast are ready evidences. That the PIB pays no heed to issues of climate change, despite Nigeria's NDCs, and aims to plunge the country further into fossil extraction is a major source of concern.

Ladies and gentlemen, the PIB presents a rare opportunity to reform the management of the oil and gas sector in Nigeria. But it also presents an opportunity to transform the footprints of oil extraction in host communities, to invest in clean energy, ween the country from fossil dependence and combat years of pollution and neglect. The PIB also ignores the extreme harm inflicted on the Niger Delta and says nothing about a region-wide environmental remediation effort which ought to start now. The Bill passed by both chambers of the National Assembly have done none of the above.

This position and statement is endorsed by the following organizations:

- Health of Mother Earth Foundation
- We the People
- Corporate Accountability and Public Participation Africa
- Environmental Rights Action/Friends of the Earth
- Policy Alert
- Ogoni Solidarity Forum
- Kebetkatche Women Development and Resource Centre
- Africa Network for Environment & Economic Justice
- Indigenous Centre for Energy and Sustainable Development
- Coalition Against Gas Flaring
- Host Communities Network
- Green Alliance Nigeria
- Centre for Transparency Advocacy
- Oilwatch Nigeria