International Journal of Innovative Legal & Political Studies 10(4):29-35, Oct.-Dec., 2022

© SEAHI PUBLICATIONS, 2022 www.seahipaj.org ISSN: 2467-8503

Petroleum Industry And The Communities Bill: A Critical Review

[1]Nkpah, Aakpege Young Ph.D & [2]Maclean, Monam Goodnews Ph.D

[1]Department of Sociology
Faculty of Humanities, Social and Management Sciences,
Edwin Clark University, Kiagbodo. Delta State, Nigeria
youngitize2020@yahoo.com

[2]Department of Sociology
Faculty of Social Sciences
University of Port Harcourt, Port Harcourt, Nigeria
macmonam@yahoo.com

ABSTRACT
Everything is wrong with the management of Nigeria's oil industry. Everyone, the foreigners perhaps more than Nigerians, know the sorry state of the industry, Sadly, the government has been incapable of dealing with the problems associated with the industry, mainly cartelism, mismanagement, inefficiency and corruption for a variety of reasons. The petroleum industry bill appears an attempt to deal with the multifaceted and multidimensional problems of the industry. However, the bill has been greeted with all sorts of controversies. There have been allegations and counter allegations by vested interests. This study use content analysis. The study is concerned with these controversies but rather we aim at doing a broad examination of the bill in order to raise policy issues that may help in improving the bill as amended.
Keywords: Petroleum industry bill, community, oil, resource management, down stream, up stream

INTRODUCTION

It is critical that petroleum, as a key energy source, is the most internationally traded commodity since the 20th century. Industries and virtually every human activity seem to have depended on one form of energy or the other over time for which the oil has for long become the significant choice (tamuno,1999; Ikimi, 1972; Ibeanu, 2005; Ikporukpo, 1999). The implications for oil-producing countries are multidimensional, varying at many levels both for the environment and development of these countries Ikeni (1999). In fact, this global interest in the commodity has meant a lot for the development of oil-producing countries especially at this time of crisis in the global capitalist system. Countries that depend substantially on the petroleum industry are already seeing drastic reduction in revenues. They have seen prices of export products falling to the bottom in more than four decades. This kind of situation speaks volume about mono-cultural economies like Nigeria and their vulnerability to external shocks. It follows that reforms in the petroleum sector that respond to these issues meaningfully will certainly be in the interest of Nigeria in both the short and the long run (Eteng, 1998).

The oil industry in Nigeria is more than five decades old. By the way, petroleum laws had existed long before exploration and production activities even started. Initial legislation on the oil industry was in 1889 (Petroleum Ordinance). This was followed almost in quick succession by the Mineral Regulation of 1907. These laws formed the basic foundational framework for operating the petroleum sector at the time. Although by law only British oil companies were eligible to explore for oil at this time, the first oil

company to start exploration for oil was the German Bitumen Company around 1908 in the area of Nigeria nowadays known as Ondo State Taiwo and Akin-Aina (1991). However, the outbreak of the First World War (FWW) disorganised the company and worsened any chances of sustained effort at finding the oil. By 1938, Shell D'Arcy Petroleum Development Company had been granted concession by the British colonial state of Nigeria which gave the company license for exploration of oil throughout Nigeria. There was no competition, meaning that Shell D' Arcy would have to search for oil without competitors for some fairly long time. This lasted until 1959 when the monopoly was broken with the result that other companies such as Mobil, Chevron (then called Gulf), Agip, Elf (then called Safraip), Teneco and Amoseas being granted licenses were also to begin exploration activities in the country (Onosode, 2000). A new petroleum law was formulated in 1969. This law replaced previous petroleum laws earlier mentioned. For many the Petroleum Act of 1969 remains the major framework for analysis and management of the petroleum sector in Nigeria, perhaps because of its attendant Petroleum Drilling and Production and Regulations component Onosode, (2000). The law became the foundation of the oil industry in Nigeria. The Act vested ownership and management of the oil in the Nigerian state. Most sections of the Act deal with issues of exploration and production licenses, leaving out matters of development of the oil-producing communities and damage to the environment in real substantive terms. There is a provision for compulsory effort on the part of oil companies not to pollute the environment. There is need to PIB and community involvement.

Fundamental Objectives of the Bill

The objectives generally appear well-reasoned. It includes freedom to apply for grant or award of leases and licenses for the exploration and production of petroleum. The Bill also states that the management of petroleum resources shall be conducted in accordance with the principles of transparency, good governance, and sustainable development of Nigeria. It makes a commitment to ensuring community development, and participation of Nigerians in the industry fundamental objectives. The government shall also ensure compliance with international standards on the protection of the environment. These objectives are doubtless laudable (Idoniboye & Andy, 1985).

However, the restatement of the sovereignty of the Nigerian state over petroleum on behalf of Nigerians is bound to generate its own controversy. Agitation for resource control has always focused on attacking provisions of this nature. As recently as 2005, the National Political Reform Conference recommended that communities should be involved in the 'management and control of the resources in their communities by having assured places in the Federal Government mechanisms for the management of the oil and gas exploration and marketing'. The absolute sovereignty of Nigeria over petroleum is bound to be an explosive issue.

Multiplicity of Institutions

The long title of the Bill makes it explicit that the Bill sets out to create institutions and regulatory authorities for the Nigerian petroleum industry. The Bill proposes six or seven institutions, namely:

National Petroleum Directorate (s.12); Nigerian Petroleum inspectorate (s.37); Petroleum Products Regulatory Authority; National Petroleum Assets Management Agency (s.113); Nigerian Petroleum Research Centre (s. 148); National Frontier Exploration Service (s.174); Petroleum Technology Development Fund (s. 223) and Petroleum Equalization Fund (s. 199). (Idonbiye & Andy, 1995)

Many of these bodies are existing under various Acts. It is therefore tidier that they should all be included in just one statute for ease of reference. Here we are referring to Petroleum Equalization Fund, Petroleum Technology Development Fund and to a limited extent the Petroleum Products Regulatory Authority. Omorogbe, (2021)

The question can nevertheless be asked whether some of the bodies are not a mere replica of one another or whether the functions of the institutions cannot be conveniently performed by just three institutions. With the National Petroleum Directorate (N PD) it is difficult to fathom what the Ministry of Petroleum will be doing. Indeed section 13(s) of the Bill is indicative of the overlapping functions of some of the institutions. The paragraph provides that the NPD shall 'promote compliance with all legislation by all

participants and stakeholders in the industry'. That exactly is the function of the Nigerian Petroleum Inspectorate unless one is interested in the needless hairsplitting exercise of distinguishing between enforcing and promoting compliance with the laws. The country can conveniently do without the National Petroleum Directorate with its full complement of bureaucracy and Board (Kemedi, 2003).

At a time when the proposal to establish a Petroleum University is at an advanced stage, it is difficult to see the necessity for the Nigerian Petroleum Research Centre. The functions of the National Petroleum Assets Management Agency and the National Frontier Exploration Service can be undertaken, indeed should be undertaken by the Ministries of Finance and Petroleum Resources respectively. There is a need to spend some more quality time in streamlining these institutions. On a technical note the objects and functions of the institutions can also be harmonized and reduced. Creating more bureaucracies has not proved an effective solution to our problems in this country if the truth must be told. Indeed multiplying them may multiply inefficiencies if the underlying attitude and orientation persist.

Funding of the Institutions

Section 28 of the Bill provides that a portion of fiscalised crude or gas shall be paid into an account of the Directorate to be shared by the institutions for the purpose of their operations. This provision is likely to be misunderstood by many. In the first place, the fiscalised crude or gas proposed to be paid into the account of the Directorate is supposed to be part of the revenues accruing to the Federation which ought to be paid into the Federation Account. Thus, section 28 of the Bill may be declared unconstitutional -if challenged in a court of law. Second, there is no justification for creating bodies or institutions that cannot be funded in the normal course of governance. The extra- governmental funding reflects a tendency to spend money accruing from the upstream sector before any serious accounting or reflection on how to spend the money is done. It is as if these institutions are being created simply because we can get the oil companies to fund them. That is not right at all (Idonbiye & Andy, 1985)

Restriction on Suits against the Institutions

The Bill follows in the Nigerian tradition of either creating special limitation in respect of the period within which suits can be filed against statutory bodies or of requiring that pre-action notice be given to such bodies before they can be sued. Although the Supreme Court has repeatedly affirmed the constitutionality of such provisions and laws, there is little doubt that they restrict rather than grant access to the courts. On this score such provisions are objectionable. The National Assembly would be rendering an invaluable service to this country if it crosses out such provisions which dot the present Bill. Section 61 of the Bill contains the two types of restrictions (Omorogbe, 2021).

Resolution of Disputes

Some of the new institutions notably the Inspectorate and the Petroleum Products Regulatory Authority are saddled with resolving disputes between persons coming under its operations (s. 68) Omorogbe, (2021).

The Bill stipulates that disputes cannot be referred to the Inspectorate unless parties have attempted to negotiate. One can understand the desire to ensure that matters are conciliated to prevent needless recourse to courts with the attendant acrimony and delay. But the point is that these bodies are not suited for settling disputes. It would have been preferable to have a provision which makes it mandatory for parties to attempt to resolve disputes by conciliation and arbitration before having recourse to the courts. In that case the arbitration would be governed by the relevant Arbitration and Conciliation Act. There is the tendency for the bodies to lose focus if this aspect of the Bill. It is also needless to state as is done in section 72 of the Bill that parties aggrieved by the determination of the bodies can seek judicial review. That is a right conferred by the Constitution that needs no restating in an inferior statute.

Transparency and Openness

The Bill makes serious and noteworthy attempts at granting public access to the activities of the institutions. Sections 306 and 344 are typical in this regard. Section 306 makes it clear that registers of

technical licenses issued under sections 301 and 302 should be made to members of the public who can also receive certified true copies of the documents upon payment of the prescribed fee (Omorogbe, 2021). Section 259 voids confidentiality clauses in respect of royalties, bonus, taxes and any other financial matters that directly affect the revenues derived by the State from exploration and production of petroleum. This provision should enhance accountability and openness. At the present time, most production sharing agreements and Joint Venture Agreements between the NNPC and the oil companies are shrouded in baffling secrecy. The provision in section 259(3) which states that the determination of the Directorate as to whether a piece of information is proprietary and so outside the openness clause in section 259 shall be final is however likely to detract from the benefits to be derived from the clause. The Bill should attempt to lay down objective criteria for determining such an important question (Omorogbe, 2021).

Privatization of NNPC

Section 136 of the Bill creates the Nigeria National Petroleum Company Limited to succeed the NNPC and inherit the latter's assets and liabilities. At inception ownership of the Company shall be vested in the Federal Government, but after two years of its incorporation government may divest its interest in the company and sell same to members of the Nigerian public through the Nigerian Stock Exchange. It appears that the privatization of the Corporation is being done outside the existing system supervised by the National Council on Privatization and under a different statute. The reason for using this procedure is unclear, but it may raise concern as to the genuineness of the ultimate privatization of the corporation, particularly as the petroleum industry is a major sector of the economy which privatization section 16 of the Constitution forbids (Omorogbe, 2021).

Redundant Provisions

Provisions relating to the incorporation of Joint Ventures as Limited liability companies are largely redundant as the issues are already covered by the Companies and Allied Matters Act. We have in mind such provisions to the effect that the Board of the companies shall be accountable to shareholders, act in good faith, treat shareholders equally etcetera (s. 252). The same consideration applies to the specified functions of the Board and the rights of shareholders in sections 253 and 254 respectively. Section 408 which deals with prohibition of forced labour and child labour and also the upholding of the right to collective bargaining are matters which have been adequately dealt with in our Labour Statutes. Repeating them in the Bill may lead to the unintended result that the operators may carry on as if the other provisions in the Labour laws which are not repeated are to be disobeyed or do not carry the same weight which is not the case (Omorogbe, 2021; Kemedi, 2003).

Equity Participation for Communities in Joint Ventures

There is a allegedly emanating from the Presidency that the communities should hold 3 per cent of the shareholding of the Joint Ventures.53 There is no doubt that equity participation by the communities is better than the current regime of no-participation or even denial of the right of the communities to control their natural resources. Nevertheless, the proposal is at best hazy. To start with, we need to be clear as to what is meant by 3 per cent equity participation. Is it 3 per cent of the equity held by the current NNPC which is to be transferred to the National Oil Company or are the communities to hold 3 per cent in relation to the whole shareholding of the Joint Ventures? This clarification is important as it would affect the quantum of the holding of the communities in the ventures. It should be noted that the Bill under discussion does not contain the provision. What is in the Bill in section 246 (3) is that each joint venture company shall be owned by the parties to the existing joint ventures, in proportion to their existing participating interests, with the exception of the participating interests held by the Nigerian National Petroleum Corporation, which shall henceforth be held by the National Oil Company (Oyehadejo & Ughala, 1995).

Another matter that requires clarification in respect of the, and which is really a matter to be sorted out by the communities, is to determine those who will hold the shares or represent the communities on the

Board of the Joint Ventures. This is a matter that should be handled carefully as the equity participation may generate acrimonious divisions that can be the enemies of the company to keep the people of the oil-bearing communities politically divided and ultimately weaken their resolve to be in the driver's seat of the oil industry. In other words, the offer of equity participation may turn out to be a Greek gift unless the communities have a reasoned common position on these issues Frynal,(2000).

While no easy solution may be the communities may decide to float an Oil Communities Incorporated Trustees (OCIT) to take up the equity on behalf of the people. The different communities would have nominated persons of impeccable moral character as Trustees preferably from each of the states but with the state apparatus having no input whatsoever in the nomination. The possible advantage of this suggestion is that the articles of incorporation would detail how the profit accruing to the communities would be used. The OCIT could become a parallel NDDC. The decision is for the people themselves to take. Whatever the position equity participation in the Joint Ventures is a matter to which we need to pay close, serious and careful attention Onosode (2000).

It is arguable that the better approach to the management of the oil industry is not to continue with the Joint Venture system as this has a tendency to compromise government institutions in that government cannot be expected to regulate the activities of its business partners. As we noted elsewhere, the Technical Assistance Agreement is a better commercial mode that has been tried and used in other oil-producing countries that are governed by serious minded power elite. Under such agreements, the country owns the crude oil, the facilities and equipment which is managed by the National Oil Company Manby, (1999). The oil companies are lust technical advisers paid negotiated management fees pending such a time when their services would no longer be needed. The agreement also facilitates technology transfer and the elusive local content more easily than the present commercial agreements in place Gbadegesin (1998). With democratic governance based on the will of the people coupled with the true ownership of the oil, there would be no joint ventures. The people would manage and control their resources through their own governments, not governments imposed by electoral fraud and mafias Etu-efeofor, (1997).

Indefensible Environmental Remediation Levy

States and Local Governments are required to pay 1% and 0.5% of their annual derivation allocation into Remediation Fund under the custody of the Inspectorate to restore the environment in cases of dames caused to the environment as a result of sabotage (s.286). This is likely to be contested by the States and the Local Governments as making them vicariously liable for the crime of sabotage Owolabi and Okwechime, (2007). This is a fundamental negation of our criminal jurisprudence. The Bill does not make any Provision for refund in any year when there is no act of sabotage. No reason was also proffered for not making the Federal Government to pay any percentage of the royalties received by it for remediation in cases of sabotage. After all, the Federal Government controls the security agencies that ought to be responsible for preventing sabotage in the first place Owolabi and Okwechimse, (2007). There is no justification for the levy. It should be deleted from the Bill. However, the financial provision required in section 285 of licensees for remediation is justifiable since it is more or less like a caution fee that may be returned to the licensees if not used up. It is hoped that it would make the activities of operators more environment-friendly.

The Bill, the Environment and the Communities

The proposal in section 283 that every licensee shall within three months of the coming into effect of the Bill submit an environmental programme or an environmental quality management Plan dealing with such specific matters as its environmental objectives, commitment to comply with relevant laws and regulations and also remediation of environmental degradation is clearly well motivated. It is without doubt based on an awareness of the devastating effect of untrammeled exploitation of oil and gas on the environment. Nevertheless, the provisions inexplicably and inexcusably exclude the communities which bear the brunt of environmental degradation from its purview (see also 405(3) Ofonosode 2000; Omoragbe, 2021). Indeed section 284 categorically states that the Inspectorate shall consult with the Federal Ministry of the Environment and the State Ministries of Environment within which the license or

lease is situated and with any other relevant bodies within which the licence or lease is situated'. Communities are conspicuously omitted. Modern global thinking in environmental protection recognizes that without the communities environmental plans tend to be shallow and protective only of the interests of a few local collaborators of business concerns. This aspect of the Bill needs to be reworked to make it align with the interest of the oil-bearing communities Manby, (1999).

The processes of awarding licenses are by competitive and open bidding process. This speaks to years of abuse and cronyism when mining and prospecting licences are given to people who lack the technical knowhow or the means to drill boreholes near the lagoons (s.270). It is heartwarming that the Bill specifically prohibits discretionary awards (s. 270(2) Ikporokpo, (1999).

Positive Features of the Bill

The Bill has useful or rather potentially useful provisions. These include, among others, consumer protection (s.386), provision of service to customers (s. 387), competition and market regulation (s.391), encouraging indigenous participation in the petroleum sector (ss398-402), Nigerian Content (ss. 403-404). Indeed the Bill sets minimum limits for Nigerian board membership and managerial and professional cards.

Policy Statement

1. That the National Assembly should amend the bill as follow on the Petroleum Industry Bill has been created for consultation with community people and the civil society;
2. That section 1 of the proposed bill be deleted and replaced with the following:

"Property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the exclusive economic zone and extended continental shelf shall vest in the oil producing communities." In other words, the control and management of natural resources including petroleum should be vested in the oil-producing communities who should pay taxes to the Federal Government in Nigeria;

That Community Development Agreements should be incorporated into the PIB to ensure development of the oil-producing communities. This should be a prerequisite for the issuance of licenses as obtained in the Mineral and Mining Act of 2007; That the aspirations of the various ethnic nationalities as contained in their Bill of Rights and

Declarations such as the Ogoni Bill of Rights (1990), The Charter of Demands of the Ogbia People (1992), Kaiama Declaration (1998), The Resolutions of the First Urhobo Economic Summit (1998); The Akalaka Declaration (1999); The Warn Accord (1 999); The lkwerre Rescue Charter (1 999); The First Niger Delta Indigenous Conference (1999); Oron Bill of Rights (1 999 and he Niger Delta Peoples' Compact (2008) be addressed in the PIB; That the role of communities in matters concerning granting of licenses for oil prospecting and production be clearly spelt out in the PIB; That the PIB should properly stipulate penalties for environmental violations by operators of the oil industry in Nigeria and expunge section 286 which requires States and Local Governments to pay 1 % and 0.5% of their annual derivation allocations into a Remediation Fund under the custody of the Inspectorate for the purpose of restoring the environment in cases of damage caused to the environment as a result of sabotage; That the Land Use Act be repealed in line with provisions of the PIB.

REFERENCES

Eteng, I (1998). "The Nigerian State, Oil Exploration and Community interests: Issues and Perspectives" in Adewunmi F. ed., Oil Exploration: The Slate and crisis in Nigeria's Oil Bearing Enclave, Lagos: Friedrich-Ebert-Stiftung.

Etu-Efeotor J.O 1997). "Anticipation and Management of Crisis. A Case Study" in Soremekun, K.ed, Perspectives on the Nigeria Oil Industry, Lagos: Ankra hooks.

Fawole, W.A (1994). "The Military and the Future of Democracy in Africa", in Omoruyi, O. et al eds., Democratization in Africa. African Perspectives, Vol. Two, Benin City: Hima & Hima Ltd.

Feicrabend, I.K, R.L. Feierabend and B. Nesvold (1971). "Social Change and Political Violence: Cross-national Patterns", in Finkle, .J.L and Gable R.W eds., Political Development and Social Change, New York: Wiley and Sons Inc.'

Frynas, .1 .G (2000). Oil in Nigeria.' conflict and Litigation between Oil Companies and Village Communities, London: LIT VERLAG.

Gbadegesin, M (1998). "The Impact of Oil Production Activities on the Environment: Implications for Peasant Agriculture" in Adewunmi, F. ed. Oil Exploration: The Stale and Crisis in Nigeria 's Oil Bearimig Enclave

Griffiths, M and O 'Callaghan, T (2002). International Relations: The Key Concepts, London: Routledge.

Gurr, R.T. (1969). Why Men Rebel, Princeton, New Jersey: Princeton University Press.

Ikein, A (1990). The Impact of Oil on a Developing County, New York: Praeger.

Ikporukpo, C.O. (1999). "Petroleum, Fiscal Federalism and Environmental Justice in Nigeria", paper delivered at IFRA Monthly seminar, University of Ibadan, 7 July.

International Institute for Democracy and Electoral Assistance (IDEA) (2001). Democracy in Nigeria: Continuing Dialogue(s) for National-Building, Sweden: International IDEAP.

Kemedi, V.D (2003). "Community Conflicts in the Niger Delta: Petro-Weapon or Policy Failure?" Berkeley Workshop on Environmental Politics Working Paper No. WP 03-12.

lbeanu, O (2005). "Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria's". in Environment Change and Security' Project Report,' Issue No. 6, The Woodrow Wilson Center, summer.

ldoniboye, E.B and Andy A.l (1985). "Effects of Oil Pollution on Aquatic Environment", in 77w Petroleum Industry and the Nigerian Environment, proceedings of an International Seminar sponsored by Federal Ministry of Housing and environment and NNPC, Port-Harcourt.

Ikime, O (1972). "Colonial Conquest and Resistance in Southern Nigeria", Journal of the Historical Society of Nigeria, Vol. V1. No.3.

Manby .B (1999a). The Price of Oil.' Corporate Responsibility and Human Rights Violations in Nigeria's Oil-Producing Communities, USA: Human Rights Watch,

Manby, B (l999b). "The Role and Responsibility of Oil Multinationals in Nigeria", Journal of Internm1ional Affairs, Fall, 53, No.1.

Omorogbe, O. (2021), Oil and Gas Laws in Nigeria, Multhouse Press.

Onosode, G (2000). Environmental Issues and Challenges of the Niger Delta, Lagos: Lily Bank Property and Trust Limited.

Owolabi, O and Okwechime, I (2007). "Oil and Security in Nigeria: The Niger Delta crisis", in African Development, Vol. XXXII, No. I. Council for the Development of Social Science Research in Africa.

Oyehadejo, O. and Ughaja. V. (1995). "Oil as Threat Well Blowouts, Pipeline Failures and Spills", Nigeria Oil and (lax Mon/lily, September, vol. I No. 9.

Saro-Wiwa, K (1995). A Month and a Day: A Detention Dairy, Ibadan: Spectrum Books. Limited.

Sun, Lagos May 18, 2009.

Sun, Lagos May 23, 2009.

Taiwo, O. and Akin-Aina, T. (1991) "Environmental Implications of Oil-Production and Policy Framework in Nigeria", in Tomori, S.ed: Oil and Gas Sector in the Nigerian Economy, Lagos: faculty of Social Sciences, University of Lagos, Nigeria.

Tamuno, T. (1999) "On the Niger Delta Question", Lecture delivered under the auspices of the Rivers State College of Arts and Science, Port-Harcourt and the Rivers State University of Science and Technology, Nkpolu, Port-Harcourt.