

THE PETROLEUM INDUSTRY BILL 2008:

***THE OFFICIAL POSITION OF THE
GOVERNMENT OF RIVERS STATE***

JULY, 2009

THE PETROLEUM INDUSTRY BILL:

WHAT HOPE FOR RIVERS STATE?

The Petroleum Industry in Nigeria has for many years remained our major source of national income just as Rivers State and other states of the Niger Delta of Nigeria have remained the principal States where the mineral resource is found and exploited. It is therefore necessary that we contribute to the discussion on charting a transparent and a viable path for the reform of the Industry via the Petroleum Industry Bill as prepared and submitted to the National Assembly. Accordingly, the positions canvassed in this paper on sections of the Bill are of great interest to the Nation and especially Rivers State.

The Petroleum Industry Bill is a proposed legislation for a new and unified legal framework for the re-organization and operation of the Nigerian Petroleum Industry. The Legislation is an outcome of the work of the Oil and Gas Reform Committee that was inaugurated on the 24th of April, 2000 under the Chairmanship of Dr. Rilwanu Lukman (CFR) then serving as the Presidential Adviser on Petroleum and Energy.

The Federal Government constituted the Petroleum Sector Reforms Committee without any deliberate attempt at involving the States and Communities where petroleum is produced. If it did, issues such as vesting one hundred percent of the petroleum resources in the sovereign State of Nigeria and other related crucial issues would have been exhaustively discussed at the outset. It should therefore be on notice and recorded accordingly that the proposed Bill was made without the desired input of the people and Government of the South-South zone, or the Niger Delta region that produces over 90% of the nation's petroleum resources.

The situation once more reminds us of the recommendation of the Willink's Commission of 1958 which provided that people who are non Niger Delta inhabitants could not effectively legislate for the people that inhabit the difficult terrain of the Niger Delta. The Rivers State presentation herein, is another attempt to forestall the past injustices and inequity that have

recently plunged the Niger Delta and the nation's petroleum industry into the chaos which the President is trying to resolve through the pronouncement of Amnesty.

The Bill seeks to create Institutional Instruments such as National Petroleum Directorate, Petroleum Products Regulatory Authority, Nigerian Petroleum Company Limited, National Petroleum Asset Management Agency, Nigerian Petroleum Research Centre, National Frontier Exploration Services, Petroleum Equalization Fund, and Petroleum Technology Development Fund.

In so doing, the Petroleum Industry Bill (PIB) has woefully failed to:

(a) address or redress the issues that have given birth to the current challenges in the Niger Delta and

(b) guarantee the uninterrupted flow of the Nigerian oil and gas with a view to restoring and recapturing investor confidence.

In this presentation, Rivers State hopes to highlight certain structural and procedural deficiencies in the Bill and make suggestions that should be considered in passing the Bill into law or otherwise.

1.0 FUNDAMENTAL OBJECTIVES:

The Bill provides *inter alia* that sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf and the Exclusive Economic Zone shall vest in the Sovereign State of Nigeria for and on behalf of the people of Nigeria.

This should be amended to recognise the rights and obligations of the States, Local Governments and Communities where petroleum is produced as well as their participatory rights and obligations in the management and control and such other ancillary matters related to investments set forth in the Bill.

This position of the Rivers State Government is consistent with similar provisions in the Solid Minerals Act recently passed into Law. As it is the practice worldwide, Rents and Royalties should be paid to the States and Communities that harbour petroleum production.

2.0 INSTITUTIONS OF THE INDUSTRY [Sections 9 – 220]:

The Bill provides for the establishment of the following:-

1. The National Petroleum Directorate
2. The Nigerian Petroleum Inspectorate
3. The Petroleum Products Regulatory Authority
4. The National Petroleum Asset Management Agency
5. The Nigeria National Petroleum Company Limited
6. The Nigeria Petroleum Research Centre
7. The National Frontier Exploration

It is necessary to clearly understand the proposed source of funding for these Establishments.

2.1 *FUNDING* [Section 28]

The Bill provides in Section 28 that *“a portion of fiscalised crude as agreed under the terms of this section shall be paid by every Company engaged in petroleum operations in the upstream sector of the upstream Petroleum Industry into an account of the Directorate designated for the sole purpose of collecting the said fiscalised crude for the use of and shared by:*

- a. The Directorate*
- b. The Inspectorate*
- c. The Agency and*
- d. The Centre*

in accordance with the amounts necessary to fulfill their function and as required by the budgets of each of these Institutions”.

In addition, funding of the Petroleum Products Regulatory Authority will be amongst others, *“... from an administrative charge of 0.3% of the price of*

a litre of annual average consumption of white products per day to be inserted into the template.” Section 93 [1] [b]

2.2 IMPLICATIONS:

This gives an open cheque to these bodies and removes them from national budgetary control. It will increase the price of white products and reduce the amount payable into the Federation Account. It may be necessary to examine whether a move to remove Petroleum Sector funding from the control of the National Assembly is a wise step. Is this the route taken by other nations where oil is produced? Certainly not - especially for progressive democratic Countries like Norway. It would be necessary to emulate successful practices in progressive democratic countries.

In this wise, we suggest that whatever may be the budget of these establishments, since they are National Institutions ought to come under the purview of the National Assembly as has been the case so far.

3.0 THE NPD [Sections 12 – 36]

The National Petroleum Directorate – The NPD - serves as the Secretariat of the Minister. The Bill proposes a legal personality with perpetual succession and a common seal for the NPD.

3.1 IMPLICATION:

This Directorate is expected to replace the Ministry of Petroleum. Is there anything wrong with the Ministry of Petroleum or does the Minister wish to have a Directorate whose funding is outside the purview of the National Assembly and also create a Director-General instead of Permanent Secretary? We believe the Ministry of Petroleum should remain a Ministry and function as such. If this trend is allowed, other Ministries would also create Directorates for themselves for instance, Agriculture, Mines etc.

4.0 THE NPI [Sections 37 - 74]

The functions canvassed in the Bill for the National Petroleum Inspectorate show that for the State to be well informed of the goings on, she must be represented in the 12 or so persons representing special interests. The

interests of the Oil Producing States require that they be represented separately, State by State.

Since this may not be accommodated by the 12-member special group, ***if the Inspectorate must be***, then we ***INSIST*** on an increase in the number as may be necessary and Rivers State ***MUST*** be represented and her Representatives nominated by the Government of the State. This may also apply to other Niger Delta States.

5.0 THE PETROELUM PRODUCTS REGULATORY AUTHORITY (PPRA)

[Sections 75 - 112]

The functions assigned to this Authority in the Bill are unwieldy. The setting of benchmark prices for Petroleum products should not be a problem that requires an Authority as this clearly conflicts with the idea of commercialization on which this whole exercise is based.

However, where the National Assembly decides to retain the PPRA then its membership ***MUST*** include Rivers State and the Representative nominated **by the State Government. This may also apply to other Niger Delta States.**

6.0 NATIONAL PETROLEUM ASSETS MANAGEMENT AGENCY (NAPAMA)

[Sections 113 - 135]

The 13 member Governing Board ***MUST*** include an indigene of Rivers State because of the upstream activities NAPAMA is charged with. Indeed, as in all cases earlier highlighted, the Law must state clearly that all Oil Producing States have a nominee each with relevant oil industry experience in NAPAMA. The same goes for the Nigerian Petroleum Research Centre. The inclusion of all Oil Producing States in the Governing Board must be clearly stated in the Law.

7.0 THE NIGERIAN PETROLEUM RESEARCH CENTRE

In the past, the center has suffered from lack of effective funding and direction. In consideration of the importance of research to the success of the Industry and the added responsibilities imposed by the Bill to the Centre, it is suggested that the Bill provides a specific and quantifiable value

of the fiscalized crude as a percentage of production for Research and Development.

8.0 THE NATIONAL FRONTIER EXPLORATION SERVICES

What is the necessity for this? Oil exploration is a commercial activity. If there is oil in those Frontiers, Oil Companies would willingly go there to explore.

In the past, billions of the Nation's resources were swallowed in those Frontiers without positive results. The Chad Basin experience is still fresh. The enormous waste of resources recorded over many years, led to the discontinuance of exploration activities at the Chad Basin.

There is absolutely no need to politicize a wholly commercial venture. The Nigerian Nation did not collectively invest money in the Niger Delta Area before oil was discovered in there. What then is the rationale for Nigeria to invest in such Frontier exploration? Of course this promises to be another collective colossal waste.

We must note that if this proposal succeeds, the proponents will turn it over to private interests. Let the private sector therefore take the lead here. Otherwise, we MUST include the outer sections of Oceans and Seas as Frontiers that qualify for such Federal Government financed operations.

9.0 THE PETROLEUM EQUALIZATION FUND

[Sections 174 - 197]

The Bill stipulates that funding for this would be from "*...net surplus revenue recovered from petroleum products marketing companies...*" – **Section 174[1]** What is the meaning of "*net surplus*" revenue accruing from petroleum products marketing companies? Have we as a Nation sat down to calculate the cost of this to those who do not benefit from the PEF?

There is no product in this world that is sold at the same price in every part of a given Country. Products from the North to the South usually sell at higher prices. Why then should petroleum products cost the same at source and at the remotest corners of the Country?

In any case, can we say with sincerity that the Fund so far has achieved its aim? Are petroleum products truly sold at a uniform price all over Nigeria?

Are we not aware that some Riverine Towns/Villages close to the source, buy products at much higher prices than Towns and Villages far removed from the Source? If the Nation must continue with this trend then at least we ought to begin to realize and appreciate the cost of this largesse to those that do not benefit from the so-called "equalization". In a truly Federal State, Nigeria inclusive, this Equalization Fund ought to be [and indeed should be] scrapped. Let anyone name any other Country in the World that maintains such a Fund.

This indeed negates the idea of commercialization and full deregulation because this is clearly an unwarranted subsidy not motivated by any commercial considerations.

We therefore restate that this Petroleum Equalization Fund be scrapped and deleted from the Bill.

10.0 THE PETROLEUM TECHNOLOGY DEVELOPMENT FUND [Sections 198 - 220]

This is a laudable program that has failed to live up to its name. If this Fund must continue to exist, its Headship must rotate among the Oil Producing States or all States of Nigeria.

In the spirit of a true one Nigeria, we must be seen to be impartial and just, especially for a product that is derived from one part of the country.

Therefore, for transparency, equity and fair play in the Petroleum Industry, the Headquarters of the Petroleum Technology Development Fund should be relocated to the South-South and specifically, Rivers State where bulk of the nation's petroleum activities abound. The post of the Executive Secretary should be rotated among the oil producing States of the Federation.

As at today, not one person from any of the Oil Producing States has been Head of or Secretary to the Fund and this is no longer acceptable to us! This is largely why scholarship awards and businesses of the Fund are skewed.

A situation where one section of the country takes over completely all aspects of the management of an industry which raw material is located elsewhere is very unhealthy.

The 9-member Board recommended for this Fund cannot be said to be reflective of the full scope of the Fund. It is not proper that the Minister serves as Chairman. The Board should have a separate Chairman and be truly national in nature in view of the funding pattern which derives from the National purse. Nomination to the Board must be made by the Government of each federating unit and this must be stated very clearly in the Law.

11.0 THE NIGERIAN NATIONAL PETROLEUM COMPANY LIMITED [Sections 136 - 147]

The Bill stipulates that an "*NNPC Limited*" shall be incorporated within three months after the coming into force of the Act, as a private Company limited by shares under the Companies and Allied Matters Act (CAMA) 1990, as the successor Company to the assets and liabilities and commercial functions of NNPC – Sections 136 [1] and [2]. Akin to this, is the incorporation of the Joint Ventures.

11.1 INCORPORATED JOINT VENTURES (I.J.V)

The Bill also stipulates that with effect from the commencement of the Act - precisely twelve months, - all existing Joint Venture relationships shall each be incorporated with the parties to the J.Vs as Shareholders of the incorporated entity, in order to create financial self sufficiency.

The interest held by NNPC in the J.Vs shall be held by NNPC Limited and the corporate governance regime of the Incorporated J.Vs shall be similar to that of NNPC Limited – Sections 221 - 224.

11.2 IMPLICATIONS OF BOTH PROPOSALS:

These two proposals above are extremely delicate and must be clearly understood by Nigerians, especially Rivers State and the other States of the Niger Delta. All the oil and gas reserves in a Company's current portfolio shall form the basis for the number of shares to be held by each party [Company] in the incorporated entity.

In the case of the NNPC Limited, it would be all the oil & gas reserves belonging to this nation. The implication of having all our oil & gas assets domiciled in a **Limited Liability Company** implies that the Board of Directors of such a Company would be free to deal with the assets as it deems fit. Some of the actions it could take are as follows:

- a. It could borrow from the local and international capital market/banks and finance houses using our national assets as collateral.
- b. It could purchase whatever it wishes to, from anywhere in the world using our only national asset.
- c. It could pledge our entire national asset for important and even un-important programs and projects.
- d. It could trade with our assets and even get involved in various risky and speculative transactions and ventures (futures market).
- e. Since it could sue and be sued, then it follows that anytime the Company is in Court, the whole nation would be on edge because the custodian of our national assets is in Court.

Indeed, the Chairman of its Board of Directors would clearly become more powerful than the President of Nigeria. At the end, we could be confronted with the possibility of watching our national oil & gas assets vanish within a few months.

Rivers State requests that the right of individuals and institutions of the State to own shares in the Nigeria National Petroleum Company should be

enshrined in the Law on the basis of equity participation using possessory rights of the land dwellers/host communities of the petroleum producing region. The Bill should thus provide for a 25% revenue sharing for the producing States and Communities on a "Carry and Free Holding" basis in a ratio of 10% to the States and 15 % to the producing communities.

However, should the proposal to dump all our oil & gas assets in NNPC Limited be allowed to pass, in order to guide against the possible negative tendencies of the Board, the following provisions must be included:

- a. The Boards to be constituted i.e. the Boards of both NNPC Limited as well as the Incorporated J.Vs **MUST** include Representatives of all oil producing areas especially Rivers State and such representatives must be nominated by the Government of each State.
- b. The Chairmanship of both Boards **MUST** rotate among the principal Oil Producing States.
- c. There must be a "Shareholders Agreement" which will provide for each member, sufficient powers in certain issues – veto power. Those issues must include:-
 - i. Matters pertaining to borrowing, using the assets as collateral.
 - ii. Payments for services using our oil reserve as a means for payment
 - iii. Major purchases, programs/projects and ventures exceeding \$2m
 - iv. Forward sale of crude or gas or other products
 - v. All agreements where financing goes beyond the one year budget.
(Please see the NLNG Shareholders Agreement)
- d. Approvals for payments to be made above \$5m must pass through the National Assembly.

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OR alternatively, such activities/responsibilities as relying on the assets of the Company for loans, collateral for payments etc. should be excluded from the functions of the Board and vested in the National Assembly in line with current practice.

- e. The members of the Boards **MUST** be nominees of the State Government and should be subjected to the scrutiny and approval of the Senate as is done at present for the Niger Delta Development Commission.
- f. Finally, the Budget of the Company must be approved by the National Assembly. The other Shareholders other than NNPC Limited may work out how to deal with their own assets and this must be stated in the Shareholders Agreement.

These and other measures must be put in place to safeguard our God-given endowment from the whims and caprices of a greedy Board.

As at today, there is no truly democratic Country that has embarked on this sort of arrangement being canvassed in the Bill, without adequate plans to safeguard its assets. Most OPEC countries are not democratic and so the oil and gas reserves belong to the Monarchies who could form Companies supervised by their Princes for the family.

We do not need to create oil & gas Sheikhs in Nigeria. What the Bill seeks to do is to create such monsters if not handled carefully.

We must be reminded that in 1999, a Decree creating NAPIMS Limited was promulgated and then repealed within a few weeks by Gen. Abdulsalam Abubakar's Government. NAPIMS Limited was similar to NNPC Limited though not as wide. We need to tread carefully.

12.0 LICENSES, LEASES AND CONTRACTS:

[Sections 221 - 224.]

The Bill provides that all licenses and leases in respect of crude oil or natural gas not previously granted, prior to the commencement of the Act, including all unallocated blocks previously held by the NNPC on behalf of

the State will be vested in the [National Petroleum] Directorate on behalf of the Federal Government of Nigeria . Section 230 [1]

12.1 IMPLICATIONS:

By this proposal, is the Directorate not intending to function like another Oil/Gas Company? Since the NNPC Limited is a National Oil Company, why should it not continue to hold on to those unallocated blocks it previously held?

Clearly, this proposal is aimed at vesting the Minister and the Director-General with very wide powers and influence which undoubtedly, could be used for patronage as has been our experience in that regard up till now. This section must be completely reviewed to show transparency without granting super powers to a Minister and his Director-General.

Currently, Petroleum producing States are isolated and not factored into granting of prospecting licenses, mining leases, exploration licenses, and permits in petroleum operations. The oil producing States watch with utmost dismay how companies granted licenses by the Federal Government, move and ravage their Communities without knowledge or linkage with the State's economic planning, social responsibilities, and institutional arrangements.

The Law should clearly provide a mechanism that integrates the State in developing a professional, competitive and profitable petroleum operations business through participation in the planning and granting of prospecting or mining licenses, exploration licenses and permits for the upstream, midstream and downstream operations

13.0 FINANCIAL RESPONSIBILITIES OF GOVERNMENTS AND OPERATORS.

[Section 261]

The Bill provides in Section 261 that *“every State and every Local Government within which any license or lease is located, shall pay a sum equal to 1% of the State's annual derivation allocation, and 0.5% of the*

Local Government's annual derivation allocation into a Remediation Fund, which shall be utilized solely and exclusively for the restoration and remediation of the environment in cases where the said damage to the environment has been caused by sabotage".

13.1 IMPLICATIONS:

This proposal needs to be clearly understood. It implies that each State would bear the cost of any act of sabotage to a petroleum facility in its territory. In other words, if anyone from anywhere in Nigeria or in the world willfully vandalises or destroys an oil pipeline/facility, the State in which that pipeline/facility passes would be required to pay the cost of repairing that pipeline/facility and all other necessary remediation.

Whose duty is it to ensure that oil and gas infrastructure is not damaged by sabotage?

Of course, that is the duty of the Federal Government which owns the Police, the Army, Air Force, Navy etc. If these security agencies are not able to secure our Nation then whatever act of sabotage that is permitted to take place should be the responsibility of the Federal Government. The Federal Government should bear the cost of repairs and all such remediation. This proposal is definitely aimed at taking away a part of the income of the Niger Delta States and is rejected *in toto*.

The Rivers State Government is asking for more funds from derivation and would not pay into such Fund that tacitly transfers responsibility for overcoming acts of sabotage to the State Governments and Local Governments rather than the Federal Government and her Agencies.

In view of the number of Licenses issued to Petroleum Operators in Rivers State, the State is likely to pay over 20% of its derivation into this Fund. How and why?

14.0 THE NATIONAL TRANSPORT LOGISTICS COMPANY and FACILITY MANAGEMENT COMPANIES (NTLC) [Sections 324 - 325]

The Bill proposes to transfer pipelines and depot systems from the PPMC, NGC etc to NTLC and divide these into segments with each segment licensed out to facility management Companies.

We suggest that such Facility Management Companies should be **STRICTLY indigenous** to States where such facilities are located. All these must be clearly spelt out in the Law.

15.0 REVENUE TO THE REPUBLIC

It is necessary to clearly address this issue which the Bill failed to mention. At the moment, revenue to the Federation account derives mainly from the sale of crude each month. If or when NNPC becomes NNPC Limited and Joint Venture Operations become Incorporated JVs with NNPC Limited, it must be stated clearly:

- how an IJV should treat its crude and gas. The JVs hardly sell their crude, while NNPC sells Nigeria's crude for the Republic.
- we must be told clearly how this will be handled. Would it be based on the Company declaring dividend?
- How many times a year would the dividend be declared monthly or what? All these must be resolved.

We suggest strongly that revenue from the Federation should in view of the existence of the Land Use Decree, continue to accrue to the Federation from crude and gas sales as well as other activities.

In that regard, the crude & gas belonging to Nigeria must be sold as currently done for the good of the Nation and revenue distributed monthly. Such revenue must accrue directly every month until such a time that the Nation is in a position to review its Laws on payments to the Federation Account.

In particular, we suggest as follows:-

- (a) All Royalties from Oil and Gas must be paid to the States, Local Governments and Communities where the oil and gas was extracted at a rate similar to the current rate of 25%.
- (b) The Petroleum Profit Tax (PPT) must be paid to the Federal Inland Revenue to be distributed among the States in such a way that at least 25% of the PPT derived from any State is paid to that State.
- (c) All other taxes, licenses, fees should be paid to the Federation Account for sharing by all the States, as well as dividend/profit by NNPC Limited and the IJVs.
- (d) The tax element in the Petroleum Products template should be paid to the Federation Account provided 50% of the tax is paid to the State where the product was consumed.

This will ensure adequate compensation to the States for their infrastructural depreciation caused by petroleum products consumption e.g. Lagos State.

16.0 MARGINAL FIELDS [Section 247]

The Bill provides that “A field that has not been operated for ten years is deemed to be marginal” – Section 247 [2]

It further provides that “where an oil field within an existing license or lease is designated as marginal ..., the Minister may direct that the said marginal field should be awarded to another Company other than the licensee or lessee.” – Section 247 [1]

16.1 *IMPLICATION:*

This type of provision gives the Minister ample room for temptation to be unjust and unfair. Marginal fields should indeed revert to the *bona fide* owners of the area such a field is located. The Minister may provide guidelines for operations and only where the *bona fide* owners of the land area are unable to obtain technical partnership for such a field, should it be put forth for bidding on clearly defined terms not subject to the singular best judgment of the Minister.

This clause needs to be properly couched to provide for clear guidelines for bidding for marginal fields similar to those that obtained when the field was initially awarded/granted.

17.0 DOWNSTREAM GAS:

The Bill is silent on issues that bother on the provision of gas for the local market and the immediate environs and so we propose that definite stipulations must be made to ensure that before the Authority engages in external sale of Nigeria's gas, adequate provisions must be made to accommodate ALL national gas requirements and needs of the Nation especially the Niger Delta Region and Rivers State before engaging in such transactions such as the Trans Saharan Gas Pipeline project.

Such provisions must take care of the all time domestic need of gas to Nigeria for upwards of 200 years before recourse to such projects that would in no time diminish our reserves and turn Nigeria into a net importer of gas.

The marketing structure to be emplaced by the controlling Authority must be such that the selection of the Marketing Companies is truly representative of our national realities. This at the moment is not the case. Therefore Marketing Companies must be selected from all sections of the country especially the Niger Delta and Rivers State.

18.0 GAS FLARING PENALTIES

Rivers State proposes that all gas flaring penalties should be credited to the Communities and the State directly affected by the hazardous effects of gas flaring, until gas flaring is finally eliminated.

CONCLUSIONS:

In summary, we propose that the Bill be withdrawn and completely redrafted to ensure respect for the component parts of the Federation, fair play and equity.