PETROLEUM INDUSTRY BILL AND NATIONAL DEVELOPMENT IN NIGERIA:
PROSPECTS AND CHALLENGES

By

Ishmael Ogboru

And

Onuoha Onyinyechi Josephine
Department of Economics
University of Jos

Abstract
This paper sets out to examine issues involved in the Nigerian petroleum industry bill. It specifically sought to examine the prospects and challenges of the petroleum industry bill as it relates to national development in Nigeria. Using descriptive analysis, the paper examined the petroleum industry bill and established its nexus with national development. The paper went on to posit that the bill holds a lot of prospects for the development of Nigeria as nation. The challenges such as the absence of clear definition of host Communities, among other challenges were identified, which can hinder the realization of the objectives of the bill. Sources of data used in this paper were essentially secondary that is, literature from the media and internet. This is due to the nature of the topic, which is both current and a gray area of research in journals and books. Based on the challenges identified for the successful implementation of the bill, recommendations were proffered, among which is the need to ensure that the processes of the PIB mechanisms for institutionalizing good fiscal discipline and financial standards are transparent, measurable and accessible to the public, and free of political interference.

Key words: Petroleum, Industry, Bill, National development, Host Communities,

Introduction
Nigeria is an oil-rich country and its economy is heavily reliant on profits from oil. The heavy reliance on oil exploration and exploitation, and the almost total dependency of states on central government coffers creates an undesirable situation. The Petroleum Industry Bill, touted to be a panacea for many of the country’s social and economic ills, has been a four year battle for the government of Nigeria (GoN) to better the oil sector and adhere to international standards (Igwe, 2012).

The Petroleum Industry Bill (PIB) is a piece of legislation intended to address endemic structural, policy and managerial issues in the Nigerian oil and gas sector. It is an attempt to redress observed weaknesses and abuses by operators and stakeholders, eliminate corruption and restructure the industry to make it more responsive to social and economic needs of Nigerians and foreign investors with basic key concerns such as equity, responsibility and sustainability targets.

Going through the PIB, one progression towards growing indigenous manpower, technology, operation and ownership will see how much of national consciousness that is reflected in its provisions (Asemudara, 2013). Some of its objectives under Section 1 include enhancing
exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people and promoting the development of the Nigerian content in the petroleum industry. Furthermore, the PIB provides that a Petroleum Prospecting Licence, Petroleum Exploration Licence and Petroleum Mining Lease may only be granted to a company incorporated in Nigeria under the Companies and Allied Matters Act or a corresponding law and that it shall be a condition for the grant of all licences or leases in the upstream petroleum industry that the person granted must be qualified as an operator.

Ogunbanjo (2013) stated that the PIB is one of the most significant pieces of legislation to be considered by the Senate, whilst lauding the various benefits to be derived from the passage of the Bill which he stated included increased domestic gas supply for the power industry, a flexible and stable fiscal framework that is competitively attractive, the creation of a two-tier royalty and tax regime which captures the upside of crude oil and gas prices and the creation of a more commercially viable national oil company through the corporate restructuring of the Nigerian National Petroleum Corporation (NNPC) amongst others.

However, the controversial Petroleum Industry Bill had aroused tension at the senate, dividing lawmakers along regional lines. Lawmakers have been divided over the stipulation of a 10% community fund for oil producing communities, powers of the petroleum minister, and the provisions for the exploration of oil elsewhere outside the Niger Delta (Ekot, 2013). The bill has been referred for consideration to committees on petroleum upstream, petroleum downstream, gas, judiciary and legal matters.

While the industry and its many players and regulators await the new law, this paper seeks to review the objectives and issues involved in the petroleum industry bill as well as its prospects and challenges as it relates to national development in Nigeria.

**Methodology of the Paper**

This paper adopted the qualitative (descriptive) approach of analysis owing to the nature of the topic under consideration, which is both current and a gray area of research, conventionally found in journals and books. Secondly, there is dearth of data in this topical area, which limits the application of quantitative analysis. Sources of data used in this paper were essentially secondary that is, literature from the media and internet.

**The Evolution of the Current Version of the Petroleum Industry Bill and its Objectives**

As far back as the early 2000, successive Nigerian governments have worked to develop a national oil and gas policy. In an attempt to restructure the oil and gas industry, the Oil and Gas Sector Reform Implementation Committee (OGIC) was inaugurated on 24th April, 2000 under the chairmanship of Dr. Rilwanu Lukman (then serving as the Presidential Adviser on Petroleum and Energy). The OGIC was charged with the task of making recommendations for a far reaching restructuring of Nigeria’s oil and gas industry (the “industry”), that is, to cover the upstream, midstream and downstream sectors of the industry. The recommendations of OGIC included a proposal to separate the commercial institutions within the industry from the regulatory institutions (Fagbohunlu & Ikwuazom, 2012).

In 2007, the Federal Government of Nigeria introduced the National Oil and Gas Policy and re-constituted OGIC to make recommendations towards the emergence of a new institutional framework to govern the operations of the oil and gas industry, including the emergence of a new National Oil Company, new regulatory bodies and a new national directorate, for a more
effective policy formulation for the industry. Further deliberations of OGIC produced the Lukman Report (2009) which recommended a new regulatory and institutional framework that, when implemented, would guarantee greater transparency and accountability. This report formed the basis for the first PIB that was submitted in 2008 as an Executive Bill. Among the salient features of the original version of the PIB were 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 that sought to increase overall government take.

Initial reactions to the Bill prompted intense discussions among stakeholders in the industry and signaled the commencement of a process of multiple revisions of the Bill in an attempt to produce an acceptable draft. This revision process culminated in a proliferation of diverse and irreconcilable versions of the Bill. The existence of different versions of the Bill together with preparations for the general elections in the 2nd quarter of 2011 contributed to the inability of the last session of the legislature to enact the Bill into law.

The resurgence of the Bill as pointed out by Fagbohunlu and Ikwuazom (2012), can be traced to a number of factors including the gradual cessation of investments in the sector as a result of uncertainty regarding the fiscal provisions of the Bill and their potential impact on the industry, the emergence of competing petroleum investment opportunities in other sub-Saharan African countries such as Ghana, Angola, Sao-Tome and Principe, and more recently, the attempt by the Nigerian government to deregulate the downstream industry in January 2012 which led to an increase in fuel prices.

The Federal Government as part of efforts to contain the strike that ensued committed to expedite the reform of the oil and gas industry by, among other things, fast-tracking the passage of the PIB. Subsequently, the Federal Government inaugurated a Special Task Force with responsibility to produce a harmonized version of the Bill which would be re-presented to the legislature for passage. The current Bill which has scaled through its second reading in the National Assembly is believed to be largely the product of the work done by the Special Task Force and its technical committees.

The Petroleum Industry Bill covers all aspects and all areas of the petroleum industry. It makes provision on the structure of the organizations and regulatory agencies that drive the industry, oil exploration, production, logistics and pipelines, upstream and downstream management and regulation, gas exploration, production and sales, gas flaring, environmental quality management, health and safety, reserves, management, etc. It aims to ensure that the management and allocation of petroleum resources in Nigeria are in line with the principle of good governance, transparency and sustainable national development.

Among several objectives, the current draft of the Bill seeks to open up the oil industry to privatization, address host community concerns, promote local content and optimize domestic gas supplies. It seeks to establish a fiscal framework that encourages investment and increases revenue inflow to the government, through the creation of new regulatory institutions and profit-driven oil and gas entities that will drive the industry operations. In addition to attracting the much-needed investment into natural gas, which will in turn, bolster energy security, the Bill’s passage is expected to bring an end to licencing rounds, contract
renewals and investment that have been put on hold for five years, causing massive revenue losses to the country (Agbor, 2012).

Some of the fundamental objectives of the Bill as contained in section 1 of PIB (2012), are: to create a business environment conducive for petroleum operations; to enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people; to optimize domestic gas supplies, particularly for power generation and industrial development; to deregulate and liberalize the downstream petroleum sector; and to attain such other objectives to promote a viable and sustainable petroleum industry in Nigeria.

**Issues involved in Petroleum Industry Bill and National Development in Nigeria**

Despite the stated objectives, most of the debate on the Petroleum Industry Bill (PIB) revolves around fiscal, institutional and regulatory restructuring. The PIB has drawn different emotions from stakeholders since it came into the public domain. The PIB proposes fundamental reforms of Nigeria’s oil industry and is anchored on the creation of new regulatory institutions, transformation of upstream contractual agreements, new fiscal regime, and downstream sector deregulation, government participation in the industry and transparency in contractual agreements. Also, at the National Assembly, the crux of the Bill’s second reading centered around three contentious issues which include the 10% remittance of profits from petroleum operators to host communities in form of Petroleum Host Community Fund (PHCF), the inadequacy of the Petroleum Technical Bureau, and the excessive powers of the Minister.

One of the fundamental issues involved in the PIB is centered on one of the stated objectives of the Bill, namely, the promotion of openness and transparency in the oil and gas industry. The need for openness and transparency in the administration and management of Nigeria’s vast crude oil and gas reserves cannot be overstated. As such, the provisions of the PIB which declare that “the grant of a petroleum prospecting licence or a petroleum mining lease shall be by open, transparent and competitive bidding process conducted by the Inspectorate” will be largely viewed as positive by all stakeholders (Fagbohunlu & Ikwuazom, 2012).

As opined by Sayne (2011), if the final Petroleum Industry Bill (PIB) contains strong transparency and accountability provisions, Nigeria’s oil sector performance has real opportunity to improve. Transparency encourages competition, discourages illicit behaviour and attracts investment. Accountable institutions reassure investors, improve regulation and revenue collection, and result in higher production and earnings. He concluded that given oil’s prominent role in the economy, Nigeria will struggle to break into the top 20 economies without such reforms.

In the words of Aramide and Olarewaju, (2013), the PIB would be incomplete without transparent and accountable mechanisms to achieve all of its stated objectives. From the fiscal framework to the institutional and regulatory structuring, transparent and accountable processes form the core of opportunities to improve the country’s oil sector performance outlook (Ohaeri, 2013). Transparency would encourage competition, discourage illicit behavior and attract investments. This is a very good step forward for Nigeria. From a legislative point of view these provisions are now among the most advanced in the world and will make Nigeria a leader in Africa in this respect (Pedro, 2012).
Another issue is that of the Petroleum Host Communities Fund (PHCF). There is a strong sense in the Niger Delta communities that the people living in this area are not benefitting directly from the oil and gas wealth of the area, despite the activities of the Niger Delta Development Commission (NDDC). Therefore, the PIB included a detailed and transparent financial distribution system to ensure that the communities would benefit directly from the petroleum activities. It allocates 10% of the after-tax profits of the onshore and shallow-water operations to the communities and the littoral states. As observed by Makinwa, (2012), the Petroleum Host Communities Fund (PHCF) is a relatively new idea in PIB 2012. The aim of the fund is to assist in the development of host communities affected by the upstream activities of oil companies, 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. For the sake of clarity and to allay fears, the 10% host community fund is not deducible from the federation account, but rather funded by operating oil companies within a given community (Nwabugo, 2013).

The fiscal regime under the PIB is an important issue with new fiscal provisions in the Bill. The PIB introduces higher royalties and increased governments take. At present, a standard 20% royalty applies for onshore operations and 18.5% for prospects in swamp/shallow waters (1-100 metres). The rates built on a reducing sliding scale with offshore fields of water depth up to 200 metres attracting 16.67%, 12.0% for 201-500 metres, 8.0% for 501-800 metres, 4.0% for 801-1,000 metres and 0% when the depth exceeds 1,000 metres. Under the fiscal provisions of the PIB, a progressive royalty linked to production rate and oil price is introduced replacing the existing depth-related royalty (Onyeukwu, 2010).

Under the current regime, companies and entities engaged in upstream petroleum operations are subject to petroleum profits tax pursuant to the Petroleum Profits Tax Act (PPTA) while other companies (including those engaged in downstream petroleum operations) are subject to companies income tax pursuant to the Companies Income Tax Act (CITA). The current rate of petroleum profits tax is 50% for operations in the deep offshore and inland basin and 85% for operations onshore and in shallow waters. As noted by Oyedele (2013), the Bill proposes to replace the existing petroleum profits tax with a Nigerian Hydrocarbon Tax (NHT) at the rate of 50% for petroleum operations onshore and in shallow water fields and 25% for petroleum operations in deepwater, bituminous and frontier acreages. In addition to NHT, the Bill also proposes companies income tax at the rate of 30% on upstream petroleum operations (which under the existing regime are not subject to companies income tax).

According to Fagbohunlu and Ikwuazom (2012), other significant aspects of the new fiscal regime proposed by the PIB include:

I. The introduction of a general production allowance (GPA) claimable by a company which has executed a production sharing contract (PSC) with NNPC. Under the current regime, an oil producing company which had executed a PSC with NNPC prior to 1 July 1998 is entitled to claim an investment tax credit (ITC) at the rate of 50% of qualifying capital expenditure (QCE) incurred by that company wholly, exclusively and necessarily for the purposes of its petroleum operations while an oil producing company which executed a PSC with NNPC after 1 July 1998 is entitled to claim investment tax allowance (ITA) also at the rate of 50% of QCE. The difference between ITC and ITA is that while ITC offers a dollar for dollar credit which directly reduces the tax payable, ITA operates to reduce taxable profits before the tax rate is applied to determine the tax payable. The PIB now proposes to replace both ITC and
ITA with GPA. Given that the GPA is intended to, much like the current ITA, reduce assessible profit (and not the tax payable), it is likely to impact more adversely on the take of PSC contractors in the pre-1 July 1998 PSCs.

II. While the ITC and ITA are calculated as a percentage of QCE and available throughout the period of petroleum operations, GPA is to be calculated as follows:

(a) For onshore operations: the lower of US$30 per barrel or 30% of the official selling price (OSP) up to a cumulative maximum of 10 million barrels and the lower of US$10 per barrel or 30% of OSP for volumes exceeding 10 million barrels up to a cumulative maximum of 75 million barrels and then no more.

(b) For operations in the shallow water areas: the lower of US$30 per barrel or 30% of the OSP up to a cumulative maximum of 20 million barrels and the lower of US$10 per barrel or 30% of the OSP for volumes exceeding 20 million barrels up to a cumulative maximum of 150 million barrels and then no more.

(c) For operations in areas with bitumen deposits, frontier acreages and deep water areas: the lower of US$15 per barrel or 30% of the OSP up to a cumulative maximum of 250 million barrels per Petroleum Mining Lease and the lower of US$5 per barrel or 10% of the OSP for volumes exceeding 250 million barrels.

(d) For companies currently in a PSC with NNPC but which are not currently claiming either ITC or ITA: US$5 per barrel or 10% of the OSP for all production volumes.

III. Oil producing companies in joint venture operations with NNPC are not entitled to claim GPA notwithstanding that they are entitled to claim Petroleum Investment Allowance under the current regime.

IV. NHT is not deductible when calculating company’s income tax (therefore constituting it as “true tax”). Similarly, the amount of companies’ income tax paid or to be paid is also not deductible in the computation of NHT.

V. With respect to royalties, the PIB does not specify new royalty rates, but provides that applicable royalties will be determined by regulations that will be drafted by the Minister after the Bill is enacted as law. However, pursuant to the savings provisions of the Bill, the present rates of royalties (which are charged on a sliding scale and are depth related) will continue to apply pending the issuing of new regulations by the Minister, among others.

A very controversial issue inherent in the Petroleum Industry Bill is that relating to the excessive power of the petroleum minister. The Bill gives the Petroleum Minister a very powerful supervisory role over all aspects of oil exploration and production including power to determine when gas flaring and venting will be stopped by any company. Powers that could be effectively used to the benefit of the nation and that could also very easily be abused to the detriment of the industry and the nation (Momodu & Nwajide, 2012).

Also, the Bill makes the Petroleum Minister Chairman of the boards of the organizations established by the Bill such as Petroleum Technology Development Fund (PTDF), National Petroleum Assets Management Corporation, and Petroleum Equalization Fund. The Minister will also be responsible for recommending to the President who to appoint as chief executives and as members of the boards of these organizations.

The Minister will directly supervise the activities of the Petroleum Technical Bureau and the Upstream Petroleum Regulatory Agency, and be responsible for recommending persons to be
appointed as operating officials of the organizations. Indeed the Petroleum Technical Bureau is created by the Bill as a special unit in the office of the Minister and is to take over and carry out *inter alia*, functions of the former Frontier Exploration Services of NNPC. In the views of Ohaeri (2013), the current framework arrogates too much responsibility to the person of the minister rather than to independent institutions and this can easily give room to abuse of power, patronage and political interference.

In addition, the PIB in its current state still contains crude concentration of so much power in the hands of the President. Section 119 gives the President unilateral powers in granting oil licences. To this end, analysts have argued that uncontrolled decision-making power is often prone to misuse and abuse, mainly because it is impossible to see into how decisions are arrived at and accountability is obfuscated.

The expected effects of a well-implemented Petroleum Industry Bill include: dismantling the monopoly and control of the Nigerian National Petroleum Corporation through privatizing price controls; creating competition in the downstream sector by encouraging private sector participation; reducing the costs of subsidizing oil prices hitherto incurred by the government; consequently diverting funds towards meeting other socio-economic needs; increasing the Foreign Direct Investments required for growing the nation’s economy.

Despite these positives effects, it has been observed by The Nigerian Extractive Industry Transparency Initiative (NEITI) that the country would lose $3 billion petroleum revenue annually if it passes the Petroleum Industry Bill with its proposed fiscal terms into law. NEITI, as cited by Ohiare (2013), noted that the current rates of Nigeria Government share of Revenues are: Production Sharing Contract (PSC) 48%, Joint Venture (JV) 82%, and International rates of government share of oil revenue are minimum of 56% and maximum of 90%. But the House of Representatives report proposal, according NEITI, provided a maximum of 45% for PSC and 60% for JV. This translates to a loss of about $3 billion annually.

Overall, the PIB is seen as a step in the right direction. It introduces some positive developments including moves to address host community concerns, promotion of local content, removal of minimum tax, removal of restriction on capital allowances claimable, and tax deduction for abandonment provision (Oyedele, 2013).

**Challenges of the Petroleum Industry Bill and National Development**

In recent years, the petroleum industry has faced severe challenges. There have been major setbacks that undermine the sector’s contribution to the nation’s economy. The major issues with the all-important petroleum sector have been corruption, poor institutions, weak regulations, and lack of transparency. The petroleum industry bill also has been facing numerous challenges right from its very inception in 2008. The inability to pass the previous versions of the PIB was due to vested interests pulling in opposite directions and lack of will by the political class.

One of the major challenges of the current version of the PIB is in its fundamental objectives to create transparency. Unfortunately this seems to be lacking in the way and manner the PIB is being legislated. Also, there are about four versions of PIB in circulation which is supposed to ensure transparency in the Nigerian petroleum industry. This revelations raises concerns as to the transparency of the legislative process and the commitment of the National Assembly
to ensure that the Petroleum Industry Bill (PIB) achieve the laudable objectives which the bill seeks to achieve (Jimoh, 2013).

Another challenge facing the Bill is the absence of clear definition of Host Communities. Makinwa (2012) observed that the bill fails to define exactly what host communities are. She went further to posit that the lack of definition may open the way for the exploitation of the fund by people for personal purpose, and add to the ever-growing climate of grievance.

The fiscal changes envisaged under the bill pose as a challenge to its successful implementation. The oil companies are threatening to sue the federal government over the Bill’s purported retroactive agenda. Certainly, it has been the major bone of contention between the key players in the industry. The crux of opposition to the PIB is that it will create a harsh environment that would materially change the economics of the existing and new operations particularly in the deepwater regions (Onyeukwu, 2010).

**Prospects of the Petroleum Industry Bill**

This paper opines that despite the numerous challenges and difficulties faced by the current petroleum industry bill, the Bill still holds good prospects for Nigeria. The various sections of the Bill makes provisions that when enacted is capable of transforming the petroleum industry and subsequently, the country as a whole.

The Bill makes provision on gas flaring and venting with the aim of stopping and outlawing flaring and venting of natural gas. It provides in section 275 that: “Natural Gas shall not be flared or vented after a date (“the flare-out date”) to be prescribed by the Minister in regulations made pursuant to this Part, in any oil and gas production operation, block or field, onshore or offshore, or gas facility such as, processing or treatment plant, with the exception of permits granted under sub-section (1) of section 277 of this Act” (PIB, 2012).

As observed by Nwabugo (2013), a further look at the bill shows that it would ensure more transparency in the oil sector. Nigerians can own equity in the new National Oil Company and the National Gas Company. There would be mass employment, the nation would earn more revenue, and the management of the oil sector will have enhanced indigenous outlook than the present dominance by foreigners. Citizens will have an opportunity to become shareholders in the National Oil Company. The PIB also advocates reversal of provisions of prior agreements and contracts, and introduces new fiscal regimes even for old petroleum sharing contracts.

The biggest wins in the PIB are the new set of guidelines which stipulate that licence sales must be open and transparent. The bill intends to establish rules, guidelines and procedures that will ensure good governance, transparency and accountability in the management and exploitation of oil in the country. Its target is therefore, to introduce operational and physical guidelines for efficient management of revenue to enable Nigerian government to retain a higher proportion of revenue accruing through oil industry. Revenues from the industry that accrue to the government would improve from the current 48% from Production Sharing Contracts (PSC) and sometimes excess loading of the nation’s crude. Undoubtedly, the tax changes would instigate an increased government take from an average of 73% to a projected 82% under the PIB terms. This calculation is derived on projections of a mid-size deepwater oil field with production of around 50 million barrels a year and oil price of US$75bbl (Oyedele, 2013).
In addition, the PIB 2012 creates a Petroleum Host Communities Fund. As asserted by Pedro (2012), Peace and stability in the Niger Delta can be significantly enhanced if people in the region believe that they share fairly in the benefits of oil and gas production.

**Conclusion and Recommendations**

The introduction of the Petroleum Industry Bill is a step in the right direction. The new PIB therefore seeks to repeal the existing petroleum Acts and replace them with an all-encompassing Acts that provide for better fiscal and regulatory management of the oil and gas sector. Although with current challenges, Nigeria’s Petroleum Industry has remarkably high prospects. These potentials need to be unlocked through the timely implementation of the Bill that will drive infrastructural development within the industry, increase government oil revenue, attract foreign direct investments as well as support the active involvement of indigenous industry players and consequently foster national development. However, the need to strengthen the petroleum industry and its revenue collection systems to avoid loopholes as much as possible cannot be over emphasized. In view of this, the following recommendations have been put forward.

Firstly; there is need to ensure that the processes of the PIB mechanisms for institutionalizing good fiscal discipline and financial standards are transparent, measurable and accessible to the public, and free of political interference.

Secondly; there is absolute need to ensure that critical fiscal rates are identified, such that the rates will not negatively affect overall investment in the industry as this may adversely affect government revenue thereby reducing the economic benefits to the country. This can be achieved through engagement with relevant stakeholder groups.

Thirdly; the National Assembly whose constitutional responsibility it is to pass the Bill into law should be unbiased, objective and above all transparent in the legislation of the Bill, and as a matter of urgency hasten the process of its implementation and ensure that it is passed and take effect before the end of 2015.

Fourthly, the Bill should ensure the full privatization of the Nigerian Petroleum Assets Management Company (NPAMC) just like its counterparts, the National Oil Company (NOC) and the National Gas Company (NGC). Such step will ensure that the company is managed like any other major international petroleum company with minimum political interference.

Finally, the president alongside the minister of petroleum should ensure equity in revoking and granting licences as well as in the appointments of the chief executives of the Upstream Petroleum Inspectorate, Downstream Petroleum Regulatory Agency, the National Oil Company, the Asset Management Company and all government agencies or corporate entities established or to be established after the Bill has been passed into law. This will go a long way in reposing confidence in the Bill and also enhance public co-operation and participation.
References


