

SUBMISSION TO FOREIGN AFFAIRS COMMITTEE INQUIRY INTO GLOBAL BRITAIN AND THE NIGERIA-UK RELATIONSHIP

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From: Publish What You Pay UK and Policy Alert (Nigeria)

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Summary

- Publish What You Pay UK and Policy Alert (Nigeria) are members of the international Publish What You Pay civil society movement (www.pwyp.org) working for transparency, participation, accountability and sustainability in the world's oil, gas and mining sectors.
- We base this submission mainly on the findings and recommendations resulting from our 2019-21 joint project focused on the Nigerian oil and gas sector as reported in our March 2021 report *"What's in It for Us?" An action-research case study of Nigeria's extractive industries*.²
- We summarise below key findings from our collaboration concerning the poor governance, lack of accountability and harmful public impacts of Nigeria's extractive industries.
- The UK, as a key trading partner of Nigeria, its former colonial power and a country where several companies that extract Nigeria's oil, gas and mineral wealth are incorporated, headquartered, publicly listed and/or regulated, shares responsibility for the sorry state of Nigeria's extractive sector.
- Considering the dominance of oil and gas in the Nigerian economy, the severity of environmental impacts, and mounting climate-related risks, the UK government and in particular the FCDO should prioritise acting on the recommendations below to address both long-standing and newly emerging challenges, risks and threats arising from Nigeria's extractive sector.
- We also include additional recommendations on natural resource governance, relevant to Nigeria and other countries, as part of subsection 3.2 below, from *Fighting Corruption: An Agenda for 2021*, recently issued by the UK Anti-Corruption Coalition, of which PWYP UK is a member.³

¹ <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/5153869>

² <https://www.pwyp.org/pwyp-resources/pwyp-report-nigeria-extractives/>

³ <https://www.ukanticorruptioncoalition.org/>;
https://static1.squarespace.com/static/5f6df6d897255f2b8e83c9ce/t/609d18c208abed424b9a2f6c/1620908227062/FINAL_UKACC_Agenda_2021.pdf

1. Introduction

- 1.1 We welcome this opportunity to submit to this FAC inquiry. Our two organisations are members of the international Publish What You Pay civil society movement (www.pwyp.org). PWYP globally comprises more than 1,000 members and 50 national chapters. It campaigns for transparency, public participation, accountability and sustainability in the world's oil, gas and mining sectors.
- 1.2 We make this joint submission because of our concerns to see major improvements in the governance of oil and gas extraction in Nigeria, and improvements in regulation in the UK and other home jurisdictions of extractive companies operating in Nigeria, so that currently negative consequences for affected communities and the whole country can be mitigated and reversed.
- 3.1 We base this submission on the outcomes of our 2019-21 joint project focused on the Nigerian oil and gas sector. Extractive companies operating in this sector include major UK-based companies such as Royal Dutch Shell and smaller UK-registered and/or AIM-listed companies such as Seplat Petroleum and Savannah Petroleum/Seven Energy.
- 1.4 As an outcome from our collaboration, we co-published the report *“What’s in It for Us?” An action-research case study of Nigeria’s extractive industries* in March 2021.⁴ The findings and recommendations below are drawn mainly from the findings and recommendations published in our report but also (in subsection 3.2) from *Fighting Corruption: An Agenda for 2021*, recently issued by the UK Anti-Corruption Coalition, of which PWYP UK is a member.⁵

2. What [...] challenges do the UK’s historic links with Nigeria pose when considering the future partnership between the two countries?

- 2.1 The Nigerian extractive sector is large, complex, poorly governed and in many ways opaque and still unaccountable to citizens and communities. Negative impacts of the extractive sector on Nigerians’ livelihoods, environment, health and human rights can be severe (often more so than in other comparable countries), disproportionately affect disadvantaged groups, including women, youth and people with disabilities, and are largely uncompensated for.
- 2.2 Responsibility for environmental harms and impoverishment in oil-affected communities lies not only in Nigeria, but also in London (including as capital city of the former colonial power), the Hague, Paris and other capitals where multinational parent companies that extract Nigeria’s mineral wealth are incorporated, headquartered, publicly listed and should be more stringently regulated.
- 2.3 Eight oil and gas companies, including Royal Dutch Shell and Seplat, paid US \$359 million in 2018 to the Niger Delta Development Commission (NDDC), the federal government agency responsible for facilitating development in Nigeria’s oil-rich but poverty-stricken Niger Delta region. Despite the huge receipts that have accrued to the NDDC over the past 20 years, the NDDC is plagued with corruption scandals and widely perceived in Nigeria to have failed in its mandate of

⁴ Summary report: <https://www.pwyp.org/wp-content/uploads/2021/03/PolicyAlert-SDN-PWYP-summary-Nigeria-extractives.pdf>. Full report: <https://www.pwyp.org/wp-content/uploads/2021/03/PolicyAlert-SDN-PWYP-report-Nigeria-extractives.pdf>

⁵ <https://www.ukanticorruptioncoalition.org/>;
https://static1.squarespace.com/static/5f6df6d897255f2b8e83c9ce/t/609d18c208abed424b9a2f6c/1620908227062/FINAL_UKACC_Agenda_2021.pdf

promoting development in the Delta. It has a reputation for not completing projects, while the Delta is littered with abandoned onshore wells following unplanned abandonment, and many offshore facilities also face unplanned abandonment, with adverse potential consequences for nearby communities.

- 2.4 There is little if any evidence that the Nigerian government's intended benefit sharing arrangements, such as the 13% receipts derivation formula for oil-producing states, and intervention initiatives like the NDDC and the Nigerian Content Development and Monitoring Board (NCDMB), have helped host and impacted communities, which need to be directly and actively involved in interventions intended to improve their socioeconomic conditions.
- 2.5 Civil society engagement with the Nigerian government and with extractive companies operating in Nigeria has brought about limited improvements in accountability that need to go much further. Payments-to-governments reporting⁶ and the Extractive Industries Transparency Initiative (EITI)⁷ make a modest contribution to accountability across the sector and help deter corruption but can be undermined by poor quality implementation, narrow and unhelpful company interpretation of reporting requirements, lack of strong political commitment and oversight, and other factors.
- 2.6 Civil society and citizens need disclosure of Nigeria's extractive industry contracts and fiscal terms, and of company-community agreements (MOUs), if they are to hold government, industry and in some cases community leaders to account more effectively. Beneficial ownership (BO) disclosure regimes such as the UK's PSC register⁸ and Nigeria's EITI (NEITI) BO register⁹ are important but need tighter rules and better oversight and enforcement to raise disclosure standards.
- 2.7 Public education, awareness raising and dialogue across civil society and with communities offer a major opportunity to achieve change but require sustained effort and sufficient resources to achieve community empowerment, focus advocacy messages and engage with duty bearers to deliver better public outcomes.
- 2.8 Nigeria is over-reliant on oil and gas and is running out of time – as the world transitions to a low-carbon economy – to improve its regulation of extraction and to use its hydrocarbon income to support sustainable development and economic diversification.¹⁰

3. By what mechanisms could the UK government support trade and private sector development in Nigeria and stimulate investment? And how should the FCDO take account of and mitigate potential inhibiting factors to investment (such as corruption, security, human rights abuses)?

3.1 The UK government and FCDO should encourage and provide support to the Nigerian federal

⁶ <https://www.pwyp.org/pwyp-news/extractive-companies-publish-worldwide-payments-under-uk-law/>; <https://resourcegovernance.org/blog/uk-financial-regulator-confirms-extractive-companies-must-name-govts-they-pay>

⁷ <https://eiti.org/>

⁸ <https://www.gov.uk/guidance/people-with-significant-control-pscs>; <https://companieshouse.blog.gov.uk/2016/04/13/the-new-people-with-significant-control-register/>

⁹ <https://bo.neiti.gov.ng/>

¹⁰ <https://carbontracker.org/terms/stranded-assets>; <http://priceofoil.org/2020/06/01/countries-need-to-phase-out-fossil-fuels-heres-how-to-do-it-fairly/>; <https://www.iea.org/reports/net-zero-by-2050>

government to:

- 3.1.1 fast-track passage of the long-delayed Petroleum Industry Bill (PIB)¹¹ to split the Nigeria National Petroleum Corporation (NNPC) into different entities that will address issues of governance and of regulatory and fiscal uncertainty in the sector and create a sustainable community-led framework for local participation and grievance redress;
- 3.1.2 publish timely monthly and annual online machine-readable data on the Niger Delta Development Commission's (NDDC) receipts from the government and from oil companies, explaining how these sums are calculated and how the money is utilised;
- 3.1.3 require the NDDC to establish mechanisms to involve states, local governments and beneficiary communities in community needs assessment, planning and monitoring to improve ownership, effectiveness and sustainability of development projects;
- 3.1.4 create a robust legal and regulatory framework for extractive assets decommissioning and abandonment to address project closure costs and the future consequences of closure;
- 3.1.5 implement equitable benefit sharing arrangements that involve the direct and active participation of affected communities;
- 3.1.6 establish an up-to-date open access public register of all extractive industry community development agreements (MOUs) making the terms of each publicly available;
- 3.1.7 publish for each extractive licence awarded the full text of main agreements/contracts, annexes and amendments in freely accessible and machine-readable formats in line with Nigeria's 2016 London Anti-Corruption Summit and Open Government Partnership (OGP) National Action Plan commitments and with the EITI 2019 Standard;
- 3.1.8 tighten rules on beneficial ownership disclosure for extractive companies, making full public disclosure an eligibility criterion for asset bid rounds and screening applicants for conflicts of interest, PEPs (politically exposed persons) and corruption risk at the point of prequalification or prior to licence award;
- 3.1.9 undertake open and accountable public investigations where the development of hydrocarbons or solid minerals results in negative social, environmental and human rights impacts, promptly publish the findings, penalise offending companies, and implement timely and appropriate remedies;
- 3.1.10 formalise the artisanal and small scale mining sector and protect the rights and livelihoods of small scale mining communities;
- 3.1.11 accelerate preparations for declining hydrocarbon income and the energy transition, working with all sectors of industry and society to diversify away from fossil fuels towards becoming a low-carbon economy and prioritising the needs of communities most affected by oil and gas extraction.

3.2 The UK government and FCDO should also:

- 3.2.1 work with the Canadian government, the European Union and the US Securities and Exchange

¹¹ <http://www.petroleumindustrybill.com/wp-content/uploads/2020/09/Petroleum-Industry-Bill-2020.pdf>

Commission for greater alignment on extractive payments-to-governments disclosure requirements between jurisdictions to help establish a fully consistent and rigorous international reporting standard for companies;

- 3.2.2 work with the Department for Business, Energy & Industrial Strategy (BEIS) and Companies House, and with HM Treasury and the Financial Conduct Authority, to require UK-incorporated and London Stock Exchange-listed oil, gas and mining companies to disclose payments to governments for the purchase of producer states' publicly owned oil, gas and minerals ("commodity trading") and champion this reform internationally;¹²
- 3.2.3 work with BEIS and Companies House to disallow the appointment of companies or other corporate bodies as directors of another company (which encourages potentially fraudulent circular ownership structures), and consider replacing the current 25% control disclosure threshold applied by the UK's public beneficial ownership (PSC) register with a requirement for companies to report all beneficial owners' shares or voting rights in exact percentages;
- 3.2.4 work with BEIS and Companies House, and with HM Treasury and the Financial Conduct Authority, to require more comprehensive, detailed, consistent and rigorous information disclosure by UK-incorporated and London Stock Exchange-listed extractive companies about their environmental and social policy and practice, impacts and how remedied, respect for human rights, practices to combat corruption risk, and energy transition plans in line with Paris Agreement 1.5 degree Celsius targets;
- 3.2.5 in addressing the global climate crisis, prioritise anticorruption and accountable resource governance as part of UK and global efforts to achieve a managed reduction in fossil fuel production, and help Nigeria and other hydrocarbon-dependent governments in the global South to implement just and equitable climate adaptation, mitigation and energy transition plans;
- 3.2.6 lead internationally to accelerate the redirection of international funding away from fossil fuels and into the low-carbon energy transition and economic diversification, prioritising justice for poorer producer countries, workers, affected communities, women and rural livelihoods; this needs to include: acting fastest with other high-income and historically high-carbon-emitting countries to reduce domestic hydrocarbons production; helping finance the transition among partner countries in the global South – implying recognition and repayment of historic ecological debt; helping make affordable clean energy available to all; and recognising the rights of communities and the environment to be respected and protected in the continuing extraction of solid minerals needed for the energy transition, including the right of affected communities to say no to extraction;
- 3.2.7 seek out and fund more civil society transparency, participation and accountability initiatives directed at securing more equitable and sustainable outcomes in producer countries and subnational localities when non-renewable natural resources are extracted, and increase support for capacity building for civil society organisations working to make the extractive sector more just and sustainable (including in Paris Agreement 1.5 degree C terms);
- 3.2.8 publicly commit to the principle of free, prior and informed consent (FPIC)¹³ on an ongoing basis whenever large-scale infrastructure or development projects are funded by UK and/or

¹² <https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2019-2021/uk-national-action-plan-for-open-government-2019-2021>

¹³ <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>

multilateral development aid and/or involve UK-incorporated and/or London Stock Exchange-listed extractive and other companies; FPIC should apply equally to indigenous and non-indigenous peoples and communities and be required both at project inception stage and at every significant new stage of project development, expansion or modification;

3.2.9 maintain an active commitment to, and actively promote, the effective and universal operationalisation of the UN Guiding Principles on Business and Human Rights¹⁴ and fully and actively support the process towards achieving an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises with regard to human rights.¹⁵

Ends

¹⁴ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁵ <https://www.business-humanrights.org/en/big-issues/binding-treaty/>