

# CHALLENGES AND PROSPECTS OF THE PETROLEUM INDUSTRY ACT AND NATIONAL DEVELOPMENT IN NIGERIA

Kessington Obahiagbon, Osarieme Uyi Osazuwa, and Andrew Nosakhare Amenaghawon\*

## *Abstract*

*The prospects and challenges of the Petroleum Industry Act (PIA) with respect to national development in Nigeria has been outlined using descriptive mechanism. As a nation, the prospects of the PIA for its development cannot be over emphasize. Aspects which can hinder the realization of the objectives of the Act have been identified and outlined. For instance, clear definition of Host Communities, fiscal policies etc have been reviewed. Based on these challenges, conclusions were reached, and recommendations have been proffered amongst which is the institutionalization of fiscal and financial discipline and transparency particularly to the public.*

**Keywords:** Petroleum, Industry, Act, National development, Fiscal policies.

## **1. Introduction**

The Nigerian economy is heavily dependent on oil exploration, exploitation, and sales. The need to harness the profits from the oil resources has led to high dependency of states on the Central Government which creates undesired national challenges. The Petroleum Industry Act, 2021 (PIA) places the Federal Government of Nigeria to better manage the oil sector and adhere to international standards<sup>1</sup>. PIA is a legislation that addresses structural policy, and managerial challenges in the Nigerian oil and gas sector.

The Act addresses observed weaknesses and abuses by stakeholders, eliminate corruption and reposition the petroleum industry thereby making it more responsive to social and economic requirements of Nigerians and foreign investors. These are all carried out in line with the concepts of equity, responsibility, and sustainability of set targets. The PIA also puts into consideration local content, technology, operations, and ownership, thereby having a reflective aspect of national consciousness.<sup>2</sup>

According to Ogunbanjo<sup>3</sup>, increase in supply of domestic gas, a flexible and sustainable fiscal framework that is economically attractive, creating two-tier royalty, and tax regime, and the development of a more commercially viable national company by restructuring the Nigerian National Petroleum Corporation (NNPC) are some of the most significant benefits of the legislation. Nevertheless, the PIA had earlier been subject to intense scrutiny by legislators due to its regional alignment. The area of the Act which previously divided legislators were percentage of community funds for oil producing communities, the powers of the petroleum

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\* Authors are of Petroleum Technology Development Fund Professorial Chair in Renewable Energy, Department of Chemical Engineering, University of Benin, Benin City, Edo State, Nigeria

<sup>1</sup> Igwe, U. (2012). Nigeria: Petroleum industry bill Reasons to be sceptical. Retrieved from <http://www.allafrica.com/stories/201208021444.html> P2.

<sup>2</sup> Asemudara, I. (2013). Petroleum industry bill, a mirror of national consciousness. Retrieved from <http://www.punchng.com/feature/the-law-you/petroleum-industry-bill-a-mirrorof-national-consciousness/> P.1.

<sup>3</sup> Ogunbanjo, A. (2013). The second reading of the petroleum industry bill commences. Retrieved from <http://www.petroleumindustrybill.com> P.6.

minister, and the provisions regarding the exploration of oil outside the Niger Delta<sup>4</sup>. Due to the lack of literature and the recent nature of the PIA, this paper will adopt a qualitative approach.

## **2. The Petroleum Industry Act and its Objectives**

Nigerian Government agencies had started working on the development of a national oil and gas policy as far back as early 2000. The oil and gas sector reform implementation committee (OGIC) were formed on the 24<sup>th</sup> of April 2000 with the committee chaired by Dr. Rilwanu Lukman who was the presidential adviser on petroleum and energy. The OGIC made recommendations to cater for the upstream, midstream, and downstream sectors of the industry. One of such recommendations included a proposal to separate the commercial institutions within the industry from the regulatory institutions.<sup>5</sup>

The Nigerian Oil and gas Policy was introduced by the Federal Government in 2007, and the OGIC was reconstituted to come out with recommendations towards a new framework to guide the operations of the oil and gas industry. Furthermore, a deliverable from the OGIC was the report which recommended a new regulatory and institutional framework.<sup>6</sup> When implemented, this would guarantee greater transparency and accountability. This report formed the basis for the first Petroleum Industry Bill (PIB) that was submitted in 2008 as an Executive Bill. Features of the Bill was the unbundling and commercialization of the Nigerian National Petroleum Corporation (NNPC), transformation of the existing joint ventures between multinational oil companies and the NNPC, deregulation of the downstream sector, creation of new regulatory bodies, and introduction of a new fiscal regime. The bill was met with high level discussions amongst industrial stakeholders, and it commenced a process of multiple reviews to come out with ideal draft.

The Government by setting up a special task force committed to hasten the reform of the oil and gas industry by fast-tracking the passage and signing into law of the PIB. The PIA is largely from work carried out by the Special Task Force committees. In the PIA, provisions are available for the organizational structure, regulatory agencies, oil and gas exploration/production, gas flaring, health, and safety etc. The Act ensures that the management and allocation of petroleum resources in Nigeria are transparent, and sustainable in line with national development. The PIA will open the oil industry to private entities, resolve host community concerns, promote local content as well as enhance gas utilization. It establishes a fiscal work structure that drives investment and enhances government revenue inflow by creating new regulatory institutions and profit-oriented oil and gas sector to support industrial operations.

## **3. Issues Arising from the Petroleum Industry Act and National Development**

Majority of the discussion around the PIA are concerned with fiscal, institutional, and regulatory restructuring. The PIA has had mixed reactions from stakeholders since it was passed into law. This is due to its content spanning across regulatory institutions, upstream

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<sup>4</sup> Ekot, I. (2013). Petroleum industry bill scales second reading in Nigerian senate. Retrieved from <http://premiumtimesng.com/news/123514-nigerian-senate-gives-petroleumindustry-bill-second-reading.html> P.1.

<sup>5</sup> Fagbohunlu, B. and Ikwuazom, C. (2012). Overview of the Nigerian petroleum industry bill. Retrieved from [http://www.hoganlovellsafrica.com/uploads/Publications/Africa\\_September\\_2012\\_new\\_letter\\_-\\_Nigerian\\_Petroleum\\_Industry\\_Bill.pdf](http://www.hoganlovellsafrica.com/uploads/Publications/Africa_September_2012_new_letter_-_Nigerian_Petroleum_Industry_Bill.pdf) Pp. 1-5.

<sup>6</sup> Lukman, R. (2009). Keynote address by the Honourable Minister of petroleum resources on the proposed petroleum industry bill. Abuja, 16th July 2009.

contractual agreements transformation, new fiscal regime, and deregulation of the downstream sector and government participation in the industry. Also, a contentious aspect of the Act which includes percentage remittance of profits from the operators to host communities in the form of Petroleum Host Community Fund (PHCF), inadequacy of the Petroleum Technical Bureau, and the excessive powers of the Minister are key areas discussed in the Act.

Another fundamental aspect of the PIA centres around the promotion of openness and transparency in the oil and gas industry. There is provision in the Act that tackles the need for openness and transparency in administration to manage crude oil and gas reserves. Hence by open, and transparent bidding, stakeholder will view the industry positively<sup>7</sup>. As already established, transparency encourages competition, discourages illicit behaviour, and attracts investment. Also, institutions that are accountable reassures investors, improve regulation and revenue collection, which yields higher productivity and income. This makes the passage of the PIB to PIA a particularly good step for the progression of Nigeria. These provisions are among the most relevant in the world and will ensure Nigeria is placed amongst the leading countries in Africa.<sup>8</sup>

Challenges have also arisen from the host communities Fund (PHCF). Despite the activities of the Niger Delta Development Commission (NDDC), the perception exists that people living in the Niger Delta communities are not benefitting directly from the wealth created from the oil and gas rich area. The PIA includes a transparent financial distribution system which ensures direct benefits from petroleum activities. After-tax profits are allocated to the communities and the littoral states from the onshore and shallow-water operations. According to Makinwa,<sup>9</sup> the Petroleum Host Communities Fund (PHCF) is a relatively new idea. The fund aims to assist the host communities affected by the upstream activities of oil companies develop, and for these communities to have direct influence and action on decision making for their environmental and socio-economic progression through monies acquired by the fund. The host community fund will not be deducible from the federation account, but rather funded by operating oil companies within a given community.<sup>10</sup>

Also, under the fiscal provisions of the PIA, a progressive royalty linked to production rate and oil price is introduced replacing the existing depth-related royalty.<sup>11</sup> A controversial aspect of the PIA is the power given to the petroleum minister, where he/she supervises over all aspects of oil exploration and production. These include powers to determine when the companies will stop gas flaring and venting. These powers have been described as powers that could be beneficial to the nation and can be easily abused to the detriment of the Industry and the Nation.<sup>12</sup> The Act provides that the petroleum minister is the Chairman of the Boards of organizations established by the act. These organizations include, Petroleum Equalization Fund, Petroleum Technology Development Fund (PTDF), and National Petroleum Assets

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<sup>7</sup> Fagbohunlu, B. and Ikwuazom, C. (2012). Overview of the Nigerian petroleum industry bill. Retrieved from [http://www.hoganlovellsafrica.com/uploads/Publications/Africa\\_September\\_2012\\_new\\_letter\\_-\\_Nigerian\\_Petroleum\\_Industry\\_Bill.pdf](http://www.hoganlovellsafrica.com/uploads/Publications/Africa_September_2012_new_letter_-_Nigerian_Petroleum_Industry_Bill.pdf) Pp. 1-5.

<sup>8</sup> Pedro, V. M. (2012). Nigeria Petroleum Industry Bill 2012: Commentary on the PIB 2012. UK: Ernst & Strong. P.14.

<sup>9</sup> Makinwa, F. (2012). Nigeria petroleum industry bill 2012: Conflict analysis report. Retrieved from [http://integritynigeria.org/wpcontent/uploads/2012/09/PIBReportFinal\\_v3.pdf](http://integritynigeria.org/wpcontent/uploads/2012/09/PIBReportFinal_v3.pdf) P.6.

<sup>10</sup> Nwabugo, I. (2013). Another look at the petroleum industry bill. Retrieved from <http://www.nigerianpilot.com/another-look-at-the-petroleum-industry-bill/> P.1.

<sup>11</sup> Onyeukwu, H. (2010). Selected Works: Who is afraid of Nigeria's petroleum industry bill? Retrieved from [http://www.work.bepress.com/humphrey\\_onyeukwu/7](http://www.work.bepress.com/humphrey_onyeukwu/7) Pp.3-4.

<sup>12</sup> Kassim-Momodu, M. and Nwajide, C.S. (2012). The Nigerian Petroleum Industry Bill 2012: Some Observations and Suggestions. Petroleum Technology Development Journal, 2012 Volume 2, p3.

Management Corporation. He also recommends to the President appointees for the position of Chief Executives of various organizations established by the PIA. The Minister plays a supervisory role for activities of the Petroleum Technical Bureau and the Upstream Petroleum Regulatory Agency. Ohaeri,<sup>13</sup> stated that the current framework arrogates too much responsibility to the person of the Minister rather than to independent institutions giving room for abuse of power.

Presently, the PIA still gives so many powers to the President. For instance, the President has unilateral powers in granting oil licences. To this end, analysts have argued that uncontrolled decision-making powers are prone to abuse, mainly because it is impossible to see into how decisions are arrived at, and accountability is obfuscated. Likely positive outcomes from a well implemented PIA will include breaking the monopoly of the Nigerian National Petroleum Corporation through privatization, price controls, and reduction in government subsidy. This will in turn release funds for other economic needs thereby enhancing the Foreign Direct investment in the economy.

#### **4. Challenges Faced by the Petroleum Industry Act and National Development**

The petroleum industry faces numerous difficulties amongst which are corruption, weak institutions/regulations, and lack of transparency. The Petroleum Industry Bill faced several challenges right from its inception in 2008. The delay and inability to pass the bill into an Act were due to political interest and lack of will power by the political class. The fundamental objectives to create transparency turned out to be a major challenge of the bill and consequently might hinder the implementation of the Act. This was obvious during the legislation of the PIB, where several versions of the PIB were in circulation; a bill which was primarily aimed at bringing transparency to the industry. This raised questions which bordered on the integrity of the legislative arm of government.<sup>14</sup>

Another aspect of the Act that remains relatively unclear is the proper definition of Host communities. According to Makinwa,<sup>15</sup> the bill fails to give a clear definition of the Host communities. The has the potential to open channels for exploitation of the funds thereby increasing the agitation in the Niger Delta region.

The fiscal changes in this sector envisaged under the Act pose a challenge to its successful implementation. The oil companies feel it will create a harsh and hostile environment which will change the economics of investment in the sector, hence altering the existing and new operations in the deep-water regions.<sup>16</sup>

#### **5. Prospects of the Petroleum Industry Act**

##### **5.1. National Development**

Despite the challenges faced by the PIA, there are still great prospects for Nigeria with respect to the Act. For instance, the Act makes provision for transforming the petroleum sector and the entire country. Provisions on gas flaring aiming to stop and outlaw gas flaring and venting of

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<sup>13</sup> Ohaeri, V.I. (2013). Frequently asked questions about the petroleum industry bill. Lagos: Spaces for change. Pp. 9-10.

<sup>14</sup> Jimoh, M. (2013). Challenges and prospects in Nigeria's petroleum industry. Retrieved from <http://www.thetideonline.com> P.2.

<sup>15</sup> Makinwa, F. (2012). Nigeria petroleum industry bill 2012: Conflict analysis report. Retrieved from [http://integritynigeria.org/wpcontent/uploads/2012/09/PIBReportFinal\\_v3.pdf](http://integritynigeria.org/wpcontent/uploads/2012/09/PIBReportFinal_v3.pdf) P.6.

<sup>16</sup> Onyeukwu, H. (2010). Selected Works: Who is afraid of Nigeria's petroleum industry bill? Retrieved from [http://www.work.bepress.com/humphrey\\_onyeukwu/7](http://www.work.bepress.com/humphrey_onyeukwu/7) Pp.3-4.

natural gas. More also, the Act has the potential to ensure more transparency in the oil sector. The new Act makes provision for Nigerians to own equity in the new National Oil Company and the National Gas Company. Citizens can become shareholders in the National Oil Company. This will create a springboard for mass employment, more revenue for government. There would be enhanced indigenous/local content outlook instead of the previous dominance of the sector by foreigners. The PIA also introduces new fiscal regimes even for old petroleum sharing contracts. More importantly, the PIA introduces new sets of guidelines ensuring that licence sales must be open and transparent. The PIA has established guidelines and procedures that will make way for good governance, transparency, and accountability in the exploitation of oil in Nigeria. This will ensure government revenues from the industry will improve to about 82% under the PIA terms from an average of 73 %.<sup>17</sup>

## 5.2. Renewable energy development

The PIA has numerous prospects for renewable energy development as outlined in the following.

- Renewable energy is the future of energy deployment in the world. Since energy from renewable sources reduces environmental pollution and climate change.
- The PIA, if implemented transparently will free more funds the Government in terms of profit thereby increasing allocation of more funds to the PTDF to encourage research and training in this area. Also, increased profits to Government will lead to massive investment in Agriculture to create employment and development of crops utilised in the production of biodiesel.
- There are abundant renewable energy resources in Nigeria such as solar, wind power and biomass. By developing such energy sources, we can reduce dependence on oil and natural gas, thereby creating energy portfolios that are less vulnerable to price increase.

## 7. Conclusion and Recommendations

The passing of the Petroleum Industry Bill (PIB) into law (now PIA) is a positive step. The PIA aims to change the existing petroleum Acts with a more detailed Act that provides for better fiscal and regulatory plans of the oil and petroleum Industry. These potentials would be revealed as the implementation of the Act drives industrial infrastructural development, increase government oil revenue, attract foreign direct investments as well as support the active involvement of indigenous industrial players and consequently foster national development.

Nevertheless, there is a growing need to rethink the petroleum industry and its current revenue collection process to block financial loopholes. To this end, some recommendations have been provided below.

- 1) Mechanisms should be put in place to drive good fiscal discipline and financial transparency to ensure these variables are measurable, accessible to the public and devoid of political manipulations.
- 2) Relevant expert and stakeholders should be engaged to monitor critical fiscal rates to ensure they do not negatively affect investment in the oil industry thereby reducing adversely affecting government revenue.

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<sup>17</sup> Oyedele, T. (2013). Fiscal regime under the new petroleum industry bill: Revolutionary or business as usual? Retrieved from <http://www.pwc.com/ng/en/pdf/nigeria-august-taxnews-fiscal-regime-under-the-new-petroleum-industry-bill.pdf> pp.2-3.

- 3) The President and Minister of Petroleum should put into play equity when granting and revoking licences and appointing Chief Executives of all Government Agencies or entities established by the Act. This will ensure confidence in the bill and enhance public cooperation.