

THE TORTUOUS SEARCH FOR DIRECTION AND PURPOSE IN THE NIGERIAN PETROLEUM INDUSTRY*

Abstract:

Over the years and since crude oil was discovered in Oloibiri, in the present day Bayelsa State, in the year 1956, the oil sector has played a dominant role in the socio-political and economic development of the country. At the moment, Nigeria sits atop the largest oil and gas reserve in sub-Saharan Africa, with crude oil accounting for over 90% of her export earnings. Despite the fact of this remarkable role played by the oil sector, this critical industry is presently being governed by some outdated and not too relevant pieces of legislations. The Petroleum Act of 1969 and the Petroleum Profit Tax (PPT) Act of 1959 still regulate the 21st century Nigerian oil industry. The inadequacies of these Acts are evident in the magnitude of losses, leakages and corruptions prevalent in the industry. There is no doubt that the Nigerian oil industry is long over-due for radical and far-reaching reforms. This is mainly the reason why the introduction of the Petroleum Industry Bill (PIB) in the National Assembly was applauded by all. Unfortunately, this Petroleum Industry Bill has sojourned for close to two decades in the National Assembly, without seeing the light of the day. To this extent, this study empirically highlights the high points of this Petroleum Industry Bill (PIB 2020), what it set out to achieve, the tortuous journey at the National Assembly and concluded by positing that for there to be a meaningful and impactful reformation in the industry, the Bill should be given due attention towards ensuring that it is passed into law before the end of year 2021.

Keywords: Petroleum Industry Bill, Nigeria Oil and Gas Sector, Multinational Oil Companies, Fiscal Regulation, Host Communities.

1. INTRODUCTION

The desire to reform and improve the management of Nigeria's hydrocarbon resources, transform the Nigerian National Petroleum Corporation (NNPC) into a world class National Oil Company in the mould of Saudi Arabia's Aramco, Malaysia's Petronas and Brazil's Petrobras, as well as increase returns on the Country's investment in the oil and gas sector, informed the establishment of the Oil and Gas sector reforms implementation Committee (OGIC) on the 24th of April, 2000, by then President Olusegun Obasanjo.¹ At inception, Committee was headed by Dr. Rilwanu Lukman (CFR), then serving as the Presidential Adviser on Petroleum and Energy and later on passed to Dr. Edmund Dakorou, former Minister of State for Energy.² The OGIC was charged with broad and wide ranging terms of reference to make recommendations for a far reaching restructuring of Nigeria's oil and gas industry.³ The Committee comprising of a wide spectrum of individuals from both the private and public sector

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¹ C. Amanze-Nwachukwu and E. Alike "PIB- An elixir for Oil and Gas". Thisday Newspaper, Vol. 17. No. 6297 published on Friday 20 July, 2012 at page 2.

² A. A. Nuhu-Koko "Nationa Energy Council (NEC) Oil and Gas and Power Reform Committee – A return to the drawing board? www.nigeriannews.com/atiku (visited on 9/3/2021).

³ Ibid

worked for four years to produce the National Oil and Gas Policy.⁴ The new policy covers in a comprehensive manner, all the relevant aspect of the industry – Upstream, Downstream, Gas, Petrochemicals and many other industry related matters. The trust of the policy however revolves around the need to ensure separation and clarity of roles between the different public agencies operating in the industry and the overall objective is to reposition the nation’s oil and gas industry in view of the contemporary challenges within the oil sector.

On the 7th day of September, 2007, the then President, Late Alhaji Umar Musa Yar’Adua (GCFR) inaugurated the second Oil and Gas Sector Reform Implementation Committee (OGIC), with the mandate to transform the broad provisions in the National Oil and Gas Policy (NOGP) into functional institutional structures, that are legal and practical for the effective management of the oil and gas sector in Nigeria.⁵

2. THE PETROLEUM INDUSTRY BILL (PIB)

The Petroleum Industry Bill (PIB) was first presented to National Assembly in September, 2008 and was thereafter Gazetted in the National Assembly Journal.⁶ The Bill passed through the first reading stage in the National Assembly in 2008, second reading in 2009, clause by clause consideration in 2010 and 3rd reading in 2011, before actions on it were discontinued as a result of multiplicity of versions of the bill in circulation. Technically, the Bill died with the end of the 6th Assembly in May, 2017.⁷

The renewed enthusiasm on the part of Federal Government towards ensuring that the Bill is passed into law, led the then Honourable Minister for Petroleum Resources to inaugurate a special task force which was mandated to review the different versions of the Bill previously submitted to the National Assembly and to produce a new one for representation to the National Assembly.⁸

The Federal Executive Council (FEC) at its weekly meeting on Wednesday, 11th July, 2012, approved a new Petroleum Industry Bill and this was sent to the National Assembly on the 19th of July, 2012⁹ and was subsequently gazette in the National Assembly Journal.¹⁰

It has come to be acknowledged that no other bill in the history of the nation’s fourth Republic had stirred as much passion and perhaps, intrigues as the Petroleum Industry Bill. This is for the fact that the Bill centers on the mainstay of the economy as our economy relies heavily on the revenue generated from oil and gas operations. At the moment, most of the laws that govern activities in the Petroleum Sector were enacted more than 50 years ago and are compounded by the fact that they are contained in

⁴ E. Egbogah “Oil and Gas Sector Reforms in Nigeria: What you should know. <https://www.dregbogah.com/document/69/himl> (visited on 9/3/2021)

⁵ Reforming Corruption out of Nigeria’s oil – Progress and prospects CHR Michelsen Institute. <https://www.cmi.no/publications/file/3348-reforming-corruption-out-of-nigerian-oil-part-2-pdf> (visited on 10/3/2021).

⁶ National Assembly Journal, No. 47, Volume 5 of December 29, 2008.

⁷ F. O. Akinrele, “Petroleum Industry Bill”, <https://www.foakinrele.com/publication/petroleum-industry-Bill.aspx> (visited on 11/3/2021).

⁸ C. Amanze-Nwachukwu and E. Alike op. cit.

⁹ I. Emewu, “PIB: FG scraps DPR, PPPRA, Nigerians to get 30% equity in new NNPC” Daily Sun Newspaper of July 20, 2012. Volume 7, No. 2416, page 52.

¹⁰ As Bill No. HB.12.07.383, VOL 9, 24 September, 2012 – A Bill for an Act to provide for establishment of a legal, fiscal and Regulatory framework for the Petroleum Industry in Nigeria and for other related matters.

many pieces of legislations. It is worrisome that knowledge of these laws has been very vague and their applications, nothing to write home about.

It is observed by this researcher that among the reasons why the Bill was not passed by the 6th National Assembly was because of the pressure and campaign mounted on the leadership of the National Assembly by some multinational oil companies who believed that they will loose their investments, in the event the Bill was passed into law and assented to, by the President of the Federal Republic of Nigeria. There was also this fear by a powerful bloc which have held a strangulating grip on the sector, would inadvertently have their hold and influence whittled down, once the Bill is passed into law, hence the unholy agenda to have it killed on the floor.

It would also appear that the political leadership of this country, lacked the political will to ensure that the Bill is assented to. The Bill has dragged for a long time and its non-passage into law has occasioned much hardship on Nigerians. Suffice it to say that there has been much dirty dealings in the sector. In fact, Nigeria has been taunted internationally as the only oil producing country that does not know the quantity of crude oil daily produced and even the quantity exported and the exact sum realized. Nigeria is also, the only oil producing country that does not have a functional refinery. As at date, the nation's crude oil is exported and we import the refined products. Despite being one of the largest suppliers of crude oil in Africa, the country has traditionally been unable to significantly translate her oil wealth into sufficient national development. There have been many reasons for this, including insufficient governance, weak sector regulation and inefficiencies in oil operations. These have resulted in declining investment and returns in the industry, owing to the uncertain investment climate, incessant fuel shortage and insecurity. All these anomalies are traceable to leadership deficit. This is more the reason why the Petroleum Industry Bill has been on this long and tortuous journey. The question on the lips of every concerned observer is **whether this Bill will ever be passed into law and assented to, by the President.**

The Senate on Thursday, 25th May, 2017 passed the Petroleum Industry Governance Bill. The bill seeks to establish a framework for the creation of Commercially-oriented and profit-driven Petroleum entities, to ensure value addition and internationalization of the Petroleum Industry, through the creation of efficient and effective governing institutions with clear and separate roles for the Petroleum Industry.¹¹ Subsequently, the National Assembly decided to break the PIB into a number of different pieces of legislation guiding specific aspects of the industry. The PIGB is the first of the several Bills, then, the Petroleum Industry fiscal Bill and the Host Community Bill.¹²

The PIGB was concurrently passed by the House of Representatives on 15th January, 2018.¹³ This was generally applauded by keen observers but the hopes of having a breath of fresh air in the industry were dashed when President Muhammadu Buhari, failed to assent to the Bill, after its passage into law.

¹¹ The Petroleum Industry Bill (KPMG Newsletter, 2017) <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/ng-kpmg-newsletter-on-the-petroleum-industry-governance-bill> (visited on 16/03/2021)

¹² The petroleum Industry bill (KPMG Newsletter, 2017) op. cit.

¹³ K.C. Ene, "The fall and rise of the Nigerian Petroleum Industry Governance Bill (Oxford Policy Management) Newsletters <https://www.opmi.co.uk/blog/nigerian-petroleum-industry-governance-bill>

3. THE PETROLEUM INDUSTRY BILL 2020

The latest version of the Nigeria's Petroleum Industry Bill (PIB) 2020, was forwarded to the National Assembly on the 28th day of September, 2020.¹⁴ The Bill has gone through first reading at both the Senate and House of Representative but full deliberations and public hearing is expected to take place in the first quarter of 2021.¹⁵ The new draft bill sees the four components of the bill (i.e. governance, administration, host communities and finance) brought back together under one bill. It also sees to the scrapping of a number of existing agencies and department already existing in the petroleum ministry and to be replaced by two regulators, viz:- The Nigerian Upstream Regulatory Commission and the Nigerian Mid and Downstream Petroleum Regulatory Authority. The new bill also sees to the privatization of the Nigerian National petroleum Corporation.¹⁶

4. THE HIGH POINTS OF PETROLEUM INDUSTRY BILL 2020

The Draft Petroleum Industry Bill 2020¹⁷ is a detailed Bill covering most of the relevant issues pertaining to crude oil and gas exploration, exploitation, production, Host Communities, transportation and marketing in the country. Other issues covered in the Bill, include matters of state participation and control, fiscal issues, regulations, safety, health and environmental concerns.

The Bill is subdivided into five (5) parts with a total number of 319 Sections. These sections and headings are as follows:-

4.1 CHAPTER 1 (GOVERNANCE AND INSTITUTIONS)

PART ONE: VESTING AND OBJECTIVES

Section 1 of the Bill provides for the vesting of petroleum and its resources under the Federal Government of Nigeria.¹⁸

Section 2 of the Bill provides for the objectives of the Bill when passed into law. These shall include

- (a) To create efficient and effective governing institutions with clear and separate roles for the petroleum industry.
- (b) To establish a framework for the creation of a commercially oriented and profit-driven national petroleum company.
- (c) To promote transparency, good governance and accountability in the administration of the Petroleum resources of Nigeria; and
- (d) To foster a business environment conducive for petroleum operations.¹⁹

¹⁴ L. Akinbolajo and O. Olaleye "Nigeria: Petroleum Industry Bill: Overview of key fiscal changes (Anderson Publication – 25 November, 2020) <https://ng-anderson.com/petroleum-industry-bill-overview-of-key-fiscal-changes> (visited on 8/3/2021).

¹⁵ The draft Nigerian Petroleum Industry Bill 2020: An analysis of environmental and host community matters (SDN) <https://www.stakeholderdemocracy.org/the-draft-nigerian-petroleum-industry-bill-2020> (published on 16/12/2020) visited on 16/03/2021.

¹⁶ The draft petroleum Industry bill op. cit. page 6.

¹⁷ A Bill for an Act to provide legal, Governance, Regulatory and Fiscal Framework for the Nigerian Petroleum Industry, the Development of Host Communities and for related matters.

¹⁸ Section 1 of the Bill provides thus – "The property and ownership of Petroleum within Nigeria and its territorial waters, Continental Shelf and Exclusive Economic Zone is vested in the government of the Federation of Nigeria"

¹⁹ Section 2(a)-(d) of the Bill.

PART TWO: MINISTER OF PETROLEUM

Part Two provides for the powers of the Minister of Petroleum which shall include but not limited to formulation, monitoring and administration of government policies in the petroleum industry.²⁰

PART THREE: THE COMMISSION

This part²¹ provides for the establishment of the Nigerian Upstream Regulatory Commission (NURC). This Commission shall be a body corporate with perpetual succession and common seal and shall be responsible for the technical and commercial regulation of upstream petroleum operations.

PART 4: THE AUTHORITY

This part provides for the establishment of the Nigerian Midstream and Downstream petroleum Regulatory Authority.²² This Authority shall be a body corporate with perpetual succession and a common seal. It shall have the power to acquire, hold and dispose of property, sue and be sued in its own name. The Authority shall also be responsible for the technical and commercial regulation of midstream and downstream petroleum operations in the petroleum industry.

PART 5: THE NIGERIAN NATIONAL PETROLEUM COMPANY LIMITED

This part provides for the establishment of the Nigerian National Petroleum Company Limited.²³ It further provides as follows – **“The Minister shall within 6 months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National petroleum Company Limited (NNPC Limited). The ownership of all the shares of this company which shall be setup in conjunction with the Minister of Finance, shall be vested in the Government at incorporation and be held on behalf of Government, by the Finance Minister”**.

The objects of the NNPC Limited are provided under Section 64 of the Bill and they are as follows-

- (a) Carry out petroleum operations on a commercial basis
- (b) To lift and sell royalty oil and profit oil for commercial fees, payable by Government, at the request of the Commission and pay the corresponding revenue to accounts indicated by the Commission, ETC.

4.2 CHAPTER TWO (ADMINISTRATION)**PART ONE: GENERAL ADMINISTRATION**

This part of the Bill which is comprised of Sections 66 and 67 provides for what should be termed as the fundamental objectives and directive principles of the Bill, when it shall finally be passed into law and assented to, by the President of the Federal Republic of Nigeria.

PART TWO: ADMINISTRATION OF UPSTREAM PETROLEUM OPERATIONS

This Section²⁴ of the Bill makes provision for the Administration of Upstream Petroleum Operations on issues relating to licences, lessees, national grid system operations and administrations. It also provides

²⁰ Section 3(1)(a)-(k), (2), (3), (4) & (5) of the Bill.

²¹ Sections 4 to 28 of the Bill

²² Sections 29 to 52 of the Bill

²³ Sections 53 to 65 of the Bill.

²⁴ Sections 68 to 110 of the Bill

for granting of petroleum exploration licences,²⁵ Petroleum Prospecting licences,²⁶ Petroleum mining leases,²⁷ their renewals and for allied matters like bidding and award of licence processes.

PART 3: GENERAL ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS

This part of the Bill makes provisions for matters relating to licence applications, permits and regulations. Section 111 of the Bill provides that the Authority may grant, renew, modify or extend individual licences or permits, provided that, where it relates to the establishment of refineries, the licence shall be issued by the Minister on the recommendation of the Authority.²⁸

PART 4: ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM GAS OPERATIONS

This part²⁹ makes provisions for the general administration of midstream and downstream gas operations. It makes general provisions for gas operations as it relates to licencing for constructing gas plants, gas platforms, its transportation, processing, storage and disposal on the midstream and downstream sectors.

PART 5: ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM PETROLEUM LIQUIDS OPERATIONS

This part of the Bill provides for all activities connected to administration of midstream and downstream petroleum liquids operations.³⁰ Grant of licences, permits and instruments needed for establishing a crude oil refinery, petroleum liquids storage facilities, depots, transportation, pipelines, distribution and marketing of all liquid petroleum products are provided for under this Part.

PART 6: OTHER MATTERS RELATED TO MIDSTREAM AND DOWNSTREAM OPERATIONS

This Part provides for incidental matters related to Midstream and Downstream operations.³¹ It provides for such matters as powers to serve Notices³², Power to prevent anti-competitive behaviour³³ and other public service obligations.³⁴

²⁵ This licence is non-exclusive and granted in respect of areas of unproven reserves for the exploration of petroleum. It expires on December 31 of the year it was granted.

²⁶ This licence is an exclusive licence granted for any period determined by the Minister of Petroleum Resources of Up to five years for onshore areas and shallow waters and up to 10 years for deep offshore and inland basins. This licence permits the licensee to conduct more extensive exploration activities and remove and dispose of petroleum discovered while prospecting.

²⁷ This is a lease granted by the government to search for, win, work, carry away and dispose of petroleum. Under the petroleum Act 1969, the entire ownership and control of all petroleum products in Nigeria is vested in the Federal government of Nigeria.

²⁸ See generally Sections 111 to 124 of the Bill.

²⁹ Sections 125 to 173 of the Bill

³⁰ Sections 174 to 208 of the Bill

³¹ Sections 209 to 215 of the Bill

³² Section 215 of the Bill

³³ Section 211 of the Bill

³⁴ Section 209 of he Bill

PART 7: COMMON PROVISIONS FOR UPSTREAM, MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS

The Part of the Bill provides for upstream, midstream and downstream petroleum operations. It makes provisions for Consultations for regulations,³⁵ contravention and enforcement of conditions of leases, licences or permits,³⁶ mandatory registration of and registration of licences, permits and authorizations.³⁷ Section 228 of the Bill provide for offences whereas Section 229 provides for penalties. A very important aspect of offshore operation, Abandonment, decommissioning and disposal is provided for under this Part.³⁸

4.3 CHAPTER 3 (HOST COMMUNITIES DEVELOPMENT)

This Chapter of the Bill creates the Host Communities Development.³⁹ Section 234 of the Bill provides that the objective of the Chapter are to-

- (a) Foster sustainable prosperity within host communities
- (b) Provide direct social and economic benefits from petroleum operations to host communities.
- (c) Enhance peaceful and harmonious co-existence between licensees or leases and host communities; and
- (d) Create a framework to support the development of host communities.

Section 235(1) OF THE Bill provides that the settlor shall incorporate a trust for the benefit of the host communities for which the settlor is responsible (“host community development trust”)

Section 239(3) of the Bill provides for the objectives of the host community development trust and they are as follows-

- (a) To finance and execute projects for the benefit and sustainable development of the host communities.
- (b) Undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes
- (c) Facilitate economic empowerment opportunities in the host communities
- (d) Advance and propagate educational development for the benefit of members of the host communities
- (e) Support healthcare development for the host communities
- (f) Support local initiatives within the host communities which seek to enhance protection of the environment
- (g) Support local initiatives within the host communities which seek to enhance security.
- (h) Invest part of available fund for and on behalf of the host communities.

SOURCE OF FUNDING FOR PETROLEUM HOST COMMUNITIES DEVELOPMENT TRUST are provided under Section 240(2) and (3) of the Bill.

Section 240(2) provides that each Settlor where applicable through the operator, shall make an annual contribution of the applicable host community development trust fund of an amount equal to 2.5% of its actual operating expenditure in the immediately preceding calendar year in respect of all petroleum

³⁵ Section 216 of the Bill

³⁶ Section 217 of the Bill

³⁷ Sections 218 to 233 of the Bill

³⁸ Sections 232 and 233 of the Bill

³⁹ Sections 234 to 257 of the Bill

operations affecting the host communities for which the applicable host community development trust was established.

Furthermore, Section 240(3) of the Bill provides for receiving of donations, gifts, grants or honoraria that are provided to such host community development trust for the attainment of its objectives.

4.4 CHAPTER 4 (PETROLEUM INDUSTRY FISCAL FRAMEWORK)

This Chapter is further sub-divided into Eleven (11) parts and they are:-

PART 1: OBJECTIVES AND ADMINISTRATION

Section 258 of the Bill which makes provision for the objectives provides as follows –

- (a) To establish a progressive fiscal framework that encourages investment in the Nigerian Petroleum Industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria.
- (b) Provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application.
- (c) Establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair return for investors
- (d) Simplify the administration of petroleum tax; and
- (e) Promote equity and transparency in the petroleum industry fiscal regime.

Section 259 of the Bill placed the administration and collection of Government revenue and taxes, in the petroleum industry, on the Federal Inland Revenue Service.

PART 2: HYDROCARBON TAX

This Part applies to companies engaged in upstream petroleum operations in the onshore, shallow water and deep offshore; with a proviso that it shall not apply to associated and non-associated natural gas; and condensate and natural gas liquids.⁴⁰

PART 3: ASCERTAINMENT OF CHARGEABLE TAX

This Part makes provision for ascertainment of chargeable tax of a company for any accounting period.⁴¹

PART 4: ASCERTAINMENT OF TOTAL PROFITS AND CONSOLIDATION FOR TAX PURPOSES.⁴²

PART 5: PERSONS CHARGEABLE⁴³

PART 6: APPLICABILITY, ACCOUNT AND PARTICULARS⁴⁴

PART 7: APPEALS (TO TAX APPEAL TRIBUNAL)⁴⁵

⁴⁰ Section 260 of the Bill. See generally Sections 260 to 266 of the Bill.

⁴¹ Sections 267 to 268 of the Bill

⁴² Sections 269 to 272 of the Bill

⁴³ Sections 273 to 276 of the Bill

⁴⁴ Sections 277 to 287 of the Bill

⁴⁵ Sections 288 to 289 of the Bill

PART 8: COLLECTION, RECOVERY AND REPAYMENT TAX⁴⁶**PART 9: OFFENCES AND PENALTIES⁴⁷****PART 10: APPLICATION OF COMPANIES INCOME TAX TO PETROLEUM OPERATIONS⁴⁸****PART 11: GENERAL PROVISIONS⁴⁹****4.5 CHAPTER 5 (MISCELLANEOUS PROVISIONS)**

This Part of the Bill makes general provisions for actions like legal proceedings, pre-action Notice, amendments, consequential amendments, repeals and transfer of assets and liability to the Commission.⁵⁰

Section 318 of the Bill provides for interpretations.

5. OBSERVATIONS ON THE DRAFT BILL

5.1 Section 1 of the draft Bill vests the ownership of petroleum resources found anywhere in the country unto the sovereign state of Nigeria. It is observed that this is a total adoption of the United Nations General Assembly Resolution 1803(xvii) of 14th December, 1962.⁵¹ Under the International Law, only the Federal Government of Nigeria is recognized as the subject of International law, regardless of the nature of the Federal structure, so the government is recognized as the legitimate representative of its sovereignty within the comity of nations for the purpose of international discourse.⁵²

It has also been observed that this position of the Bill on ownership of natural resources had earlier been codified into our laws.⁵³

The relevance of the above State ownership of Petroleum resources as found anywhere in the country, as adopted by the drafters of the Petroleum Industry Bill (2000), for a country that practices federal system of Government, has been criticized by some writers and pundits. In his paper,⁵⁴ delivered at the inaugural Alex Ibru Legacy Lecture, at the University of Port Harcourt, he argued that this current position of the law which empowers the Federal Government to solely exercise ownership and control right over all resources found anywhere in the country is calculated to arbitrarily hijack and nationalize the natural resources rights of the States and Communities where Petroleum is discovered and mined.

⁴⁶ Sections 290 to 296 of the Bill

⁴⁷ Sections 297 to 301 of the Bill

⁴⁸ Section 302 of the Bill

⁴⁹ Sections 303 to 306 of the Bill

⁵⁰ Sections 307 to 319 of the Act

⁵¹ It declares inter alia, that every State has and shall freely exercise full permanent sovereignty including possession, use and disposal over all its wealth and natural resources. See also, United Nations Charter on Economic rights and Duties of States, 1962.

⁵² S.A. Zuru, *The Nigerian's Upstream Oil and Environmentalism: Government, the Niger Delta and Multinational Oil Industry* (Nigeria, Faith Printers International, 2009.) page 21.

⁵³ Petroleum Decree No. 51 of 1969 (now, Petroleum Act, CAP 350 LFN, 1990) Section 44(30) of Nigerian Constitution (1999, as Amended).

⁵⁴ Titled – “Natural Resources and the Quest for Justice: the future of Niger Delta Children(1)”

Going further, he questioned the rationale behind the exclusion of solid minerals from the provision of Section 44(3) of the Nigerian Constitution.

Arguing on the side of those who believed that Section 1 of the draft bill must be maintained is M.A. Ojomo,⁵⁵ who argued that whoever controls the entire federation surely has the broader mandate of the people, the moral authority and better political high ground than anyone else to make legitimate claim over the ownership of the resources of the country.

This Article is of the view that Section 1 of the Draft Petroleum Industry Bill does not accord with the principles of true federalism which the Federal Republic of Nigeria, by virtue of her 1999 Constitution (as amended) claims to practice. Various States from which these natural resources (both liquid and solid) are produced from, should be given participatory right in the exploration, exploitation, management and control of these resources, so that they do not feel alienated.

5.2 As soon as the Petroleum Industry Bill is passed by the National Assembly and assented by the President, about ten (10) existing laws shall stand repealed.⁵⁶

5.3 Having seen the objectives of the draft Bill as well encapsulated under Section 2 of the Bill, it could be said that when passed into law, it has all it takes to revamp the Nigerian Petroleum Sector and to put it right back on track for the benefit of all Nigerians. It is also observed that Multinational Oil Companies engaged in the exploration and production of oil in Nigeria are in support of this bid by the Federal Government to reform the oil Sector through the introduction of Petroleum Industry Bill, 2020.⁵⁷ However, there are few portions of the Bill where they are not pleased with, more especially, the provisions on fiscal governance and regulation, powers of the Minister of Petroleum resources, contractual agreements (obligations and the retro-active nature of the Bill).

5.4 With respect to Host Communities, this Article observed that much like the old Bill, the 2020 version of the Bill that is currently at the national Assembly, equally incorporated the Host Communities Development, albeit under a slightly modified nomenclature. Section 235(1) of the Bill under Chapter 3 creates provision for the incorporation of Host Community Development Trust, immediately after the Bill is signed into law. The aims, objectives, together with the manner of administration of the trust are well provided under this Chapter. The current bill proposed the remitting of 2.5% of the profit of

⁵⁵ "Ownership of Mineral Oil and Land use" – The Nigerian current law Review (1982) Pg. 330-340; As referred to, by Prof. S. A. Zuru, with due respect, in his book – "Critical Discourse on Strategic Legal Issues in Natural Resources Law and Policy (Nigeria, Faith Printers International, 2007) p. 45.

⁵⁶ Section 310 of the Bill – (a) Associated Gas Reinjection Act, 1979, CAP A25 LFN (b) Hydrocarbon Oil Refineries Act No. 17 of 1965 CAP H5 LFN, 2004 (c) Motor Spirits (Return) Act CAP M20 LFN, 2004 (d) NNPC (Projects) Act No. 94 of 1993, CAP N124 LFN, 2004 (e) NNPC Act 1977, No. 33 CAP N123 LFN (as Amended) when NNPC ceases to exist pursuant 54(3) of this Act. (f) Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003 (g) Petroleum Equalization Fund (Management Board etc) N0. 9 of 1975 CAP PII LFN, 2004 (h) Petroleum Equalization Fund (Management Board, etc) Act, 1975. (i) Petroleum Profit Tax Act, CAP P13 LFN 2004. (j) Deep Offshore and Inland Basin Production Sharing contract act, 2019 (as Amended).

⁵⁷ Mr. Mike Sangster, Chairman of the Oil Producers Trade Section (OPTS) which represents the interest of 30 upstream companies in Nigeria, including Chevron, Eni, Exxon Mobil, Shell and total stated at a recent public hearing on the Bill (2020) that the PIB's provisions could adversely impact the development of deep-water fields. He requested that the PIB should grant full royalty relief to deep-water oil projects during the first 5 years of production or perhaps incorporate a phased royalty scheme. He stated that it is better for Nigeria and the PIB to explicitly preserve base business and rights for existing joint venture licences and leases and production sharing contracts, which form the basis for future growth.

companies and revenues from upstream activities of these oil companies, to the Host Communities. At the recent public hearing on the current bill,⁵⁸ the Host Communities of Nigeria producing oil and gas (HostCON) demanded that this figure should be increased to 10% in order to compensate for the negative impact of upstream activities.

5.5 REQUIREMENT FOR COMPANIES AND TAXATION OF INCOME FROM PETROLEUM OPERATIONS-

Based on existing laws, nothing precludes an entity from operating in more than one Sector, (that is, upstream, midstream and downstream Sectors) of the Nigerian oil and gas industry. However, with the introduction of the Petroleum Industry Bill 2020, a company shall not be involved in more than one stream of operation and would have to register a separate company for each stream of petroleum operations.⁵⁹

The Bill also provides that Hydrocarbon Tax shall not be payable on associated and non-associated natural gas, as well as condensate and natural gas liquids produced from non-associated gas in fields or gas processing plants, regardless of whether the condensate or natural gas liquids are subsequently comingled with crude oil. However, Hydrocarbon Tax will apply to crude oil, condensate and natural gas liquids produced from associated gas.⁶⁰

5.6 Ascertainment of Assessable Profits for Hydrocarbon Tax (HT) and Corporate Income Tax (CIT) Purposes. Although, a significant portion of the provisions of the Petroleum Profit Tax (PPT) Act was imported into the fiscal Section of the PIB, the Bill amends several of these Provisions as it relates to ascertaining the assessable profits of companies with upstream petroleum operations. The proposed changes include the following-⁶¹

- (a) Introduction of the reasonability test for deductibility of expenses incurred for HT purposes. This is in addition to the requirement under the PPT Act for allowable expenses to be wholly, exclusively and necessarily incurred, to be tax deductible.
- (b) Royalty expenses will only be deductible in ascertaining the HT payable after it has been incurred and paid. This is a deviation from the accrual basis for royalty deduction under the PPT Act.
- (c) Education Tax, bad debt, bank charges, cost incurred by affiliates, arbitration/litigation cost, penalties, natural gas flare fee and taxes paid on behalf of another person will not be deductible expenses for the purpose of determining the HT payable.

To ascertain the assessable profits of companies engaged in the petroleum operations for CIT purposes, the PIB introduces new provision to apply to such companies, in addition to the provisions of the CIT Act, for instance, rents and royalties incurred and paid, contributions to abandonment and host communities fund and other deductions that may be prescribed by the Ministry of Finance will be deductible expenses. However, signature bonuses paid for the acquisition of rights, penalties and gas flare fees will not be deductible expenses for CIT purposes.

⁵⁸ The hearings were organized by the NASS Joint Committee on Petroleum, Downstream and Gas on 25th and 26th of January, 2021. (Upstream Energy Explored Newsletter) <https://www.upstream-online.com/nigerian-host-communities-object-to-PIB-provision> (visited on 18/03/2021).

⁵⁹ L. Akinbolajo and O. Olaleye, "Nigeria: Petroleum Industry Bill, Overview of Key Fiscal Changes", op cit. page 6.

⁶⁰ Ibid.

⁶¹ L. Akinbolajo and O. Olaleye, 'Nigerian petroleum Industry Bill' op cit. page 17.

5.7 PROHIBITION OF GAS FLARING

The petroleum industry Bill, in a bid to fulfill its obligations under the United Nations Framework Convention on Climatic Change (UNFCCC) and other similar conventions, demands strict adherence to a gas flaring plan.⁶² A licensee or lessee producing natural gas is expected to within 12 months of the effective date, submit a natural gas flare elimination and monetization plan to the Commission, which shall be prepared in accordance with regulations made by the Commission under the Act.⁶³ The bill has been commended for its strong environmental and social components, as it proposes stringent measures to ensure for environmental cleanups and other green initiatives but this researcher observes that its stand on gas flaring is suspect. Avenues are created by the bill for raking in money by the Authorities, at the expense of green and healthy environment.

6. CONCLUSION

There is this general consensus that the Nigerian Oil and Gas Sector must be reformed. This informed the euphoria that greeted the introduction of the petroleum industry Bill on the floor of the National Assembly by late President Umaru Musah Yar-Adua, in September, 2008. Today, 13 years, down the line, the bill is still dogged with controversies and yet to be passed into law. The question on the lips of keen observers is – will Petroleum industry Bill ever be passed into law?

Matched against the indicators of good governance in the Nigerian Petroleum Industry, the Petroleum Industry Bill holds a lot of promises for effective and unrivalled regulatory Governance in the Petroleum Sector. The Bill, not only makes unambiguous provisions as to the direction of policy for a new petroleum industry but also models regulatory agencies in a manner that make them responsive to their responsibilities.

The Bill is all encompassing in the sense that it practically touches on all relevant and hitherto vexed issues that have been stumbling blocks to an efficient, robust and transparent policy and profit oriented sector. In trying to achieve the aim of making it a piece of legislation and at same time, all encompassing, the Bill seems to be too unwieldy. This was same reason why the National Assembly in 2017, divided the Bill into 3 different parts to guide the different aspects of the industry. Infact, the PIGB was passed into law in 2018 by the National Assembly but denied assent by President Muhammadu Buhari.

The question now is – why couple these three different Bills together again? Can it be a ploy by those who did not want the Bill to be passed into law to exploit when the time comes, to clamour that it is unwieldy and should be fragmented? Then, the circus show continues. It was gratifying as well as encouraging hearing the Senate President, Senator Ahmed Ibrahim Lawan, on the last public hearing on the Bill, vowing that the National Assembly must brace all odds to ensure that the Bill is passed into law, by May, 2021. One can only be hopeful as its passage and eventual signing into law, will signal a great turn-around and new beginning in the Nigeria Petroleum Industry.

This article historically traced the journey so far made by the Petroleum Industry Bill at the National Assembly, close to two decades, the many factors that have militated against its passage in law, as well as the high points of the Bill.

⁶² Petroleum Industry Bill 2020: A summary, <https://www.tunbofa.com/the-petroleum-industry-bill-2020-a-summary> (visited on 8/3/2021)

⁶³ Sections 104 to 108 of the Bill.