

# **PETRO-STATES IN WEST AFRICA; THE CASE FOR A RIGHTS-BASED MODEL TO OIL & GAS DEVELOPMENT IN GHANA AND NIGERIA**

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## **INTRODUCTION**

In a report to the UN General Assembly in June 2000, the High Commissioner for Human Rights indicated that a rights-based approach offered a more effective, sustainable and rational model for realizing development and human rights. The approach can help modify West Africa's development approaches, especially in my view with regard to the environmental and human rights problems associated with offshore petroleum development.

## **THE RIGHTS-BASED APPROACH**

A rights-based approach is a fairly new conceptual approach in the international development arena. It is nevertheless gradually gaining traction. Even though several attempts have been made at providing a definition for a rights-based approach there is still no universally accepted definition of this novel approach. A rights-based approach however focuses on the attainment of minimum conditions for living in dignity. It identifies right-holders and corresponding duty-bearers, and works at strengthening the capacity of right-holders to assert claims, and that of duty-bearers to fulfill obligations.

The approach suggests that duty-bearers are legally answerable for the observance of human rights, and therefore, where rights are violated, rights holders are entitled to grievance settlement mechanisms and effective remedies before competent courts or other adjudicating processes in accordance with law.

Kapur and Duvvury argue that a rights-based approach to development is primarily based on a framework of rights and obligations. In May 2003, the United Nation's Development Program issued a 'Statement of Common Understanding', explaining that under 'a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and state and non-state actors with correlative obligations (duty-bearers). It works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.'

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A human rights-based approach it is claimed rests on the following principles: universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and rule of law.

By stressing these principles, a rights-based approach might at least conceptually have enormous relevance for petroleum development in a number of ways, namely (i) it may ensure accountability and transparency by identifying rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations); (ii) it may help build capacities for the realization of rights so that rights-holders can assert claims and duty-bearers can meet their obligations; (iii) it may facilitate the active and meaningful participation of multiple stakeholders, including people who directly benefit from projects; (iv) it can create a sense of local ownership of development processes through strategies of empowerment that focus on rights-holders; and finally (v) a rights-based approach can be a driver of socio-cultural or technological change.

### **PETRO-GHANA AND NIGERIA**

Oil states in West Africa particularly in Ghana and Nigeria should openly adopt an oil policy that is rights-based (i.e. one which mainstreams respect for human rights into resource development). Three elements of that policy should be i) recognition of a human rights dimension to oil development, ii) the integration of human rights standards and principles into policymaking and iii) the use of oil development to realize human rights (such as right to participation, right to environment, right to life and livelihood, right to health, right to development etc). For example, both Nigeria and Ghana's future EIAs must include a requirement that prospective oil investors should undertake compulsory human rights impact assessments (HRIAs). This will mainstream human rights and ensure that respect for human rights become an important corporate objective.

### **SOCIAL POLICY VALUES OF A RIGHTS BASED APPROACH**

Important human rights of all citizens (right-bearers) such as the rights to a satisfactory environment, to life, to information, to health, to work, to property and to health are all interlocked in petroleum related activities. A human rights approach focuses social policy on people and communities that are particularly at risk, and offer some guidance for the design and implementation of public policy, compensation or community consultations. It might as well have some effect on public policies relating to the use (or misuse) of state security agencies by the executive branch to repress human rights, particularly, the right to free expression, assembly, association and lawful demonstrations to back demands for access to oil benefits or to halt environmental degradation.

If the hypothesis that petroleum operations implicate human rights is sound, my belief is that it should persuade key actors – public officials, judges, parliamentarians, prosecutors, lawyers, private business, bankers, accountants, the media and the public in general – to take a stronger stand against oil-related human rights violations in the formulation of social policy.

One more useful and provocative dimension to the oil-human rights question is that the link between oil and violations of human rights creates new possibilities for action, especially as, such violation can shown to violate national and international law. Violations of human rights can be challenged using national, regional and international mechanisms that exist to monitor and enforce compliance with human rights. In Africa, the African Court on Human and Peoples' Rights (ACtHPR) also provides addition impetus to prevent and protect potential abuses of human rights - this is the only way the social impacts of oil can be held in check.

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African Charter on Human and Peoples' Rights (ACHPR)

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