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Nigeria: New petroleum law must include stronger protection for human rights and the environment

The Petroleum Industry Bill, currently being considered by the national legislature, reflects the most comprehensive review of the legal framework for the oil and gas sector in Nigeria since the industry began commercial operations in the 1960s.

Civil society groups working on the Niger Delta and with communities in the oil producing areas welcome the initiative to review and revise the legal framework. This provides an important opportunity to ensure that the social and human rights impacts of the oil industry are adequately addressed. The lack of effective regulation of the social and human rights impacts of the industry has been a significant problem for decades and addressing this issue was one of the main recommendations of the African Commission on Human and Peoples' Rights in its 2002 decision on the Ogoni Communication.

As presently drafted the Bill fails to address the social and human rights impacts of the oil industry. With a view to rectifying this omission the organizations offer the following recommendations and urge that they are considered in the re-drafting process:

Ensure consultation with oil-affected communities on the Bill

Amnesty International and Nigerian NGOs urge the National Assembly to immediately establish a process through which communities and civil society in the oil producing areas are consulted about the proposed new law.

Explicitly require that the social and human rights impacts are assessed and addressed

The bill as presently drafted does not require licensees to conduct assessments on the social and human rights impact of their operations as part of the licensing process. This is a shortcoming that ought to be addressed.

Recommendations:

- o The social and human rights impact assessment of all oil and gas projects should be explicitly referenced in the Bill and made mandatory. Social and human rights impact assessments should include an assessment of the potential impacts on human health, access to clean water and livelihoods.
- o Consideration should be given to including a specific section within the legislation on Communities, outlining the processes and strategies for addressing many aspects of oil operations affecting those residing or working in areas where petroleum is produced.

Remove uncertainty from the compensation system

Compensation provisions in the Bill are similar to those contained in the current legislation. A licensee or lease holder is liable to pay: "fair and adequate compensation for the disturbance of surface or any other rights to any person who owns or is in lawful occupation of the licenced or leased lands" and for: "damage or injury to a tree or object of commercial value or which is the object of veneration..." The term "fair and adequate" is not defined.

The Bill provides for some sanctions for failure to pay compensation. The Bill also requires some form of financial bond to be paid to the Inspectorate against remediation of environmental damage. These steps are welcomed.

Recommendation:

- o The Bill should define damage as the actual and/or consequential loss for damages incurred by an affected person or community arising from a petroleum undertaking. This would include long-term impacts, health issues and all other reasonable damages.

Ensure greater transparency and access to information

A lack of information on the impacts of the oil industry on individuals and communities is a fundamental problem in the Niger Delta. While some provisions of the Petroleum Industry Bill address provision of information, these are no adequate measures for ensuring the ongoing collection and disclosure of information by companies or governmental agencies to communities on the social and human rights impacts of oil operations.

Recommendations:

- o The Bill should stipulate what information both the government and the companies must collect and disclose at regular intervals. This should include, as a minimum, requirements for the collection and disclosure of information on the impact on human beings of oil and gas industry undertakings, including impact on fisheries, agriculture, health and livelihoods.
- o The Bill should require that information is gathered, analyzed and disclosed on the health risks associated with oil pollution and on the safety of food, water and air in areas affected by pollution.

Background

The Petroleum Industry Bill currently being considered by the Nigerian legislature would repeal much of Nigeria's current oil industry legislation.

This joint submission, made by NGOs that work on the Niger Delta, focuses on the social and human rights impacts of the oil industry. The recommendations made are based on the findings and recommendations of the African Commission on Human and Peoples' Rights (ACHPR) in the 2002 decision on the Ogoni Communication and on the internationally accepted principles in relation to regulation of the business.

The ACHPR Ogoni decision

The impact of oil operations in Nigeria was taken up by the African Commission in 1996 in response to a complaint filed by the Social and Economic Rights Action Center and the Center for Economic and Social Rights, on behalf of the Ogoni people. In a landmark decision in 2002, the African Commission found Nigeria to be in violation of a number of rights guaranteed under the African Charter. The decision of the African Commission clearly recognized the link between environmental destruction and human rights, and the responsibility of the government to protect people from such damage by non-state actors such as companies. The Commission called on the government, amongst other things, to protect the environment, health and livelihood of the people of Ogoniland, ensure adequate compensation to victims of the human rights violations, and to provide information on health and environmental risks as well as meaningful access to regulatory and decision-making bodies for communities likely to be affected by oil operations.

International principles on business responsibility for human rights

Professor John Ruggie, UN Special Representative of the Secretary-General on business and human rights, has underlined that states have a duty to protect human rights against abuse or harm by companies and that companies have a responsibility to respect all human rights.

Assessment of human rights impact is increasingly seen as vital for businesses, particularly in sectors that are highly physically invasive, such as extractive industries. According to the Professor John Ruggie, “While these assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights.”

Signed:

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Alliance for Sustainable Environment
Amnesty International
Catholic Secretariat of Nigeria
Centre for Advance Social Science
Centre for Democracy and Development
Centre for Environment, Human Rights & Development
Centre for Information Technology & Dev.
Centre for Peace and Rural Development
Civil Society Legislative Advocacy Centre
Coalition Against Corrupt Leaders
Coalition for Change (C4C)
Community Care Initiative
Community Development in Welfare Agenda
Down Trodden Forum for Democracy
Equity Advocate
Extractive Industry Study Group
FRIDE (Madrid)
Global Women for Sustainable Development
Human Rights Front
Institute for Community Policing (ICP)
Institute of Human Rights & Humanitarian Law
Kebekache Women Organization
Koyenum Immalah Foundation
Krucial Aid Nigeria
League of Awareness Nigeria
League of Democratic Women
League of Human Rights
Movement Against Corruption
Multi View Advocacy Network
Niger Delta Budget Monitoring Group
Nigeria Labour Congress
Ogoni Solidarity Forum
Oxfam Intermol
PACT- Nigeria
Peoples Advancement Centre
Public Procurement Platform
Publish What You Pay
Revenue Watch Institute
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Social Action
Society for Water & Public Health Protection
Social and Economic Rights Action Centre (SERAC)
Socio-Economic Rights & Accountability Project (SERAP)
South South Youth Reform Theatre
Stakeholder Democracy Network
Sustainable Peace Initiative of Nigeria
Trade Network Initiative

Transition Monitoring Group
Transparency and Economic Development Initiatives
Transparency In Nigeria
Utmost caring World
West African Civil Society platform-Nigeria
Zero Corruption Coalition
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