The Petroleum Industry Bill (PIB) and the Future of Oil and Gas Industry in Nigeria

Dr Israel Kwode

faculty of management science, National open university of Nigeria

ABSTRACT

The petroleum industry plays a strategic role in the Nigerian economy particularly in revenue and employment generation. The sector has assumed a primate position in the Nigerian economy accounting for 80% of the Nation's GDP in recent times. Unfortunately, the sector has not witnessed the expected reforms that will significantly transform the Nigerian oiland gas sector and ultimately the economy. The paper examines the issues surrounding the proposed Petroleum Industry Bill (PIB), its expected benefits, challenges and recommends quick passage of the bills and its implementation that will maximize the benefits from its petroleum resources so as to provide sustainable development.

INTRODUCTION

The oil and gas industry plays a strategic role in the Nigerian economy today. The sector has assumed a primate position in the Nigerian economy accounting for 80% of the Nation's GDP in recent times. No doubt, the industry has also pushed Nigeria to the forefront of the global industry, making the country the 61h largest exporting and 7th largest producer of oil in the world. Revenue from petroleum sector comprising export earning, petroleum profit tax and royalties has grown steadily over the years.

It is interesting to recall that the search for oil in Nigeria dates back to 1908 when the German firm known as Nigeria Bitumen Corporation started exploring for petroleum in the Western Region of Nigeria Atsegbua (1993). The exploration activities of this company were suspended as a result of German's deeply involvement in the First World War in 1914.

A new phase, which is the second phase of exploration activities started in 1973 when an Anglo-Dutch Consortium under the auspices of Shell D'Arcy is known as Shell Petroleum Development Company (SPDC) is still current operating in Nigeria. Shell D'Arcy was given the sole concessionary right to explore for petroleum in all part of Nigeria by the British Colonial government. However, their activities were suspended until after the Second World War in 1939. Thus, the third phase of exploration and production activities commenced after the returned of Shell D'Arcy with the name Shell-BP. Shell BP still retained in principle its concessionary rights.

After much exploratory activities by Shell-BP in the then Eastern Region in 1950s. In 1956 it struck the first commercial well at Oloilbiri in the now Bayelsa State, Niger Delta.Commercial production and export of crude oil from Oloibiri oil field started in 1956 with an average daily output, 5000 barrels per day (bpd).

In 1960s, exploration rights in onshore and offshore areas adjoining the Niger Delta were extended to other foreign companies.

It is worth of mentioning that between 1960 and 1977, Nigeria joined the OPECand established the Nigeria National Petroleum Company (NNPC); a state owned and controlled company which is a major player in both upstream and downstream sectors. Also, within the same period, the country attained a production

level of over 2 million bpd, and in 2004 it stood at 2.5million bpd . Thus for more than three decades, the petroleum has stood prominent as Nigeria's treasure base, as a readily available resource to meet the country's developmental needs, and a very present succour in time of political and economic exigencies Orubu (2003).

The sector which is the bedrock of the Nigerian economy is presently dominated by multi- national companies particularly in the upstream sub-sector. In fact, most Nigerians are excluded from the benefits associated with oil exploration for the past decades. It is in realization of this that the federal government has embarked on different reforms namely the local content law, the petroleum industry bill etc all aimed at ensuring full participation of Nigerians in oil and gas sector. It should be noted that since the introduction of thepetroleum industry bill, it is still circulating in the National Assembly giving room to speculations that the bill will never see the light of the day. Thus this paper examines the Petroleum industry bill with a view to highlighting critical issues, benefits, challenges and make necessary recommendations.

LITERATURE REVIEW

According to Iyoha (2003), the petroleum exportation has totally dominated the economy and in indeed government finances since the mid-1970. However, he lamented that the growth oil exportation generated did not seem to be lasting or to have had significant effect in the structure of the economy, hence that Nigerian economy had experienced growth without development. The reasoning here is that Nigeria experienced increase in measured GDP but the structure of the economy remained unchanged. In addition, because of the important nature of the petroleum sector, dependence on oil has continued.

Oriakhi (2003) confirms this dependency situation, that oil in the next 20 years or thereabout will continue to be an independent variable in the economic growth and development on the Nigeria. And that it evolves as a negotiable source of wealth and that the positive effects of crude oil exports are glaringly manifest on public finance and balance the payments.

Aliyu (2009) in his empirical analysis observed that Nigeria benefited handsomely from hikes in the oil since the beginning of second Gulf War. Also that the balance of payments position of the country remains highly favourable with over 20 months of imports, which translates to over $55 billion of reserves. Exchange rate was moderately stable between 2000 and 2008, while real GDP growth averaged 5.01 percent within the same period. The result of the analysis also indicated a 10 percent permanent increase by 7.72 percent while the same 10 percent appreciation in the level of real exchange rate only increases real GDP by 0.35 percent. This shows that Nigeria's GDP increases more by oil price increase. This shows the relative importance of oil sector.

In the same vein Adedipe (2004) upholds that in essence, policy formulation appears to respond to the oil situation or attempt to take advantage of it. This usually takes the form of expand expenditure when oil earnings increase, maintain the position when there is a dip in earnings and seek a desperate way out when there is crisis. Also, that the decrease in oil revenue affected fundingof tertiary education, necessitating a policy shift that has been difficult for the operators of the system to come to terms with.

Orubu (2003), in his empirical analysis of the link between Nigerian oil export and gross domestic product and oil revenue

and federal government expenditure observed that petroleum sector, apart from accounting for a significant proportion of the country's GDP, the petroleum sector also account for the larger proportion of the Nigeria's exports and total federal collectable revenue. Though according to him, this benefit enjoyed from petroleum sector had been made available through various government control and regulation mechanism.

The country's proven oil reserves amount to an estimated 27 billion barrels, sufficient to last for production. Annual production of 2 million barrels per day (mbd) compares favourably to 1.2 mbd in Mexico. Proven natural gas reserves as estimated at 174 trillion cubic feet (equivalent to 30 billion barrels of crude oil), with an energy content slightly higher than the country's oil reserves.

These reserves are comparable to those in Algeria, and will last for 110 years at current production levels. Nearly 80 percent of the natural gas produced is presently being flared and most of the remaining 20 percent is used for electricity generation.

Nigeria's rivers also constitute a substantial energy resource, providing the country with nearly half of its electricity. Capacity utilization in industry is about 40 percent --- with 60 percent of installed (usable) capacity idle (Soludo *et al.*, 2003).

THE ENABLING LAWS GOVERNING THE OIL INDUSTRY

Giving the importance of the oil industry in Nigeria, various laws and act have been formulated to govern the operations of the- industry. Some of them are discussed below

a) The Federal Constitution

Ever since independence in 1960, Nigeria has had 6 Constitutions and the recently amended 2011 constitution - the 1960 independence and 1963 Republican Constitutions, the 1979, 1989, 1993, 1999 and the amended 2011 Constitutions. All these Constitutions have made provisions, which govern oil production and the sharing of oil revenue.

The 1960 and 1963 Constitutions did not vest the control of "all minerals, mineral oils and natural gas" in the government of the Federation. Accordingly, sections 134 and 140, sub-sections 1 of both the 1960 and 1963 Constitutions identically state in relation to mining, royalty and rent that:

There shall be paid by the Federation to each region a sum equal to fifty percent of (a) the proceeds of any royalty received by the federation in respect of any minerals extracted in that region and (b) any mining rents derived by the federation during that year from that region. (Italics our)

In the above section "minerals" include mineral oil and in (6) it states that, "for the purposes of this section, the continental shelf of a region shall be deemed part of that region". It is clear from the above that both the 19600 and 1963 Constitutions upheld the principle of derivation in revenue sharing and allocated 50 percent to it. However, this noble position was jettisoned and substituted with ownership clauses by all the constitutions, which followed that of 1963 (Okoko, Nna & Ibaba 2006).

Thus, in the 1979, 1989, 1995 and 1999 Constitutions, the control of "all minerals, mineral oils and natural gas" is vested in the government of the federation in Section 40 sub-section 3 of the 1979 Constitution, and in section 42 sub-section 3 of the 1989 Constitution (lifted verbatim from the 1979 Constitution). It is stated that:

The entire property in control of "all mineral oils and natural gas" in, under or upon any

land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly. (Italics ours)

This is also true of the 1995 and 1999 Constitutions, which in addition provide for a minimum 13 percent as derivation revenue.Okoko *et al.,* (2006) asserted in their work that the above constitutional provisions, which vest the control and ownership of resources on the Federal Government is a negation of the practice of federalism where the control and ownership of such resources is usually with the communities, not the government - local, state or federal.

In all, the constitutional did not address the lingering issues of oil and gas sector which is the mainstay of the Nigerian economy. Also, the constitutional provisions exclude the Niger Delta people from the use of their resources for their development.

b) The Petroleum:

The Petroleum (drilling and productions regulations) Act of 1969 "provides for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all onshore and offshore revenue from resources derivable there from in the Federal Government and for all other matter incidental thereto."

Clearly, the Act alienates the people from the oil wealth. Section 1(1) emphatically states that:

The entire ownership and control of all petroleum in under or upon any lands to which this section applies shall be vested in the State. (Italics ours).

Again, section 2 (1) provides that "subject to this act, the Minister (of Petroleum) may grant -

(a) A License, to be known as an oil exploration licence, to explore for petroleum.

(b) A license, to be known as an oil prospecting licence, to prospect for petroleum, and

(c) A lease, to be known as an oil-mining lease, to search for, win, work, carry away and dispose of petroleum."

In the above provisions, the people are not given any role. Indeed, they do not even have the right to protect their sacred lands, as the authority in the law to recognize or certify an area to be sacred lies with state authority.

Equally, the provisions of the law give the oil companies the right to explore and produce oil, wherever they find it. This can be discerned from the provisions of section 17 of the Act. This section prohibits oil-based activities in:

i. Any area held to be sacred
ii. Any part set apart for or used or appropriated or dedicated to public purposes.
iii. Any part occupied for the purposes of the government of the federation or a state.
iv. Any part situated within a township, village, market, burial ground or cemetery
v. Any part which is the site of or within fifty yards of any buildinginstitution, reservoir, dam, public road or trainway or which isappropriated for or situate within fifty yards of any railway.
vi. Any part consisting of private land.
vii. Any part under cultivation.

Having made these restrictions, the Act further set them aside, by stating that where the written consent of the minister of petroleum resources (not the people) is obtained, the prohibitions can be waived. This explains why in some communities (Erhoike in Delta State for example) oil installations cohabit with the people, inspite of the obvious health and

safety consequences.

A significant feature of the Petroleum Act is that it does not protect the rights of the communities in relation to the oil companies, it only concerns itself with operational issues. One area where this is evident is the protection of the Niger Delta environment, which is treated as tangential.

Indeed, the provisions of the law on environmental protection are defective, contradictory and not stringent enough. For example, there is no penalty for violation. In section 23 for instance, it provides that: If the licensee or lessee exercises the right conferred by his license or lease in such a manner, as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured.

Here, the provision for the payment of adequate compensation is vague, given that government sets the compensation rates, with the people having no right to negotiate for the value of their losses. Perhaps more significant is the lack of any provision compelling the oil companies to remedy impacted areas.

This is also true of section 21 (1 and 2) which deals with the cutting of trees and the payment of compensation. The act thus ignores completely, the interest of the people who bear the burden for the production of the oil wealth. An analyst sums it thus:
while centralizing all oil resources in the central government, and protecting the interest of oil companies, it fails to provide enough safety valves to cushion the negative impact of oil exploration on the peasantry (Nna. 2001)

c) The Oil Pipelines Act:
The oil pipelines act of 1965 became a law as an amendment of the Oil Pipelines Ordinance (CAP) 145 of 1956. The Act governs the laying of oil pipelines. Thus in section 4 (2), it provides that a permit should be sought to survey pipeline route. Significantly, the permit is sought from the Directorate of Petroleum Resources (DPR).

What the above means is that the oil companies are licensed by the Directorate of Petroleum Resources before pipeline routes can be surveyed and laid. Here again, the people whose lands are impacted are excluded from exercising the power to grant such license. They are only allowed to "raise objections", where their interests are infringed upon. In this regard, section 15 (I) of the Act prohibits oil prospecting in the following areas, except with the consent of the people.

i. Any land occupied by any burial ground or cemetery
ii. Any land containing any grave, grotto, area, tree or thing held to be sacred or the object of veneration.
iii. Any land under actual cultivation.

We note here that the above provision contradicts that of section 17 of the Petroleum Act, which requires the consent of the Minister of Petroleum Resources (not the people) to prospect for oil in prohibited areas. Equally, it violates the Land Use Act (to be discussed later), which vests the ownership of land in the State.

Given this, the oil companies effectively explore for oil wherever they deem fit, not minding the impact on the people. Furthermore, because the law itself is not effective, there are instances where the exploration and production (EP) activities actually commence before the companies seek for a permit. A classic example is the Shell Petroleum Development Company (SPDC). Estuary Amatu (EA) project where the project commenced a year before the application for license was made (Environment Watch, 2001).The implication of the

above is environmental distortions, which add to environmental degradation. Clearly, this is a negation of a major objective of the Act, which seeks to protect the Niger Delta environment.

As noted elsewhere, oil based environmental degradation is largely responsible for the collapse of several rural economies in the region.

d) The Land Use Decree

The Land Use Decree, now an Act (CAP 2002) stands out as a major instrument that has been used to dispossess the Niger Delta people of their lands and the benefits thereof. The law positions itself as:

An Act to vest all land comprised in the territory of each state (except land vested in the Federal Government or its agencies) solely in the governor of the state, who... hold such land in trust for the people and responsible for allocation of land in all urban areas to individuals resident in the state and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments.

The above reference essentially means that the people have lost the right of their lands to the state. Sections one and two of the Act clearly highlights this fact. In section 5(1) the Act empowers the governor of a state in "respect of land, whether or not in an urban area":

(i) To grant statutory rights of occupancy to any person for all purposes; (ii) To grant easements appurtenant to statutory rights of occupancy;

(iii) To demand rental for any such land granted to any person;

(iv) To revise the said rental -

(a) at such intervals as may be specified in the certificate of occupancy, or

(b) Where no intervals are specified in the certificate of occupancy atany time during the term of statutory right of occupancy.

(v) To impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land.

(vi) To impose a penal rent for a breach of any condition, express or implied, which preludes the holder of a statutory right of occupancy from alienating the right of occupancy or any part thereof by sale, mortgage, transfer of possession, sub-lease or bequest or otherwise however without the prior consent of the governor.

Furthermore, section 6(1) provides that "it shall be lawful for a local government in respect of land not in an urban area -

i. To grant customary rights of occupancy to any person or organization for the use of land in the local government area for agricultural, residential and other purpose,

ii. To grant customary rights of occupancy to any person or organization for the use of land for grazing purposes as may be customary in the local government area concerned.

Perhaps, of more significance is the provision in section 6 (3), which states that: It shall be lawful for a local government to enter upon use and occupy for public purposes any land within the area of its jurisdiction, which is not the subject of any laws relating to minerals or mineral oils. (italics our)

It is clear from all of the above that the Land Use Decree (Act) amounts to a complete seizure of all lands from the people; and strengthens the other laws governing the oil industry (the Petroleum Act for example) in the alienation of the Niger Delta communities from the oil wealth.

Indeed, the impact of the Act on the people is in varied dimensions - social, economic and environmental. According to Obioma:

The communities lost the right to grant or refuse permission to the oil companies, the use of their land and also, the right to participate in the rates of compensation to be paid them for their destroyed resources (cited in Okoko &Ibaba, 1997)

The implication here is that the Federal Government sets the compensation rates. Sadly they are too meager to be commensurate to the losses. Thus for example, while a mature mahogany tree can generate about N10,000.00 whenprocessed into boards or planks, the compensation rate is a paltry N600.00. This is also true of the Iroko, Abura and Obeche trees. This inevitably aggravates rural poverty.

Equally, because the people have no say on how their lands should be used, the oil companies have become insensitive to the environmental costs of their activities. This is evidenced by the sub-standard technology they use instrumentality of federal legislation such as the Land Use Decree of 1978. What is deducible from the above is that the Land Use Act constrains the sustainable exploitation of natural resources and thus undermines the sustainable development of the region. Also of note is the fact that the compulsory acquisition of lands has engendered land fragmentation and reduced the bush fallow period in several communities. This has led to a decrease in the nutrient value of the soil, reduced crop yield and the resultant loss of income to farmers.

Given that agriculture (farming and fishing) is the major occupation of the local communities, the loss of income limits the ability of many parents in performing their social and economic obligations (providing the basic needs of their families, etc.); thus, setting off a chain of events such as proletarianisation and rural urban migration, which reinforces rural poverty.

The Proposed Petroleum Industry Bill (PIB)

It clear that the laws governing the oil industry in Nigeria which have a colonial origin are oppressive to the extreme (Nna, 2001) and defines the poverty and underdevelopment of Nigeria and particularly the Niger Delta region. Perhaps, more significant is the fact that federalism in Nigeria came through imposition and not negotiation by the federating groups, the basis for the domination and exploitation of the Nigeria people. This highlights the need to carry a comprehensive reform in the oil and gas industry.

According to the federal government, the necessity for the Bill was borne out by the fact that the laws governing Nigeria's oil industry have not been comprehensively reviewed in almost 40 years. The PIB combines 16 different Nigerian petroleum laws into a single transparent and coherent document that establishes clear rules, procedures and institutions for Nigeria's petroleum industry.

The PIB has been described as "a reform legislation which aims to put in place of the existing myriad of legislative and administrative instruments governing the petroleum industry one omnibus legislation establishing clear rules, procedures and institutions for the administration of the petroleum industry in Nigeria."

Although section 479(1) of the PIB saves the licences and leases issued under the Petroleum Act 1969 for the remainder of their duration, nevertheless, the contractual framework under which the licences and leases are operated and tax chargeable on their profits will be heavily

impacted when the PIB is passed into law.

The Petroleum Industry Bill (PIB) is the product of the reform agenda of Government emanating from the Oil & Gas Reform Implementation Committee. The Committee was set up by the Federal Government in year 2000 to carry out a comprehensive reform of the oil & gas industry. It produced a report which was submitted to the Government. Subsequently, in 2007 the current administration relaunched the initiative with the following Terms of Reference:

- Assume the full mandate for the implementation of the OGIC report, especially as enshrined in the Road Map approved by government.
- Advise on the take off of the new bodies, institutions, organizations and agencies that would constitute the institutional framework for the restructured Oil industry
- Identify and put in motion all required amendments and changes in all legislations governing the country's Oil and Gas industry as a result of the implementation of the OGIC report.
- Seek the approval of Mr. President on all major amendments to the report that may arise in the course of implementation
- To engage, as much as possible, all industry stakeholders in the course of the implementation programme, as well as resource persons, facilitators and consultants where necessary.

Accompanying the report was a draft legislation known as the Petroleum Industry Bill (PIB) which was adopted and presented to the National Assembly for enactment. Consistent with the Terms of Reference of the OGIC, the Chairman of the OGIC who also doubled as the then Honourable Minister of Petroleum Resources constituted an Inter Agency Team (IAT) to further review the draft bill. At the public hearing after the second reading of the bill, a Government Memorandum was submitted to both Chambers of the National Assembly. This Government Memorandum on the Bill has been subjected to public reviews, stakeholder engagements including discussions with Local and international Oil Companies (IOCs).

Highlights of the main reforms of the proposed Bill include:

Transparency: The Bill will remove secrecy and confidentiality in the petroleum sector. The texts of all licenses, leases and contracts, as well as changes to these documents will no longer be confidential. Under the new legislation, payments to the government will be public information. Petroleum prospecting and mining licences will also be awarded through a competitive bidding process.

Revenue collection: To improve revenue collection by government from the oil and gas industry, a new fiscal regime for the upstream sector of the industry will be introduced. Government feels that its take from the industry is relatively low when compared with other countries. The PIB will split the current Petroleum Profits Tax into two: the Corporate Income Tax and the Nigerian Hydrocarbon Tax. All oil companies will be required to pay Corporate Income Tax, from which they are currently exempted. The Hydrocarbon tax will be payable on a company's production, not profit.

Every company involved in the upstream petroleum industry will be subject to the same system of rents, royalties and taxes, depending on whether they operate in the onshore, shallow or deep offshore or inland areas. This means it will not be possible under the Bill to treat certain companies more favourably than others.

Administration: To handle the administration of the sector a number of

new agencies will be created. The idea is that each of agencies will focus on a specific area of the sector to avoid the overlapping of responsibilities.

Role of NNPC: The Bill will change the role of the Nigerian National Petroleum Corporation (NNPC). The NNPC currently has the character of agovernment department, whereas the Bill will commercialise the NNPC so that it can operate as viable and self-financing company. It will however still be owned by government. The idea is that that the NNPC will function like other successful state-owned oil companies such as Norway's Statoil, Brazil's Petrobras, Malaysia's Petronas and Venezuela's PDVSA. The new NNPC will also pay government the same royalties and taxes as any other oil company.

Joint ventures: To assist the new NNPC in the financing of new projects, the Bill will create a new joint venture structure, called incorporated joint ventures. The NNPC and foreign companies will join into a single company of which they will be shareholders.

Deregulation of downstream sector: Running alongside the PIB is the proposed deregulation of the downstream sector of the petroleum industry. The deregulation was supposed to start early in November but due to opposition from various quarters; this has now been put on hold to a later date.

The deregulation essentially means that the pump prices of petrol will no longer be subsidised by government. Government's arguments for deregulation is that it cannot sustain the current subsidy; it wants to reduce the level of distortions or corruption involved in oil transactions; and because it believes deregulation will lead to better quality of services and constant availability of product. It also hopes deregulation will encourage investment in refining

EXPECTED BENEFIT OF THE PETROLEUM INDUSTRY BILL(PIB)

The Petroleum Industry Bill (PIB), which many believe is the most important legislation in Nigeria's parliamentary history vis-a-vis the nation's oil industry and economy has lot of implications that are far reaching.

The PIB is actually meant to revive the entire oil and gas industry in the country. Given the importance of the industry to the national economy and the nation's strategic position in the global oil and gas market, the bill has huge expectations attached to it. It is expected to restructure the country's oil and gas industry and provide incentives to indigenous operators. We shall highlight the impact of the bill

1. **Good Governance**

One of these key objectives is establishing clear and enduring good governance in the Nigerian oil & gas industry. It is often familiar to talk about an industry that is opaque and largely characterized by discretionary decision making. The PIB however, makes it mandatory for processes in the industry to be subjected to public scrutiny. This in turn is augmented by separation of the role of policy making and regulation from operations. Good governance is promoted through the removal of much of the confidentiality as well as creating transparency.

Confidentiality encourages corruption. The best way to fight corruption is to remove confidentiality for all procedures, contracts and payments. Every Nigerian including all stakeholders should have the right to know what is going on in the industry. The bill removes confidentiality on a scale not seen in the world before, Nigeria will move in one step from one of the mostopaque petroleum nations in Africa, to one of the most open and transparent in

the world.

2. **Fiscal Provisions**

- The PIS establishes fiscal provisions that are flexible and that would guarantee an optimal take for the government. This is accomplished through:
- The simplification of collection of government revenues,the capture of windfall profits in cases of high oil & gas prices. Collection of more revenues from large profitable fields in the deep offshore waters, and co creation of Nigerian employment and business opportunities, by encouraging investment in small oil and gas fields.
- It also encourages more effective management of costs through the improvement of Nigeria's savings index and the removal of cost based incentives under the current PPT.

3. **Incorporated Joint Ventures (IJVs)**

One of the most important reforms proposed by the PIB is the reform of the Nigerian JV structure. Each existing JV structure (unincorporated JV) is to be incorporated into an autonomous commercial structure called the Incorporated Joint Venture (IJV).6 By virtue of this provision, existing unincorporated JVs between NNPC and the IOCs are to be operated under IJV structures.

The implementation of this provision would require the transfer of the license or lease held by the JV parties to the IJV Company. This transfer will trigger Capital Gains Tax and Stamp Duty. Although the PIB prescribes certain corporate governance requirements, a number of shareholder issueswould need to be addressed by the IJV parties before the IJV can replace the unincorporated JV structure.

It will appear that the PIB requirement for unincorporated JVs to convert to IJVs will also affect other licenses and leases operated under an unincorporated JV structure. This is because there is nothing in the PIB which restricts the application of the requirement to only NNPC's unincorporated JVs. It is however unclear whether certain corporate governance provisions prescribed by the PIB for the IJVs, especially those relating to the National Oil Company, will apply to unincorporated JVs which do not have NNPC as a party.

In addition, any gas produced by existing unincorporated JVs after the enactment of the PIB would be taxed at the rate of 45% instead of the 30% rate such activity currently attracts.

The PIB establishes clear principles for the working of the Incorporated Joint Ventures and guarantees that government continues to secure the maximum financial benefits from its investment in the joint ventures while receiving Government of funding from the Treasury.

4. **Support for National Gas Master Plan**

The PIB Supports domestic gas utilization through effective implementation of the National Gas Master Plan. The creation midstream sector and the regulatory framework for midstream activities now means that oil & gas delivery systems by law are subject to regulatory oversight through the establishment of open access rules. This is particularly important for managing access by small field owners into available oil and gas infrastructure currently operated by oil and gas majors. The PIB also recognizes domestic supply obligations which are now linked to delivered commitment into existing or new gas processing and transmission systems
which will also be subject to mid-stream regulations. Adequate fiscal incentives

hitherto unavailable have also been provided for oil & gas midstream operation s such as refineries, oil terminals, oil pipeline e.t.c. This ensures the availability of gas to power and other industrial sectors in the domestic economy.

5. Acreage Management Systems

Nigeria's acreage management systems are at least fifty (50) years old and completely out of tune with modern realities. This has resulted in large tracks of high potential acreage being held for more than forty years with significant portions not covered by oil & gas activities. The PIB therefore, seeks to modernize acreage management in line with international best practices. This has the potential of increased oil & gas exploration and production activities and will encourage new participants in this vital sector of the Nigerian economy.

6. Nigerian Content

With regards to Nigerian content, the PIB establishes linkages between field development work plans, midstream and downstream project approvals with national content requirements. Specific Nigerian content provisions are included which complement general Nigerian content legislation, related to Nigerian goods and services, Procurement, Employment and personnel, Training, Research and Development. Detailed local social responsibility provisions are also proposed in the PIB. The PIB adequately addresses the long term agitation of our Oil producing communities in a manner that is commendable. The passage will also accelerate the growth of the local content initiatives already embarked upon in the industry. The impact on the fortunes of the oil-rich Niger Delta will also see an acceleration of the economic and infrastructural development of the area. The bill, if and whenpassed into law would loosen up the hegemonic stranglehold of the local industry by multinational oil companies and their local surrogates, prying it away from its current "enclave" nature. This will lead to an enhancement of the industry's financial base, deepening it as the main source of revenue for the federal government.

7. Administration of the Industry

PIB strengthens administration of the industry through the proper alignment of roles of policy, regulation, research and funding institutions with the requisite powers and rules for the effective administration of the industry. In line with international best practices for the administration of the regulatory institutions, the PIB creates three regulators with both technical and cost/commercial functions as follows:

- The Inspectorate for upstream petroleum operations
- The Agency for midstream petroleum operations, and
- The Authority for downstream petroleum operations.

8. Health, Safely and Environment

The Bill provides for a detailed description of how the regulatory Institutions should interact with the ministry of environment in order to achieve the goals on Health, Safety and Environment.

Directives of Ministry of Environment prevail over Regulatory Institutions. The Government Memorandum clarifies that matters related to the conduct of operations do not only apply to upstream petroleum operations, but midstream and downstream operations as well.

The fundamental impact that the PIB will have on existing PSCs is the change of the employer party. The PIB provides that licenses and leases previously held by NNPC including those in respect of which PSCs have been awarded shall be held by the National Petroleum Directorate (the Directorate).2 When the NNPC transfers

the acreages in respect of which PSCs have been issued to the Directorate, the PSCs relating to those acreages would need to be amended to reflect the Directorate as the employer.

When existing NNPC PSCs attain commerciality, the PIB requires the contractor party to meet with the Directorate to discuss terms and conditions for the incorporation of a company which shall manage and operate the production sharing contract.3 the rationale for this provision and how it would be implemented is not clear. On the one hand, the provision could mean that the contractor parties under a PSC should, upon commerciality, constitute themselves into a company for the management and operation of the PSC. In this case, the provision will be inapplicable to a PSC with one contractor party. On the other hand, the provision could be interpreted to mean that the contractor party, upon commerciality, should incorporate a Dr. Rilwanu Lukman, Honourable Minister for Petroleum Resources, Keynote Address by the Honourable Minister of Petroleum Resources on the Proposed Petroleum Industry Bill (PIB) on 16th July, 2009

CHALLENGES CONFRONTING THE BILL

Delay in passing the bill

One critical challenge confronting the petroleum industry bill (PIB) is the delaying in passing the bill by the National Assembly. Indeed, the editorial report of Business day march 28th 2011 noted that the National Assembly has compromised it position over the PIB; and is, therefore, foot-dragging in quickly passing it. It would be recalled that the scandal, which trailed the parliament when its members went to Ghana to "brainstorm" over the bill, following the sponsorship of some multinational oil companies, watered down its content appallingly".

The multi -national oil companies vested interest

Another area of concern is the vested interest of the some of the multinational oil companies in the country. Some of the existing oil companies feel it will drive away investment because the increase in taxes will make operations unprofitable. For instance, Newswatch quoted Basil Omiyi, the country chair for the Shell companies in Nigeria saying "the aggregate impact of multiple taxes, higher royalty rates and loss of incentive under PIB will have a significant negative impact on gas and deep water projects. The majority of gas and deep water projects will not be viable under the PIB as currently proposed" Zaid Kolawole, (2011), Ventures Coordinator with Total Upstream Nigeria says many oil companies "believe that the new tax regime will decrease by half the capital investment in the sector in the next 10 years and new oil and gas production will be reduced by nearly 50%, with a high proportion of new projects becoming uneconomic." He adds that "government will have to strike abalance between taking a significantly higher stake from industry operations and ensuring the sustainable growth of the industry."

Labour issues

There is the perpetual fear of job loss in the industry if the bill is passed. Some maintained that the major companies would embark on retrenchment and restructuring of their operations.

In a memorandum to the House of Representatives public hearing on the Bill, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) also expressed concern that the government would continue to interfere in the affairs of NNPC; and about the lack of provision in the Bill for protecting the interests of host communities in the form royalties or equity ownership, amongst other issues.

The Nigeria Labour Congress (NLC) argues the large subsidies government are currently paying is due to mismanagement by government in the first place. In a statement it mentions the fact that the federal government has contracted companies in Spain, which is not an oil producing country, to refine petroleum products for the Nigerian market. Given the fact that Spain is not an oil producing country, it argues, the costs of refining there are higher than what ca. be obtained in countries that have domesticated technology for refining oil because they produce crude oil. These higher costs are passed on to Nigerians as 'subsidy'.

"It is our view that the deregulation of the downstream sector of the oil industry will only spell doom to the economy and bring untold hardship to the Nigerian people," says Abdulwahed Omar, president of NLC. "If deregulation is allowed, the country will return to the era of arbitrary high prices, profiteering,adulteration of commodity, artificial queues [at filling stations] as well as endless importation of refined petroleum products," he added.

Other stakeholders

If the PIB gets passed into law and the deregulation of the downstream sector go ahead, government will need to ensure that these new laws and measures are not just simply new wine in old wineskins and that it truly has a positive impact on the country's oil and gas industry.

RECOMMENDATIONS AND CONCLUSION

The PIB represents the most comprehensively re-viewed legislation in Nigeria's legislative history and rightly so given the importance of the oil & gas industry to Nigeria's economic well - being. The adoption and passage of the PIB will create a Nigerian petroleum legislation that will conform to international best practices.

The bill when passed into law would permit Nigeria to maximize the benefits from its petroleum resources in terms of government revenues and Nigerian content with better linkage of the oil & gas industry to Nigerian economy especially in the areas of power generation and industrial development.

REFERENCES

1. Adedipe B. (2004): The impact of oil on- Nigeria; Economic Policy formulation; a Paper presented at the conference on Nigeria: Maximizing Pro-pour growth; regenerating the socioeconomic Database, organized by oversea development institution in collaboration with the Nigeria economic summitgroup. 16th/17thJune, 2004

2. Aliyu, S.U. R. (2009) "Impact of oil price stock and exchange rate volatility on Economic Growth in Nigeria: An Empirical Investigation" Research Journal of International Studies (RJIS) – Issue 11, July, pp. 4-15.

3. Atsegbua L. (1993) "Nigeria Petroleum Law: Acquisition of oil right in Nigeria

4. Business World Newspaper editorial report - The Petroleum Industry Bill March 28 - April 3, 2011

5. Central Bank Nigeria (2006): Statistical Bulletin, Various Issues, Development Report Nigeria 2006.

6. Central Bank of Nigeria (2006): Statistical Bulletin...

7. Iyoha M.A (2003): An overview of the Nigeria Economy

8. Oriakhi D. E. (2003): An Overview of leading in the structure and development of the Nigeria economy since 1960 mindex publishing, Benin City

9. Orubu 0. C. (2003):_ "The Development and contribution of

petroleum Industry to the Nigeria economy" Mindex publishing, Benin City Nigeria.

10. Shehu L. (2010): "Excerpts of a speech presented by the GMD NNPC, Mallam Ladan Shehy at the Society of Petroleum Engineer (SPE) annual Oloibiri lecture Series and Energy Forum in Lagos.

11. The Constitution of the Federal Republic of Nigeria, 1999

12. The land Use Act. Laws of the Federation of Nigeria, 1990 CAP 202 pp7469 -7504

13. The Petroleum Act (1969) Law of the Federation of Nigeria, 1990 CAP 350.