



Comments on the
Petroleum Host
Community
Development
Bill, 2016

By Health of Mother Earth Foundation (HOMEF)



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1.0 Introduction

The Petroleum Host Community Development Bill, 2016, appears to have the philosophical base of being aimed at the development of Petroleum Host Communities using the vehicle of the Petroleum Community Trust.

By starting from that premise, the Bill ignores the fact that a community does not have to host petroleum companies or their facilities before they are exposed to the negative impacts that accompany the actions of the sector, for example, black soot was observed in some parts of Port Harcourt in 2016 and early 2017 far from the pollution sites. The 1998 offshore Idoho oil spill that started from Akwa Ibom spread as far as some coastal areas in Lagos. Goi community in Gokana Local Government area of Rivers State has no oil installations or pipelines but was heavily polluted by an oil spill in 2005 that has rendered many community people homeless till date and with all their sources of livelihood lost.

It cannot be denied that communities that do not fall into what this Bill refers to as Petroleum Host Communities do indeed get impacted as petroleum pollution does not respect community boundaries, especially in riverine areas where water bodies and swamps impacted by oil pollution are interconnected.

Secondly, by focusing mostly on financial contribution/distribution, the Bill overlooks the critical component of prior informed consent with regard to petroleum prospecting and exploitation in the affected communities.

The only manner by which this is implied is in terms of “Community Development Agreements.”

Thirdly, a Bill of this nature would benefit from robust community engagements and consultations. This does not appear to have been the case with this Bill. That step cannot be ignored and should be urgently embarked on before any further consideration of the Bill. Having a public hearing in Abuja would not be sufficient if this is truly aimed at meeting the yearnings of communities.



2.0 Learning from the Solid Minerals and Mining Act 2007

For the Bill to help resolve the disconnect between communities in the Niger Delta, the government and the operators of the petroleum sector, key lessons must be learned from the Solid Minerals and Mining Act, 2007. The fundamental need is to have communities as true stakeholders in the exploitation of resources in their territories and in the management of resultant revenues as proposed in the Bill is largely inadequate.

The Mineral and Mining Act clearly outlines the benefits for communities and land owners where minerals are extracted with a chapter dedicated to environmental considerations and environmental concerns.

Modeling the Communities aspect of the PIB after the Minerals and Mining Act would create a level playing ground and eliminate the many inequities and reckless environmental degradation that occurs in the oil fields communities as if they were no man's lands. Some of the key anchors for bringing about a sense of equity and dignity in community relations is the respect of the environment and ecological/cultural heritage of the people as well as the payment of ground rents for areas taken for the petroleum resource exploitation and facilities.

This is key to participation that the Bill seeks to ensure.

Aspects of the Solid Minerals and Mining Act 2007 that can be incorporated in the Petroleum Host Communities Bill is presented in the box below.

Extracts from Chapter 4 of The Nigerian Minerals and Mining Act 2007

98. Prohibition of mineral exploration in certain areas

(1) No person shall, in the course of exploration or mining, carry out operations, in or under any area held to be sacred or permit injury or destruction of any tree or other thing which is the object of veneration.

(2) When any question arises under this section as to whether an area is held to be sacred or a tree or thing is the object of veneration, the question shall be decided by the Mining Cadastre Office on the recommendation of the Mineral Resources Committee of the State concerned.

(3) A licensee or lessee who causes injury or damage to any area, tree or thing mentioned in subsection (1) of this section shall pay fair and adequate compensation to the persons or communities affected by injury or damage.

102. Surface rent

(1) The lessee of a Mining Lease shall pay rent, in advance without demand being made of it, at such rate per annum as shall be determined by the Minister for all lands occupied or used by it in connection with its mining operations.

(2) The Minister shall, before granting a Mining Lease on any private or any State land-

- . (a) cause the owner or occupier of the land to be informed of the intention of the Minister to grant the lease; and
- . (b) require the owner or occupier of the land to state in writing within the period specified by the Regulations made under this Act, the rate of annual surface rent which the owner desires should be paid to him by the lessee for the land occupied or used by it for or in connection with its mining operations.

(3) If within the time specified pursuant to subsection (2) of this section, the owner or occupier states the rate of the rent he desires should be paid, and the Minister is satisfied that the rent is fair and reasonable, the surface rent payable in respect of the land of the owner or occupier shall be the amount specified and the rent shall be notified to the lessee as soon as possible.

(4) The rate of the surface rent, whether fixed by the owner, occupier or by the Minister, shall be subject to revision by the Minister at intervals of five years.

(5) In fixing the surface rent payable, the Minister shall take into consideration the damage which may be done to the surface of the land by the mining or other operations of the lessee, for which compensation is payable.

116. Community Development Agreement

(1) Subject to the provisions of this section, the holder of a Mining Lease, Small- scale Mining Lease or Quarry Lease shall prior to the commencement of any development activity within the lease area, conclude with the host community where the operations are to be conducted an agreement referred to as a Community Development Agreement or other such agreement that will ensure the transfer of social and economic benefits to the community.

(2) The Community Development Agreement shall contain undertakings with respect to the social and economic contributions that the project will make to the sustainability of such community.

(3) The Community Development Agreement shall address all or some of the following issues when relevant to the host community-

- . (a) educational scholarship, apprenticeship, technical training and employment opportunities for indigenes of the communities;
- . (b) financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power;
- . (c) assistance with the creation, development and support to small scale and micro enterprises;
- . (d) agricultural product marketing; and
- . (e) methods and procedures of environment and socio-economic management and local governance enhancement.

(4) In the event of the failure of the host community and the lessee, after several attempts to conclude the Community Development Agreement by the time the titleholder is ready to commence development work on the lease area, the matter shall be referred to the Minister for resolution.

(5) The Community Development Agreement shall be subject to review every 5 years and shall, until reviewed by the parties, have binding effect on the parties.

117. Objectives of the Community Development Agreement

The Community Development Agreement shall specify appropriate consultative and monitoring frameworks between the mineral titleholder and the host community, and the means by which the community may participate in the planning, implementation, management and monitoring of activities carried out under the Agreement.

118. Environmental obligations

Every holder of a mineral title under this Act shall as far as it is reasonably practicable-

- . (a) minimise, manage and mitigate any environmental impact resulting from activities carried out under this Act; and
- (b) rehabilitate and reclaim, where applicable, the land disturbed, excavated, explored, mined or covered with tailings arising from mining operations to its natural or predetermined state or to such state as may be specified in this Act, its Regulations and other pertinent laws in force, and in accordance with established best practices.

3.0 Specific Comments

2 (2)(a) The idea of having one representative from each community does not depict true community representation and the involvement of the Ministry of Environment was not captured in the whole process.

2 (3) – The Chairman of the Trust is to be selected from the representatives of the communities on the Board. The Bill should anticipate the fact that there could be a Local Government Area where only one community qualifies to sit on the Board based on the definition of the **Host Community**.

2 (4) - The post of Secretary is reserved for an oil company staff. Again, we note that there could be a case where there is only one operating oil company in a Local Government Area. That would give the oil company too much control over the Trust and could constitute an avoidable stumbling block. This is unacceptable. An option would **be best for the Secretary to be seconded from the LGA office**.

2(7) the Secretary is entitled to a salary. If this secretary is an oil company worker, and this is the only position that attracts a salary, the provision has a potential for conflict generation. This would be avoided by taking the secretary from among the staff of the Local Government.

4 (b) – The Trustees are empowered to release funds for “**whatever**” the Board decides. There should be parameters for what the funds may be used for. For example, there should be a restriction that the funds would be used for community legacy, social and infrastructure projects. Alternatively, a link should be made to the sections 8 and 9 dealing with **The Community Development Agreement and Consultations**.

It should stipulate that cash payments should not be made from the funds.

5 (2) – Funds to be disbursed for “whatever’ the community decides. Same comment as on 4 (b).

5 (5) – The Chairman of the LGA should not be the custodian of the fund. 5 (6) states that the Local Government is an approving authority, thus the need for it to warehouse the funds is not clear. The Fund should be in the account of the Trust.

5 (7) - If the funds are not warehoused by the Local Government, there will be no need for an administrative charge.

6 (1) The Federal Government should pay directly to the Trust and not to the LGA.

6 (1b) – This speaks of royalties from “**petroleum production on land**”. This will once more ignite the onshore-offshore dichotomy and should be eliminated. Just as states have a right to funds derived from offshore locations, so should Local Governments and communities who bear the brunt of the negative impacts of offshore petroleum activities.

6 (2) This provision apparently covers onshore and offshore. It is, however, not clear what is meant by “20% of an aggregate of the total royalties accruing to the Federal Government of Nigeria for petroleum production, **evenly divided by the number of Local Governments with facility communities in Nigeria.**”

6 (3) – This clause mentions that there would be no financial benefits in a case where there is “no petroleum community within a Local Government.” The point to consider is that negative impacts are not restricted to communities that directly host petroleum facilities. This is a point that could generate divisions and conflicts, especially with the knowledge also that oil fields beneath the ground spread beyond the above-ground locations of facilities.

14 – This power to make regulations with regard to the use of the **Restoration Fund** to ameliorate the effects of pollution and environmental hazards in the host communities should be reposed in the Minister of Environment and not the Minister of Petroleum Resources. This is to ensure accountability since the Petroleum Ministry is complicit in the harms that communities suffer.

7 _ The access to information should be free and made public and such information should be made available to individuals who demand for them and to public on the Trust's website.

4.0 Conclusion

It is important that the Host Communities Bill is packaged and seen holistically and not merely as a cash dispensing instrument. The demands of the communities go beyond financial considerations, as important as those are. The right of the people to be consulted before any exploratory and exploitation actions are conducted in their communities/territories should be adequately recognised in the Bill.

REFERENCE

- i Chapter 4 of the Solid Minerals Act 2007 is on **Environmental Considerations and Rights of Host Communities**.
- ii See Social Development Integrated Centre (Social Action (2013): *Communities and the Petroleum Industries Bill – Memorandum to the Joint Senate Committee on the Petroleum Industry Bill (PIB, 2012)*, Abuja (18-19 July)

About HOMEf

HOMEf is an ecological think tank and advocacy organization registered in Nigeria. Nigeria is our base but Africa is our focus. HOMEf works to bridge the yawning gap between policy/ decisions made by government and the actual needs at the grassroots.

HOMEf works with local communities to build and share knowledge. We recognize that current global crisis have systematic roots and the prevalent paradigms of development and growth based on competition will lead to critical destruction of biodiversity and continued destructive extraction of natural resources as well as dependency on risky technologies. In all these concerns of grassroots communities are ignored, repressed or exploited. We work to build solidarity and ensure justice.

Our Core Values:

Justice & Equity in all circumstances

People and the planet in harmony and free from exploitation

- Dignity (Respect)
- Action (Solidarity)
- Knowledge

Important Documents:

1. HOMEf Re-Source Democracy booklet
2. Environmental impact Assessment Act
3. Community Guid to Environmental Monitoring by HOMEf (for Oil/Forest communities)

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