

**TITLE OF PRESENTATION:**

**COMMUNITY PARTICIPATION IN THE EIA PROCESS OF OIL AND GAS DEVELOPMENT IN THE NIGERIAN DELTA REGION:CASE STUDIES OF DEVELOPMENT PROJECTS IN BONNY ISLAND.**

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- **The above topic constitute part of an on-going PhD thesis titled “COMMUNITY PARTICIPATION IN PETROLEUM DEVELOPMENT IN NIGERIA: Lessons from the EIA Process of Oil & Gas Development Projects in the Delta Region”, at the Centre for Energy (CEPMLP), University of Dundee, Scotland, United Kingdom, presented on the 28<sup>th</sup> of April 2004, at the 24<sup>th</sup> Annual Conference of the International Association for Impact Assessment (IAIA), Sheraton Wall Centre Hotel, Vancouver, Canada.**

## PART A

### INTRODUCTORY BACKGROUND

- This presentation is centred on the Nigerian Delta question which is about the greatest problem/challenge of the Nigerian nation.
- Petroleum exploration and exploitation in the Niger Delta region has continued to adversely affect the environment and sustainability of development in the region.
- This development has estranged the people and Communities of the Delta region from the Federal Government and the multinational resources developing Companies in the Country.
- The plight or sad experiences of the people and Communities of the Delta region in the course of petroleum resources development in Nigeria have resulted in the ensuing mass agitations, youth restiveness and violent conflicts in the region.

## BACKGROUND FRAMEWORK (Contd.)

- As a result, there is general insecurity of life and property in the Nigerian Delta region. The insecurity affecting the multinationals in the region (i. e. hostage taking) has become a source of concern internationally.
- One possible solution identified by the writer is the need to improve the participation of the people of these Communities in the development of the petroleum resources of their homelands.
- That means, the need to improve the existing forms of the public participation involving the resources bearing Communities in the exploration and exploitation of petroleum resources in the Delta region.

## **PART B**

### **MAIN BODY**

#### **SECTION ONE**

#### **THE NATURE OF PUBLIC PARTICIPATION IN NATURAL RESOURCES DEVELOPMENT IN NIGERIA IN THE CONTEXT OF COMMUNITY PARTICIPATION IN PETROLEUM RESOURCES DEVELOPMENT.**

- Public participation in natural resources development involves participation of the public in the planning and decision-making process of natural resources development.
- Public participation in the planning and decision-making process in society is an evolving principle of law and development practice whose origin is rooted in the cultures of several global Communities and civilisations of the world.
- In Nigeria, public participation had been and still remains an integral part of the Ancient Delta Trading States and several other pre-colonial Communities of the Country.
- Hitherto, the absence and now the near absence of public participation of in the development of petroleum resources in Nigeria thus amount to a gap in the social system of the Nigerian Delta Communities.

**PART B**  
**MAIN BODY**  
**SECTION ONE**

**THE NATURE OF PUBLIC PARTICIPATION IN NATURAL RESOURCES  
DEVELOPMENT IN NIGERIA IN THE CONTEXT OF COMMUNITY  
PARTICIPATION IN PETROLEUM RESOURCES DEVELOPMENT (Contd.).**

- To fill this gap, there is need to improve the existing nature and forms of Community participation in petroleum resources development in the bid to encourage and promote economic development, environmental protection and sustainable development in the Delta region and the entire Country.
- Such an improvement is capable of enhancing peace and industrial harmony in the Delta region in the course of the development of the petroleum resources in the region.

**PART B**  
**MAIN BODY**  
**SECTION TWO**

**THE NATURE OF COMMUNITY PARTICIPATION IN PETROLEUM  
RESOURCES DEVELOPMENT AS DETERMINED BY THE LANDS USE ACT  
AND OTHER RELATED LAWS AND MUNICIPAL FRAMEWORKS IN NIGERIA**

- The municipal systems of ownership and control of land and the natural resources therein in Nigeria is traceable to the enactment of the Lands Use Act of the Country.
- The Lands Use Act, the Constitution and other related laws vests ownership of the entire land and natural resources thereunder in the Federal Republic of Nigeria (i. e. in the Nigerian State).
- These laws along with the existing policies, regulations, political and administrative processes, have thus relegated the customary landowners/people of the Country as the mere beneficial owners of their respective lands and all the resources therein naturally owned by them.
- As a result, the petroleum resources bearing Communities are made to occupy a weak position in the investment relations (i. e. the petroleum resources development business) taking place in their homelands.

**PART B**  
**MAIN BODY**  
**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESSMENT**  
**PROCESS IN NIGERIA.**

- Environmental Impact Assessment (EIA) may be defined as a planning tool embarked upon to identify, predict, evaluate and mitigate the likely adverse environmental and other related effects of a proposed development activity or project, in order to enhance the planning and the decision-making process of the implementation of a given development, activity or project .
- The decision-making process in EIA in a Country may be the function of a government ministerial department or a number of government ministries and/or a specialised agency established by the government.
- The scope of an EIA process may extend through the entire aspects of the development proposal, beginning from the initial project proposal stage (i.e. the design stage) to its implementation stages (i.e. the construction and post-construction stages) involving environmental management and auditing and post-project analysis of other related issues/situations.

**PART B**  
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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESSMENT**  
**PROCESS IN NIGERIA (Contd.).**

- The basic laws governing the EIA process in Nigeria are the Federal Environmental Protection Agency (FEPA) Decree No. 88 of 1988 and the EIA Decree No. 86 of 1992, along with the policy framework, Sectoral and Procedural Guidelines made pursuant thereto by the Agency which hitherto was the main regulatory institution of government empowered to carry out the EIA process until the recent creation of the Federal Ministry of Environment (FMENV).
- The FMENV created in June 1999 took over the functions of the Federal Environmental Protection Agency (FEPA) and absorbed it along with some other Federal Departments and Ministries carrying out environmental functions and responsibilities. As a result, the FMENV now conducts environmental impact assessments in accordance with the provisions of the FEPA and EIA Decrees.



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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- The Department of Environmental Assessment of the FMENV consist of three Divisions. These are the Environmental Standards and Monitoring, Oil and Gas Pollution Control and the EIA Divisions.
- (a) The Environmental Standards and Monitoring Division is responsible for the development and Management of reference laboratories, analytical services and environmental studies.
- (b) The Oil and Gas Pollution Control Division is charged with the responsibility of developing and enforcing guidelines and standards for the oil and gas industry. And,
- (c). The EIA Division is primarily responsible for EIA guideline development and EIA processing.
- The establishment of the FMENV is therefore earmarked to coordinate various environmental efforts and tackle environmental degradation issues based on the policy thrust revolving around environmental renewal and development initiative (ERDI).

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- The FEPA and the EIA Decrees were promulgated following the efforts of the United Nations on environment and development and due to the challenges of oil and gas development activities in the Delta region of the Country.
- The immediate factor which resulted in the promulgation of the FEPA and then the EIA Decrees was the secrete dumping of toxic waste at the Koko Port in Delta State in May 1988 by a foreign vessel. The reaction to this unfortunate development was the promulgation of the Harmful Waste (Special Criminal Provisions) Decree 1988 and thereafter the Federal Environmental Protection Agency and the EIA Decrees.
- Whereas, the FEPA Decree is charged with the overall responsibility of protecting and developing the Environment of Nigeria, the EIA Decree made the EIA process a statutory requirement.
- The EIA Decree provides that “the public or private sector of the economy SHALL NOT undertake or embark public or authorise projects or activities without prior consideration, at an early stages, of their environmental effects”.

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- By virtue of the FEPA Decree, the FEPA encouraged the States and Local Government Councils of Nigeria to establish their own Environmental Protection Agencies and Units, in order to foster the process of environmental protection in the States and Local Government Areas of the Country.
- EIA thus became a key tool fashioned to mitigate the adverse effects of proposed developments on the environment and to enhance sustainable development in the Country through informed and enhanced decision-making process.

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- The EIA Decree distinguishes between three types of projects, namely, the mandatory study activities, projects excluded from EIA requirements and projects for which EIA is not mandatory but which require a screening report to determine same.
- The second category of projects refer to projects which are either deemed to have minimal effects on the environment by the President or those projects undertaken during periods of national emergency.
- Oil and gas (petroleum) projects which are provided for under the exclusive legislative list of the 1999 Constitution of the Federal Republic of Nigeria, are equally provided for as item 12 in the EIA Decree under the mandatory study activities.
- These category of projects are therefore grouped as having more adverse effects on the environment.

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- In effect, by virtue of the EIA Decree, no industrial plan, project, or activity falling under the FEPA's mandatory list could be carried out without prior consideration of their environmental consequences.
- The evolution of professionally institutionalised EIA practice in Nigeria was actually triggered by the agitations of the people and Communities of the Delta region concerning the adverse effects of petroleum resources development in the region.
- Before the establishment of FEPA, there were sectoral environmental regulations with various significant responsibilities relating to environmental protection and improvement, along with the existence of commissions with advisory capacity in environmental matters and environmental NGOs.
- At the time, EIA practice in the Country was carried out in such a manner that project proponents were like advocates in or judges of their own matters.

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**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA . (Contd.).**

- By virtue of the goals and objectives stipulated in Section 1 of the EIA Decree and the principles of the EIA process, the National Procedural Guidelines outline the steps to be taken in the EIA process of a proposed development project by project proponents (i. e. from the conception to the commissioning stages of each project).
- These procedural steps are namely, project proposal, initial environmental examination (IEE)/preliminary assessment, screening, scoping, EIA study, review, decision-making, monitoring, and auditing. These steps are backed by the Sectoral Guidelines produced by FEPA on all major sectors of the Nigerian economy which includes the oil and gas sector, to enhance EIA practice in the Country.
- Project proponent initiates the EIA process in writing to the officer responsible for same, at which time, a notification form is duly completed by using the prescribed criteria to disclose all relevant information regarding the proposal along with a brief non-technical summary of the information provided.

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**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- FEPA (and now the EIA Division of the FMENV) undertakes internal screening (IEE) to determine the project's category under the mandatory study list concerning development proposals or initiatives with no predictable adverse environmental effects, the EIA is approved for the project to commence with appropriate mitigative measures outlined in the process and the EIA certificate issued. For proposals requiring the EIA process, the screening report is sent to the proponent for scoping and the preparation of Terms of Reference (ToR) within ten working days of the receipt of the proposal by the FEPA/FMENV.
- The ToR stipulates the scope of the proposed EIA study which is examined by the regulator in order to define the scope of the study. The proponents usually carry out the study by using EIA consultants, and a draft EIA report (showing an annexed record of the results of public participation convened by the proponent) is submitted in 15 copies to the regulatory officer in charge of this process.

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA . (Contd.).**

- Within 15 working days of the receipt of the draft report, the regulator concludes evaluation of the draft and determines the review method which it communicates to the proponent in writing.
- There are basically four methods of review process, namely in-house review, panel review (which may be public), public review and the mediation review process.
- Within one month of the review process, the comments arising therefrom are made known to the proponent. At the stage of review, the public may participate depending on the method prescribed by the regulator.



**PART B**  
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**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- The final EIA report, addressing and proffering answers or solutions to the comments arising from the review process, is submitted to the regulator within six months of receiving the comments arising from the review process. At this early stage, the regulator and the proponent mutually agrees to establish set conditions which makes for a follow-up (i. e. mitigative and compliance plan –the EMP) as well as sometimes a strategy for project environmental monitoring and audit procedures/processes.
- A “no project decision” is communicated by the regulator to the proponent, if the comments arising from the review process are adverse and/or improperly addressed in the final report submitted by the proponent. This shows that the report of the proponent is not satisfactory in the determination of the regulatory Agency/FMENV.

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- Within one month of the receipt of a satisfactory final report, the committee approves and issues the Environmental Impact Statement (EIS) and a certification of the process along with the accompanying conditions which includes a validity period.
- With the certificate, the proponent commences the project subject to the conditions and stipulations contained in the EIS.
- If the project is not concluded within the validity period stated in the certificate, an updated report becomes required for revalidation.
- Projects usually referred for mediation or panel review include those which public concerns warrant so. Hence, the proponent is given the opportunity of the mediation or review process to sufficiently address such concerns.
- The progress of a project is usually followed-up and/or monitored to ensure compliance with all the attendant conditions and stipulations of approval and certification process and over-all project objective.

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**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESMENT PROCESS**  
**IN NIGERIA (Contd.).**

- EIA follow-up processes involving compliance, mitigative and sometimes monitoring and environmental audit schemes form the basis of project execution plan agreed upon between the regulatory body and the proponent before the grant of approval and issuance of certification.
- State Environmental Protection Agencies where development projects are being executed are usually involved at the review and other related advanced stages of the process such as the monitoring and auditing stages.
- Formerly FEPA and now the FMENV (of which PEPA is a part and parcel), certifies EIA consultants and reviewers. Approvals for EIA consultancy works/services are usually granted to environmentally inclined research institutions and limited liability companies of proven competence.

**PART B**  
**MAIN BODY**  
**SECTION THREE**  
**INSTITUTIONALISED ENVIRONMENTAL IMPACT ASSESSMENT PROCESS**  
**IN NIGERIA (Contd.).**

- The performance of the functions and responsibilities of FEPA and now the FMENV in the EIA process overlaps with those of the Department of Petroleum Resources (DPR). This has often caused duplication of efforts, confusion And other forms of administrative encumbrances on project proponents.
- The mutually goal oriented but separately being performed functions and responsibilities of the MPR/DPR and the FMENV are not being coordinated and harmonised as a comprehensive whole.

## **PART C**

### **MAIN BODY**

## **COMMUNITY PARTICIPATION IN THE ENVIRONMENTAL IMPACT ASSESSMENT IN NIGERIA (Contd.).**

- The need to protect the environment and ensure the sustainability of development in the petroleum resources bearing Communities are basically what led to the promulgation of the FEPA Decree and then the EIA Decree immediately after the convention of the United Nations Conference on Environment and Development (UNCED), in Brazil at Rio de Janeiro, in 1992.
- The need for the participation of the people of the Niger Delta Communities in the EIA process of the oil and gas development projects earmarked to take place in their Communal lands cannot therefore be over emphasised.
- There are several provisions of the EIA Decree relating to public participation in environmental impact assessment. These includes Section 7 of the Decree.

**PART C**  
**MAIN BODY**  
**COMMUNITY PARTICIPATION IN THE ENVIRONMENTAL IMPACT**  
**ASSESSMENT IN NIGERIA (Contd.).**

- The said Section 7 provides as follows: “Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity”. Other related sections include Sections 9, 16, 17, 19, 22, 25, 27, 30, 33, 39, 41, 44, 55 and 57.
- For instance, Section 25 titled “ public notice, provides *inter alia* with respect to public concerns that “ prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report”. And Section 26 (a) (2) outline public concerns as one of the factors which may warrant an EIA review or mediation process.

**PART C**  
**MAIN BODY**  
**COMMUNITY PARTICIPATION IN THE ENVIRONMENTAL IMPACT IN**  
**NIGERIA (Contd.).**

- Generally, public participation in EIA process of proposed petroleum resources development project involves the people of the resources bearing Communities, NGOs and other members of the public who are likely to be adversely affected by the project.
- There are in practice two main aspects of Community participation:-
- These are during the Community forums held by oil and gas project proponents, in order to enlighten the people of the Communities to likely to be affected and/or impacted by the proponents proposal -evidence of which is attached to the draft EIA for submission to FEPA/FMENV.
- The next is during EIA review processes based on the concerns and/or reactions expressed by the people of the affected Communities to FEPA/FMENV. Such reactions may arise out of the Community forum and/or publication of the proponent's draft EIA report as well as public hearings/objection sessions regarding the project organised for and on behalf of the Minister/the DPR by the Ministries of Land in the States of the Delta region.

**PART D**  
**MAIN BODY**

**OTHER RELATED MATTERS OF THE PETROLEUM INDUSTRY**  
**ASSOCIATED WITH OIL AND GAS DEVELOPMENT PROJECTS IN THE**  
**DELTA REGION**

**SECTION A**

**THE ROLE OF THE DEPARTMENT OF PETROLEUM RESOURCES IN THE**  
**EXECUTION OF PETROLEUM RESOURCES DEVELOPMENT PROJECTS IN**  
**THE DELTA REGION.**

- The Department of Petroleum Resources (DPR) is an arm of the Federal Ministry of Petroleum Resources which issues petroleum licenses and permits to oil Companies.
- The Department is a statutory Agency set up to regulate, supervise and monitor the petroleum industry in Nigeria.
- The DPR oversees all activities of the Companies licensed to engage in any petroleum activity in order to ensure that they carry out their goals and aspirations and in accordance with international oil industry standards and practices.
- The DPR monitors oil Companies operations to enforce their compliance with its guidelines, industrial standards and practices.



**PART D**  
**SECTION A**

**THE ROLE OF THE DEPARTMENT OF PETROLEUM RESOURCES  
IN THE EXECUTION OF PETROLEUM RESOURCES DEVELOPMENT  
PROJECTS IN THE DELTA REGION (Contd.).**

- Due to the adverse environmental effects of oil Companies' exploration and exploitation activities, the DPR introduced comprehensive standards and guidelines in order to regulate and direct the execution of oil and gas development projects.
- The DPR Environmental Guidelines and Standards (EGAS) of 1991 for the petroleum industry is a comprehensive working document aimed at the protection and preservation of the Nigerian environment in the course of the search for and production petroleum resources. Also, among others, there are the DPR 1998 Guidelines for Accreditation and Registration of General Purpose Oil Industry Service Companies as well as the DPR 2002 Environmental Guidelines and Regulations for the Oil Industry.
- The principal Legislation in the oil industry, the Petroleum Act of 1969 and all other derivative regulations stipulate the functions and responsibilities of the DPR.

**PART D**  
**SECTION B**

**COMMUNITY PARTICIPATION IN THE PROCESS OF OIL AND GAS  
DEVELOPMENT PROJECTS IN THE CONTEXT OF THE ROLES AND  
RESPONSIBILITIES OF THE DEPARTMENT OF PETROLEUM RESOURCES.**

- The DPR performs regulatory, supervisory and monitoring roles and functions in the bid to ensure that Nigeria's national goals and aspirations are achieved in oil Companies operations in accordance with international standards and practices.
- These roles and responsibilities of the DPR are similar to the EIA functions and responsibilities of FEPA/FMENV.
- There are thus overlapping responsibilities in the processes and procedures guiding the execution of various impact assessment for oil and gas industrial development projects.
- This situation often create bottlenecks and bureaucratic confusion, rather than a comprehensive and harmonious process. This is, for instance so, in the case of the public/objection hearings usually organised by the State Ministries of Land in the Delta region (for and on behalf of the Minister) upon which the DPR's consent or permits are eventually granted.

**PART D**  
**SECTION B**

**COMMUNITY PARTICIPATION IN THE PROCESS OF OIL AND GAS  
DEVELOPMENT PROJECTS IN THE CONTEXT OF THE ROLES AND  
RESPONSIBILITIES OF THE DEPARTMENT OF PETROLEUM RESOURCES**  
**(Contd.)**

- The above-stated public hearing/objection is an aspect of land planning associated with the grant of petroleum rights for proposed oil and gas Companies' projects, which ought to be an integral process of the EIA process, since there are some provisions of the law that provides for such harmonious, coordinated and comprehensively integrated process. This is for instance the essence of Section 14 (1) (d) of the EIA Decree.
- Section 14 of the FEPA Decree on “cases where environmental assessment is necessary” provides under sub-section (1) as follows: “Notwithstanding the provisions of Part 1 of this Decree, an environmental impact assessment shall be required where a Federal, State, or Local Government Agency Authority established by the Federal Government, State or Local Government Council—”. Whilst, Section 14 (1) (d) provides that “This Section provides that “under the provisions of any law or enactment, issues a permit or licence grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part”.

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**SECTION B**

**COMMUNITY PARTICIPATION IN THE PROCESS OF OIL AND GAS  
DEVELOPMENT PROJECTS IN THE CONTEXT OF THE ROLES AND  
RESPONSIBILITIES OF THE DEPARTMENT OF PETROLEUM RESOURCES**  
**(Contd.)**

- Such provisions of the law governing the operations of the petroleum industry require harmony between and among the institutions, departments parastatals and agencies of the Government, whether Federal, State or Local Governments.

**PART D**  
**SECTION C**

**OTHER ASPECTS OF COMMUNITY PARTICIPATION IN PETROLEUM  
RESOURCES DEVELOPMENT ASSOCIATED WITH ISSUES AND MATTERS  
USUALLY ADDRESSED IN THE COURSE OF THE ENVIRONMENTAL  
IMPACT ASSESSMENT OF PROPOSED OIL AND GAS DEVELOPMENT  
PROJECTS IN THE DELTA REGION**

- The Public hearing/objection sessions organised by the State Ministries of Land in the Delta region, for and on behalf of the Minister, pursuant to the exercise of oil and gas Companies' petroleum resources development rights granted by the Federal Government.
- Oil and Gas Companies self regulation business practice of convening stakeholders' conferences involving the participation of the oil bearing Communities.
- The setting up of Project Advisory Committees (involving the participation of the oil bearing Communities) by the Oil and Gas Companies in the process of the execution of their development projects.
- Community participation through the implementation of the concept of Equity Participation of Nigerians, and indeed the Niger Delta people, in petroleum resources development.

**PART D**  
**SECTION D**  
**CONCLUSION**

- The recent environmental laws, regulations, policies and procedures relating to the development of petroleum resources projects in the Nigerian Delta region all have either specific provisions or general standards or principles aimed at encouraging the participation of the resources bearing Communities.
- This recent development is different from what obtained in the past where these Communities and their people are excluded from participating in the development process.
- The circumstances which led to the recent progressive development are basically the efforts of the United Nations on environmental protection and socio-economic development and the ensuing and determined agitations, youth restiveness and volatile industrial crisis in the Niger Delta region associated with the adverse effects of petroleum resources development in the region.

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**SECTION D**  
**CONCLUSION (Contd.)**

- Consequently, these recent laws, regulations and policies needs to be enforced in order to protect ht environment and usher in sustainable development in the Nigerian Delta region.
- The participatory process in EIA process therefore needs to focus on the enforcement of the component pillars of the participatory process (i.e. access to information, public participation in decision-making and access to environmental justice) in conformity with the agreement reached by the parties to the Aarhus Convention of June 1998 which has virtually become a world-wide standard on public participation.

**PART E**  
**SECTION A**

**CASE STUDY OF OIL AND GAS DEVELOPMENT PROJECTS IN BONNY**

- Grand Bonny is the Island Capital City of Grand Bonny Kingdom and Bonny Local Government Area of Rivers State of Nigeria situate at the Atlantic coastal zone of Eastern Niger Delta.
- The Shell Nigeria Bonny Oil and Gas Terminal and the Nigeria LNG projects are all sited in Bonny Island, due to its strategic location for export of crude oil and LNG from the Bonny coastal area of the Atlantic Ocean thereof.
- The above-mentioned projects occupy the adjoining mainland areas of one of the Communities of Grand Bonny Kingdom, namely Finima Community which also plays host to the Exxon-Mobil Producing Oso NGL Bonny River Terminal project.
- The sea where the export of oil and gas takes place is the bonny sea, whereas most of the land area which the above-stated oil and gas installations in Bonny occupy belong to Finima Community of Bonny.



**PART E**  
**SECTION A**

**CASE STUDY OF OIL AND GAS DEVELOPMENT PROJECTS IN BONNY**  
**(Contd.)**

- Finima Community, Grand Bonny Island City and Grand Bonny Kingdom as a whole therefore occupy strategic positions in the oil and gas development business of the Federal Republic of Nigeria.

**PART E**  
**SECTION B**

THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA  
PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS

- The Shell Nigeria Bonny Crude Oil and Gas Terminal was initially constructed as a crude oil terminal (BCOT) between 1960 and 1961, and the first crude therefrom was exported in 1962 from the inshore berth of the terminal.
- The land for the terminal, situate between Grand Bonny Island and Finima Community of Bonny, was acquired by Shell Nigeria from indigenes of the area between 1957 and 1958.
- The terminal was designed to process wet crude oil produced by Shell Nigeria's Eastern Division and to provide storage prior to exporting via its offshore loading platform.
- The terminal also processes and exports crude oil from third parties such as TotalFinaElf (Elf) and Chevron Nigeria Limited.

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**SECTION B**

THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA  
PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS  
(Contd.)

- The terminal was built before the evolution and commencement of EIA practice in Nigeria. Although, Shell Nigeria is of the view that the terminal was built in accordance with the standards of the Nigerian oil industry in the 1960s, Community participation at the time was very minimal. It merely involved land take and the provision of construction phase employments for some Community members.
- Since the terminal was constructed in the 1960s, it has been undergoing piecemeal rehabilitation until 1995, after which the terminal's Integrated Project (BTIP) was set up in 1996 to upgrade and develop it in an integrated form. This now makes the terminal operate as an oil and gas terminal.
- The Shell Bonny Crude Oil and Gas Terminal has thus began to process gas conditioned in accordance with the Nigeria NLG specifications and supplies same through the Nigeria LNG Plant complex (which occupies an adjoining land area to the terminal). Shell Nigeria is a major share holder of Nigeria LNG Limited.

**PART E**  
**SECTION B**

THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA  
PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS  
(Contd.)

- The existing facilities of the terminal include onshore facilities and offshore facilities.
- The initial onshore facilities were installed at the time the terminal was built, while the offshore facilities which includes a crude oil loading platform were installed as from 1973, in pursuance of which the Bonny Terminal (Establishment) Order was passed in 1974.
- The Shell Nigeria Bonny Crude Oil and Gas Terminal also supplies crude to the Port Harcourt Petroleum Refinery, beginning from 1988, for downstream sectoral purposes.
- Outline of the BTIP provides that whereas some of the existing facilities of the terminal are merely old, others are old and obsolete. In some cases, these facilities do not meet the demands of the Company including its group owners as well as industrial standards and codes for HSE and Shell's staff welfare, and so need rehabilitation.

**PART E**  
**SECTION B**

THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA  
PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS  
(Contd.)

- The Shell Nigeria Bonny terminal facilities also need to be expanded or provided with the connections, locations and foundations in order to allow the installation and tie in of equipment in the future when the production forecast is realised.
- Key project goals of the BTIP include the following:-
  - To prepare Asset Development Plan (ADP) for the terminal.
  - To re-instate the technical integrity of the terminal.
  - To maximise the utilisation of existing assets in the terminal.
  - To provide the facilities required for the processing of planned future production in a phased manner.
- The conceptual design of the terminal covers facilities needed for the next 25 years, and actual installation is earmarked to be in three phases, viz:-

**PART E**  
**SECTION B**

THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA  
PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS

(Contd.)

- A). The re-instatement of integrity which has already been completed at the close of 2003.
- B). The maintenance of integrity/expansion, which process is earmarked to be completed in 2007. And,
- C). A follow-up on phase B (above) in the expansion process.
- The provision of the draft EIA of the BTIP show evidence of series of consultation with the King and Chiefs of Bonny, including other sectoral groups as political leaders and youths leaders of Bonny. Occasional consultations are being held with the traditional leadership of Bonny, the Bonny Kingdom Development Committee (BKDC) and the Bonny Environment Consultants Committee (BECC) as well as at the Joint Industry level made up selected representative of the three major oil and gas Companies in Bonny namely, Shell, Mobil and Nigeria LNG, and Community representatives.

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- The open forum and the EIA review meeting have been held by Shell Nigeria. In the process, the representatives of the people and certain Chieftaincy Houses of Bonny were in attendance. Some of the people raised objections that their genuine concerns are yet to met in the process and the Shell representatives assured them that efforts will be made to address all genuine concerns.
- A major Community development objective of Shell Nigeria in the EIA process is to implement some development project initiatives in support of the efforts Bonny Community. To do so, a total sum of 505 million naira (which is 1% of the cost of the BTIP) was to be donated through the Bonny Chiefs' Council into a Community trust fund to be established by the Chiefs' Council.
- The said fund is to be used to embark on beneficial Community development projects, and the Bonny Chiefs' Council undertook to ensure a prudent management of the fund for and on behalf of the people of Bonny Community.

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- The agreement reached between the representatives of the Bonny Chiefs' Council and those of Shell Nigeria was translated into an a document titled the "Bonny Terminal Integrated Project Community Development Initiative".
- The achievement of the objective of this agreement upon the receipt of the development project trust fund by the Bonny Chiefs' Council will surely be an acid test of the theory of trustee beneficiary relationship as between the people of Bonny Community and the Bonny Chiefs' Council.
- More than that, the prudent or otherwise management of the fund will prove how Community representative can directly implement their people's development initiatives.
- This is against the background of the fact that oil and gas Companies in the Niger Delta have been accused by the people of not being able to able to achieve their developmental objectives independently (without involving them as owners of such development programmes and initiatives).



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- In terms of environmental protection, Shell Nigeria has so far had a good working relationship with the BECC, and same applies in terms of Community development with respect to the BKDC.
- Nevertheless, these CBOs still have certain reservations concerning the set goals and objectives of Shell Nigeria against the background of the practical achievements being made or recorded in the process.
- Shell Nigeria states that the new design of the Bonny terminal, coupled with continued maintenance over the long-term and detailed environmental monitoring will ensure that the upgrade and expansion process will result in positive long-term impacts to the environment within and beyond the local study area.

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#### **THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS**

**(Contd.)**

- The EIA was conducted in an multi-disciplinary manner, as part of the BTIP. Shell Nigeria engaged the services of Macdonald Engineering Group (MEG) of Canada to direct the preparation of the environmental and socio-economic impact of a team made up of environmental Nigerian scientists from the firms of Petrocope Limited and Delta Systematics.
- So far, Shell Nigeria exhibits a bogus profile in conducting EIAs. To this end, the Company has produced the following documents as its in-house guide. These documents include:-
- EIA Process: Stakeholders' Guide, and its accompanying Guidelines for SPDC EIA Process under the following headings:-
  - A). Stakeholder Identification and Involvement.
  - B). Scoping.
  - C) Data Collection.
  - D). Report Review, and
  - E). Preparation and Implementation of Environmental Management Plan.

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- From the foregoing, Shell Nigeria states that its new EIA process is earmarked-
- to rebuild the process in order to deliver true partnership between the Company and its stakeholders.
- to focus on the engagement and involvement of key stakeholders.
- to encourage Community participation in the process and thereby create an atmosphere of mutual trust and understanding.
- to achieve openness and transparency.
- To achieve the foregoing in order to secure statutory permit from the regulatory authorities and social license from project Communities.

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- The above-stated Shell Nigeria EIA guidelines if vigorously implemented along with the Shell's declared business principles and Community development strategies in the course of its EIA processes, will go a long way to protect and rehabilitate the Niger Delta region's environment and usher-in quasi sustainability in the course of its petroleum exploration and exploitation business in the region.

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- The Shell Bonny Crude Oil and Gas Terminal is being operated by Shell Nigeria on behalf of a consortium of the Nigerian National Petroleum Company (NNPC), Shell Nigeria (SPDC), Elf and Nigerian Agip Oil Company Limited. About 30% of Nigerian oil production and 50% of Shell Nigeria's production is exported from the Shell Bonny terminal.
- At the time the terminal was built in the early 1960s it had four storage tanks alone, which were gradually increased to twenty three (storage tanks).
- Hyundai Heavy Industries (HHI) of Korea is the Company undertaking the on-going upgrade process of the Shell Bonny terminal project (the BTIP) at the contract sum of about \$600-million.

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### **SECTION C**

#### **THE NIGERIA LIQUEFIED NATURAL GAS PROJECT FROM THE PERSPECTIVE OF THE EIA PROCESS OF ITS BASE AND EPANSION PROJECTS**

- Nigeria has an estimated 124 trillion feet (Tcf) of proven natural gas reserves (i.e. about the 9<sup>th</sup> largest proven reserves in the world).
- Due to lack of gas utilisation infrastructure, the oil Companies in Nigeria were flaring about 75% of the gas the Country was producing whilst injecting about 125 of gas in order to enhance the recovery of their crude oil production process.
- As a result in May 2000, the representatives of the major oil Companies operating in Nigeria announced that they are capable of meeting Nigeria's target of phasing out associated gas flaring in the course of crude oil production. This was the concrete beginning of what came to the Nigeria Liquefied Natural Gas Project.
- The Nigerian LNG Project actually started with the execution of a framework agreement between the Federal Government of Nigeria and its Joint Venture Partners in 1985 - a year after the Federal Environmental Protection (FEPA) was established under Decree No. 58 of 1988 and followed by the Environmental Impact Assessment (EIA) Decree No. 86 of 1992.

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#### **THE NIGERIA LIQUEFIED NATURAL GAS PROJECT FROM THE PERSPECTIVE OF THE EIA PROCESS OF ITS BASE AND EPANSION PROJECTS (Contd.)**

- Consequent upon the foregoing, the Company (Nigeria LNG Limited) was incorporated in 1989, to harness Nigeria's vast natural gas reserves to produce LNG for export to overseas markets as well as reduce gas flaring and possibly to end same by 2008. Nigeria LNG Limited is thus a Joint Venture Company owned by the Nigerian National Petroleum Corporation (NNPC-49.00%), Shell (25.6%), TotalFinaElf (15.00%) and Agip (10.4%).
- The Nigeria LNG Project was earmarked to purchase natural gas from three producers and to transport same in Nigeria and to liquefy same over 200 kilometres of dedicated Pipeline Gas Transmission System (GTS) in several areas of Rivers State in the Niger Delta including Bonny Kingdom's Communities, up to the liquefaction plant situate at Finima Community of Bonny and stretching therefrom up to the adjoining Bonny Island Capital City.

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#### **THE SHELL NIGERIA BONNY CRUDE OIL TERMINAL AND THE EIA PROCESS OF ITS BASE AND INTEGRATED UPGRADE PROJECTS**

**(Contd.)**

- The liquefied LNG is being shipped along a high fish-catch area of the Bonny River and transported for export overseas. Along with the GTS route land take, land take for the plant site initially involved the entire inhabited Finima Community land, as a result of which the people of the Community eventually had to re-locate into a section of their ancestral land now known as new Finima people to a new Community. Following this initial land acquisition, construction works of the base project involving a vast majority of the local populace in the mid 1990s for the building of a 2-train plant which was upgraded to train-3 and now with the addition of trains 4 and 5 during the Nigeria LNG Plus Project and then up to train-6 (which EIA process is at the verge of completion).
- The Nigerian LNG Project (unlike the Shell Nigeria Bonny Crude Oil and Gas Terminal) started during the commencement of the EIA process in Nigeria, between the late 1980s and the early 1990s.
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- The land take for the LNG Project, which construction phase is still on-going, has continued to involve the Pipeline Communities situate along the Gas Transmission System (GTS) route and Finima Community of Bonny (where the Plant is situate and stretching therefrom up to Grand Bonny Metropolitan Island City of Grand Bonny Kingdom.
- Construction works in Grand Bonny during the base and expansion trains of the Nigeria LNG project have continued to involve some host Communities populace who serve as managerial and mere labour personnel as the on-going Shell Bonny Crude Oil and Gas Terminal integrated expansion project scheme.
- The completion of the LNG Base Project in September 1999 witnessed a 4-day protest by the people of Bonny Community due to the non-implementation of the EIA mitigative and other-related measures affecting the welfare and well-being of the Bonny Kingdom.

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- However, the increase in subsequent LNG EIA Community participation process, the situation is gradually improving even though there are several obligations of the Company and its and government's unfulfilled promises to the host Communities which are yet to materialise.

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- EIA is still a growing phenomenon in Nigeria.
- EIA began when the people of the petroleum resources bearing Communities were totally being excluded from participating in the planning and decision-making process leading to the development of the petroleum resources projects being sited in their homelands.
- Now that the participatory process has started involving the people, the need arises to intensify same in order to enhance active participation of the people in the EIA and other processes of oil and gas industrial developments.
- The active participation of the people will surely enable them influence the planning and several aspects of the decision-making process of the development of the oil and gas resources of their homelands.

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- Meanwhile, in the ensuing participatory process, the people of the Communities have only little access to environmental information.
- So far, the information which the people of the Communities are able to have does not adequately make them adequately understand the nature of the oil and gas developments taking place in their homelands.
- Inadequate information, involvement and understanding constitute the bane of the decision-making process aimed at protecting the environment and sustainable development of the resources bearing Communities.
- There is therefore the need for capacity building in these Communities, and to integrate the cost of such capacity building process into the cost of the EIA process of the oil and development gas projects.
- In particular, access to environmental justice is being encumbered by legal and procedural technicalities rather than the merit of the facts of each case.

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- In other words, as shown in the case of *ORONTO DAUGLAS vs SHELL PET. DEV. CO. OF NIGERIA LTD. & OTHERS* (1999) 2 NWLR p.466-475, there is the need for access to substantial justice rather than technical justice in the enforcement of environmental rights in Nigeria.
- The upgrade processes of the oil and gas development projects in the Nigerian Delta region calls for an integrated and well coordinated system of land planning and environmental impact assessment of the adverse effects of these projects on the environment and people of the Communities where these projects are sited.
- There is the need for the harmonisation and integration of the regulatory processes, procedures and mechanisms of the FMENV and DPR, along with those of the State and Local Government Areas' Environmental protection units involved in these processes.

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- The Nigerian National Petroleum Corporation (NNPC) which handled the resettlement of the people of Finima Community so that the construction of the NLNG plant can commence, abandoned some of its obligations which Nigeria LNG Limited has acceded to, majority of which are yet to be completely accomplished.
- The NNPC on behalf of the Federal Government used the value of the Finima Community land as the Government's stake in the NLNG investment and thereby left the people of the Community with no direct stake in the business of the Company.
- The relationship between the Finima Community and larger Bonny Community land owners, and NLNG Ltd. thus reduced to that of mere Community relations rather than a true partnership relationship of asset stakeholding.

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- The Community development projects attached to oil and gas field development projects are often abandoned or unusually delayed by project proponents after the development of their field projects. E.g. the Community development projects earmarked to take place in Bonny during the NLNG base project are still not being executed when the NLNG main construction has reached its 5<sup>th</sup> train and progressing up to the 6<sup>th</sup>/7<sup>th</sup> trains.
- The resolution of some industrial disputes in Bonny arising from the execution of these projects is being carried out by the House system of governance/traditional rulership of the people. The cost of resolving such disputes deserve to be integrated as part of the cost of these development projects in the oil and gas resources bearing Communities.
- The cost for executing all the EIA components and/or obligations of oil and gas development projects in the resources bearing Communities should be spelt out and readily provided for, and as at when due.

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- To reduce reduce inter and intra Communal disputes over land acquisition process due to poor administration of customary land in the Country, multinational oil and gas Companies' land acquisition documents should no longer be treated as de facto titles to land among Communities.
- Community participation should place more emphasis on affected and impacted Communities rather than on ownership of disputed lands, whereas the issue of ownership of land among Communities should be left for the law courts to determine.
- Community representatives in EIA processes need to involve a cross section of all interest groups and population of the affected Communities and those more directly affected and minority groups in each Community.
- In terms of the grant of benefits etc. etc. arising from the establishment of oil and gas development projects, the interest of the larger public should constitute primary points of emphasis to Communities.



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- Community development initiatives and programmes should be best handled by a tripartite group or Committee involving the representatives of project proponents, those of the resources bearing Communities and those of reputable NGOs whose performance in implementing the Community development initiatives and programmes should be further verified in the greater interest of the beneficiaries and as well in the interest of industrial peace and harmony in the Nigerian Delta region.
- EIA practice in Nigeria is yet to concentrate on streamlining public sector developments.
- The engineers carrying out the actual construction process or field development work of the project proponents are required to properly and effectively liaise with their EIA processing units or departments, in the bid to enhance compliance of the mitigative measures and other conditions enshrined in the process of the certification process.

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- Genuine Community participation require the active involvement of the people of the resources bearing Communities in the course of the development of the resources of their homelands, noting that land is the greatest asset being utilised in the development process.
- The inter-play of several other factors and forces in the development of petroleum resources reveal that EIA constitute only a means of ensuring genuine Community participation. EIA is not therefore an end result.
- To protect the environment and ensure the sustainable development of the Niger Delta region over the decades of petroleum resources development in the region, require the production of an environmental improvement plan of the region.
- There is the need for political goodwill on the part of the Federal government of Nigeria to enhance the participatory process in petroleum resources development in the interest of the resources bearing Communities.

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- EIA for industrial development is therefore the business of all stakeholders involved in oil and gas development, who should all work in harmony as **PARNERS IN PROGRESS** in order to achieve the goals of the process namely environmental protection and sustainable development –in the case of extractive industries quasi sustainable development.
- Generally, since the participatory process evolved in the development of petroleum resources in the Nigerian Delta region, the relationship of the people and Communities of the region and the multinational petroleum resources development Companies has gradually begun to improve.
- The problem is that before the evolution of the participatory process, much harm has already been done to the environment and development of the Delta region, and this will take a purposeful and result oriented environmental improvement plan, backed by the political goodwill of the Federal Government, to redress.