

Grants of Upstream Petroleum Exploration Licences and Leases in Nigeria under the Petroleum Industry Bill 2012: An Overview

DR. ENOBONG MBANG AKPAMBANG*

LL.B (Hons.), LL.M., Ph.D., B.L. Lecturer in the Department of Public Law, Ekiti State University, Ado-Ekiti, Nigeria [Corresponding Author]. He is a Barrister and Solicitor of the Supreme Court of Nigeria

MRS. ADERONKE ABIMBOLA OJO**

LL.B (Hons.), LL.M., B.L. Lecturer in the Department of Private and Property Law, Ekiti State University, Ado-Ekiti, Nigeria. She is a Barrister and Solicitor of the Supreme Court of Nigeria

Abstract

Section 2 of the Petroleum Industry Bill 2012 (PIB 2012), in the same spirit as section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), vests the entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters, or which forms part of its continental shelf and the exclusive economic zone, on the Government of the Federation. A significant feature of this constitutional and statutory position is a corresponding exclusive power of the Federal Government to make grants for prospecting, exploration, mining and production of petroleum resources in Nigeria. The article carries out an overview of some relevant provisions relating to the award of upstream petroleum exploration licences and leases under the PIB 2012 and contends that in view of the worthy objectives and provisions of the PIB in this respect, the National Assembly should expeditiously pass the Bill into law to ensure that it becomes valid and binding on all persons and institutions engaged in the upstream petroleum operations in Nigeria.

Keywords: Downstream, Drilling, Lease, Licence, Petroleum, Relinquishment, Upstream

1. INTRODUCTION

Several problems have been identified as confronting the Nigerian petroleum sector, notwithstanding a considerable increase in the number of legislation enacted by the Nigerian government. These include corruption, lack of transparency, weak enforcement, absence of strong political will by the government, special defences accorded to grantees, conflicts of interest and unhealthy rivalry within the institutional and regulatory systems, overlaps and inconsistencies in legislation, etc.¹ As a means of tackling the problems headlong, the then President Obasanjo took steps to introduce the Petroleum Industry Bill, though that dream suffered some setbacks.

The PIB was first introduced into the National Assembly as an Executive Bill in 2008 by the then president, late Umaru Musa Yar'adua. However, the sixth National Assembly² could not successfully pass the bill into law before its dissolution. The current PIB 2012 was approved by the Federal Executive Council of Nigeria on 11 July 2012 and forwarded to the National Assembly by former President Goodluck Jonathan on 18 July 2012.³ In June 2015, during the seventh National Assembly, about 47 out of the 360 members of the House of Representatives purportedly passed the bill few hours to the end of their tenure.⁴ But the bill failed to secure a concurrent passage from the Senate as constitutionally required.⁵

Many critics have described the botched attempt by the seventh Assembly⁶ as not “only hypocritical

* **Enobong Mbang Akpambang**, LL.B (Hons.), LL.M., Ph.D., B.L. Lecturer in the Department of Public Law, Ekiti State University, Ado-Ekiti, Nigeria [Corresponding Author]. He is a Barrister and Solicitor of the Supreme Court of Nigeria.

** **Mrs. Aderonke Abimbola Ojo**, LL.B (Hons.), LL.M., B.L. Lecturer in the Department of Private and Property Law, Ekiti State University, Ado-Ekiti, Nigeria. She is a Barrister and Solicitor of the Supreme Court of Nigeria.

¹ See Akpambang, E. M. (2016). *Legal Analysis of Environmental Oil Pollution and Remedies in Nigeria*. (Unpublished Doctoral Dissertation). Ekiti State University, Ado Ekiti, Nigeria, pp. 385-386.

² That is, from the period of 2007-2011.

³ Okigbo, A. (2012). “Nigeria: Petroleum Industry Bill, History, Objectives, Institutions, and Controversies.” Available at <https://www.google.com/search?q=Nigeria%3A+petroleum+industry+bill+history%2C+objectives%2C+institutions%2C+and+controversies&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-GB:official>. Accessed on 7 January 2015. See also Akpambang, E. M., *op. cit.* p.307.

⁴ The quorum of the House of Representatives is constitutionally required to be one-third of all the members of the legislative house. Where the number of members is less than the required minimum number, a member of the House may raise an objection to the sitting of the House, and upon ascertainment of the veracity of the objection by the presiding officer, the House would stand adjourned. See Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 54 and 58.

⁵ See Ezeamalu, B. (2015, September 18). “Why National Assembly refused to pass Petroleum Industry Bill-Group.” *Premium Times*. See also Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 58.

⁶ That is, from the period of 2011-2015.

and cosmetic but also face-saving” and that “the bottlenecks strewn on the way of the PIB and the failure through self-censorship of the last Assembly to make the bill become law clearly showed that there were behind-the-scene powers at play to keep our people down.”¹

Obviously, the general intendment of the Petroleum Industry Bill 2012 is to guarantee that the management and allocation of petroleum resources and their derivatives in Nigeria are carried out precisely in conformity with the “principles of good governance, transparency and sustainable development” of the country. This, as envisaged by the PIB, would be achieved through an orderly, fair and competitive system; clear and effective legal and institutional frameworks for organising petroleum activities; and a fiscal regime that offers fair returns on investments while enhancing welfare to the Nigerian citizens.² The current PIB classified the petroleum sector into two strata, namely, the upstream and the downstream petroleum operations.

When eventually passed into law, the bill has indicated its intention to repeal some enactments which presently regulate the Nigerian oil and gas sector. The proposed enactments for repeal are: the Associated Gas Re-injection Act;³ Motor Spirits (Returns) Act;⁴ Petroleum Act;⁵ Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003;⁶ Petroleum Equalisation Fund (Management Board, etc.) Act;⁷ Petroleum (Special) Trust Fund Act;⁸ Petroleum Technology Development Fund Act;⁹ Deep Offshore and Inland Basin Production Sharing Act,¹⁰ except for sections 16 subsection (1) and (2); and Petroleum Profits Tax Act,¹¹

However, any subsidiary legislation which was made under any of the above intended repealed enactments shall, where it is not considered inconsistent with the provisions of the PIB, remain effective until it is expressly revoked or replaced by secondary legislation made pursuant to the PIB, and shall be deemed for all purposes to have been made under the PIB. Moreover, the Nigerian National Petroleum Corporation Act¹² and its other attendant enactments shall be considered to be repealed on the date that the Minister of Petroleum Resources indicates by legal notice in the Gazette that its assets and liabilities are wholly conferred on successor entities.¹³

The article, therefore seeks to carry out an overview of the grant of upstream petroleum licences and leases and other related matters under the Petroleum Industry Bill 2012 in its present state without having regard to any subsequent alteration or modification to any of the provisions by the National Assembly in the process of fine-tuning the bill towards its eventual passage into law.

2. GRANTS OF UPSTREAM OIL RIGHTS UNDER THE PETROLEUM INDUSTRY BILL (PIB)

Part III of the PIB 2012 makes elaborate provisions regarding the upstream petroleum operations.¹⁴ With the objectives of *inter alia*, establishing a conducive business environment for petroleum activities as well as enhancing exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people,¹⁵ the bill mandates the Minister of Petroleum Resources, on the advice of the Inspectorate,¹⁶ to award,

¹ See Ezeamalu, B. (2015, September 18). “Why National Assembly refused to pass Petroleum Industry Bill-Group.” *Premium Times*.

² Petroleum Industry Bill 2012, section 3.

³ Cap. A25 *Laws of the Federation of Nigeria*, 2004.

⁴ Cap. M20 *Laws of the Federation of Nigeria*, 2004.

⁵ Cap. P10, *Laws of the Federation of Nigeria*, 2004.

⁶ No. 8 of 2003.

⁷ Cap. P11 *Laws of the Federation of Nigeria*, 2004.

⁸ Cap. P14 *Laws of the Federation of Nigeria*, 2004.

⁹ Cap. P15 *Laws of the Federation of Nigeria*, 2004.

¹⁰ Cap. D3 *Laws of the Federation of Nigeria*, 2004.

¹¹ Cap. P13 *Laws of the Federation of Nigeria*, 2004.

¹² Cap. N123 *Laws of the Federation of Nigeria*, 2004.

¹³ See generally, Petroleum Industry Bill 2012, section 354.

¹⁴ The PIB 2012 defines the term, “upstream petroleum operations” to include “the winning or obtaining and transportation of petroleum, chargeable oil or chargeable natural gas chargeable condensate or bitumen in Nigeria by or on behalf of a company for its own account including production sharing contractors, by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil or chargeable natural gas or chargeable condensate or bitumen by or on behalf of the company.” See the Petroleum Industry Bill 2012, section 362.

¹⁵ Petroleum Industry Bill, *ibid*, section 1(a) and (b).

¹⁶ The upstream petroleum Inspectorate is established with wide powers under the Petroleum Industry Bill 2012. The objectives, functions and powers of the Inspectorate include, but not limited to the following: (i) ensuring compliance with national and relevant international environmental and other technical regulations by all persons engaged in upstream petroleum activities; (ii) creating, monitoring, regulating and enforcing health and safety procedures regarding every area of the upstream petroleum operations; (iii) keeping registers of all leases, licences, permits, and other authorisations issued by the Inspectorate or granted by the Minister for upstream petroleum operations, and any renewals, amendments, extensions, suspensions and revocations thereof; enforcing relevant licence, lease or permit requirements and the specific obligations

amend, renew or extend upstream petroleum licences and leases exclusively to a company incorporated in Nigeria under the Companies and Allied Matters Act¹ or any corresponding law to explore, prospect or drill petroleum resources in the country, though subject to a bidding process.²

The grant which may be in respect of a petroleum exploration licence,³ a petroleum prospecting licence⁴ or a petroleum mining lease⁵ empowers the licensee or lessee to enter into contracts for the exploration, prospecting, production and development of petroleum regarding the licence or lease held by the holder upon terms and conditions the licensee or lessee may determine.⁶ However, such power to enter into contracts does not confer the right to assign an interest in any licence or lease without appropriate approval.⁷

2.1. Petroleum Exploration Licence (PEL)

The holder of the licence has the non-exclusive right to perform geological, geophysical and geochemical exploration for petroleum within the licensed area and to drill coreholds that are not deeper than 150 meters applying solely percussion drilling techniques except it is otherwise authorised by the Inspectorate.⁸ The licence is valid for a period not exceeding 3 years, excluding the right or option of winning, getting, working, storing and carrying away, transporting, exporting or otherwise treating petroleum discovered within the licensed area.⁹

2.2. Petroleum Prospecting Licence (PPL)

The licence confers on the licensee the exclusive rights to perform petroleum exploration activities within the licenced area. The licensee is also entitled to carry away and dispose of crude oil, natural gas or bitumen won during prospecting activities by reason of production tests, subject to satisfying the responsibilities spelt out under the PIB or any other legislation in operation at the material time.¹⁰ The duration of a PPL in relation to onshore and shallow water areas does not exceed 5 years, consisting of an original expiration period of 3 years and a renewal period of 2 years, including an option for further extension as a result of an appraisal period and significant gas discovery periods. The licence area must neither be more than 500 square kilometres nor less than 4 square kilometres.¹¹

However, regarding the deep water areas¹² and frontage acreage, the duration shall not exceed 8 years, consisting of an initial cessation period of five years and renewal duration of 3 years, with a likelihood of further elongation due to appraisal periods under section 178(8) and (11) of the PIB. The licence area must not be more than 1000 square kilometres or less than 4 square kilometres.¹³

2.3. Petroleum Mining Lease (PML)

Section 181(1) of the PIB asserts that a PML shall be granted for parcels of each commercial discovery of crude oil, natural gas or bitumen to a licensee of a PPL who has fulfilled all the obligations required on the licence or otherwise imposed on the licensee and has obtained consent for the associated development plans from the Inspectorate.

The prospective lease area of a PML must be such as contain a discovery of crude oil or natural gas or both, or condensate¹⁴ which in the opinion of the inspectorate is commercial; a petroleum field or fields with suspended wells or continuing commercial production, where the corresponding PML has been revoked or has

imposed under the Bill; and (v) the administering all acreage for exploration, development and production of petroleum in Nigeria. See generally, Petroleum Industry Bill *ibid*, sections 13-16 and section 170(1).

¹ Cap. C20, *Laws of the Federation of Nigeria*, 2004(as amended)

² Petroleum Industry Bill 2012, section 172(2) and (5). As a matter of fact, the Minister of Petroleum Resources is statutorily charged with the responsibility of co-ordinating the operations of the petroleum industry as well as exercising general supervisory powers over all the affairs, activities and all institutions in the industry- see generally Petroleum Industry Bill *ibid*, sections 5 and 6, which make provisions for the role, functions and powers of the Minister.

³ Petroleum Industry Bill, section 172(1) (a).

⁴ *Ibid*, section 172(1) (b).

⁵ *Ibid*, section 172(1) (c).

⁶ *Ibid*, section 173(1).

⁷ *Ibid*, sections 173(2) and 194.

⁸ *Ibid*, section 175(1).

⁹ *Ibid*, section 175(2) and (3).

¹⁰ *Ibid*, section 176.

¹¹ *Ibid*, sections 177(a) and 178 (8) & (11).

¹² According to the PIB, “deep water” means areas offshore Nigeria with a water depth in excess of 200 meters. See Petroleum Industry Bill 2012, section 362

¹³ *Ibid*, section 177(b).

¹⁴ “Condensate” refers to a portion of natural gas of such composition that are in the gaseous phase at temperature and pressure of the reservoirs, when produced and in the liquid phase at surface pressure and temperature. See Petroleum Industry Bill 2012, section 362.

expired; or a bitumen deposit.¹ It must be pointed out that a PML must not consist of an area that is less than one parcel.² Where two or more PMLs originated from a similar PPL and in the estimation of the Inspectorate, amounts to a single field from an assessment of geological or petroleum engineering data that establishes that the field is a single field, such leases would be deemed as a single PML, even if their boundaries do not join with another lease and the granting date of such single lease shall be the date of the first lease that was granted except the Inspectorate otherwise determines.³

A lessee has the exclusive right to conduct upstream petroleum activities in or under the lease area as well as to continue to explore and prospect deeper formations. The lessee must demonstrate a firm commitment to develop and produce the bitumen deposit, crude oil, gas or condensate in the lease area in accordance with the approved development plan.⁴ This is however, subject to the verification and monitoring by the Inspectorate.⁵

2.4. Duration and Renewal of Petroleum Mining Lease (PML)

The duration of a PML is a maximum term of 20 years. Where it originated from a PPL in which there is a declared commercial discovery, such licence would be authorised to fully utilise its initial, renewal and appraisal period in such a manner that:

- (i) the onshore and shallow water area shall run for a total period of 27 years from the date of the grant of the associated PPL.
- (ii) for the deep water areas and frontier acreages,⁶ a total period of 30 years from the date of the award of the connected PPL
- (iii) in the event that a PML is granted for an unexpired PML, the term of the PML shall be the cumulative period of the mandatory term of 20 years and the residue of the terms for the PPL stated in paragraphs (i) and (ii) above.⁷

Where a lease has been in commercial production but the production has ceased and no commercial production has taken place from the lease for a period of 180 days aside for justifiable reasons of *force majeure*,⁸ repairs, maintenance, upgrading of facilities, new construction of facilities or other causes as brought to the notice of and approval of the Inspectorate, the lease may be revoked. Moreover, where a lessee plans to suspend production for a period of exceeding 180 days, and desires to resume production at a later date, such lessee must submit to the Inspectorate a detailed plan and assurance to recommence production⁹

Regarding the renewal of a lease, the PIB enjoins that at least 12 months before the expiration of a PML, the lessee may apply in writing to the Minister of Petroleum Resources for a renewal of the lease either in relation to the entire lease area or a part of it. The application would be granted if the lessee has fully paid the fees, rent and royalties regarding the lease and has performed all its responsibilities under the lease. The terms and conditions operational for such renewal shall be the prevalent requirements for the new PMLs at the time of renewal.¹⁰

3. WORK PROGRAMME FOR PETROLEUM PROSPECTING LICENCE (PPL)

Every PPL is required to contain the obligation for the licensee to commit to a work programme. Consequently, the licence holder is required to *inter alia*, explore the licence area, employing acceptable mechanism, like engaging geological and geophysical methods, to investigate with the goal of “arriving at the prospects until the area has been adequately explored for that purpose;” begin seismic operations; and within 18 months of the grant, commence drilling activities with a contemporary petroleum well drilling apparatus.¹¹

In the course of the original period, the licensee is statutorily mandated to drill a minimum of one exploration well to a stipulated minimum depth, though the licence may require more than one well to a minimum depth.¹² Any exploration well drilled in excess of the stated minimum work programme in the licence

¹ *Ibid*, sections 181(2)(a)-(c).

² *Ibid*, section 181(8).

³ *Ibid*, section 181(7).

⁴ *Ibid*, section 182(1)(2)and(3).

⁵ *Ibid*, section 182(4).

⁶ "Frontier acreages" has been defined as any or all licences or leases located in an area defined as frontier in a Regulation issued by the Minister in charge of petroleum matters. See generally Petroleum Industry Bill 2012, section 362.

⁷ Petroleum Industry Bill *Ibid*, section 184(1)(c).

⁸ A "*force majeure*" is statutorily defined to include acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving Nigeria; acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within Nigeria; a change in law. See generally Petroleum Industry Bill 2012, section 362.

⁹ *Ibid*, section 184(4) and (5).

¹⁰ *Ibid*, section 185(1)(c).

¹¹ *Ibid*, section 178(1) and (2).

¹² *Ibid*, section 178(3).

during the initial period can be accredited to the work commitment under a subsequent renewal application.¹

If in the course of the initial or renewal period the licensee discovers petroleum within 120 days or such other extended time, this must be brought to the notice of the inspectorate.² Where the discovery warrants appraisal, the licensee is enjoined to submit to the inspectorate for necessary approval a commitment to the appraisal programme spanning a period not exceeding 2 years and an extent and character that allows the licensee to declare a commercial discovery in the event that the appraisal are positive.³

It is noteworthy that a declared significant gas discovery entitles the licensee to retain the area for a duration not exceeding 10 years beginning from the date the declaration was made.⁴ Where the licensee defaults in declaring a commercial discovery prior to the expiry of the retention period, the significant gas retention area shall be relinquished and consequently, results in the termination of the licence.⁵

4. UNITISATION/JOINT DEVELOPMENT SCHEMES

Where it is obvious that a petroleum discovery in relation to a licence exceeds the frontiers of the licence or lease area, the Inspectorate has discretion of requiring that the upstream petroleum operations associated with such discovery should be conducted based on a unitised development with the licences or leases into which such discovery covers.⁶

Under such situation, the licensees or lessees of the areas concerned shall make a proposal to the Inspectorate for a joint development plan of the discovery within 2 years after the request by the Inspectorate.⁷ On the other hand, in the event that where some or all of the area into which the discovery encompasses is not under any licence or lease, the Inspectorate is required to promptly offer the available area for bids in accordance with section 190 of the bill.⁸

The significance of such joint development includes the following:

- (i) the prevention of needless competitive drilling;
- (ii) the attainment of the best results in petroleum conservation;
- (iii) the potential fruitful exploitation of petroleum trapped at very deep levels; and
- (iv) advanced techniques of cycling may only be achievable in unitisation arrangements for the maximum extraction of liquid components from gas. Thus, this scheme promotes economic engagement in cycling, pressure maintenance or secondary recovery activities.⁹

Similarly, Regulation 48 of the Petroleum (Drilling and Production) Regulations,¹⁰ which is preserved by the PIB until it is otherwise expressly repealed,¹¹ acknowledges that where a Minister of Petroleum Resources, after due consultation with a licensee or lessee is contented that there is in existence an oil field which is susceptible of being jointly developed and produced in line with good oilfield practice and that it is in the ultimate interests of Nigeria to do so for maximum recovery of the petroleum found thereunder, shall by a notice in writing direct the affected parties to draw up a development scheme for the joint development and production of such oilfield for the approval of the Minister.

The Minister's said notice shall contain a map which describes the affected oilfield and the period of time within which the development scheme is required to be submitted for approval. If the development scheme is not submitted within the stipulated period or if the prepared scheme is not ratified by the Minister, the Minister is statutorily empowered to proceed to prepare the scheme (that in his opinion is fair and equitable to the grantee and the other parties) which would become applicable for the development of the oilfield concerned.

It is crucial to point out that going by the fact that unitisation scheme could possibly result in differences and disagreements between the parties, especially as each party may ambitiously desire to be the unit operator, the amount of control, transparency, openness, and impartiality with which the Inspectorate administers the scheme and exercises its statutory functions is highly essential to the success of a joint development scheme.¹²

¹ *Ibid*, section 178(6).

² *Ibid*, section 178(7).

³ *Ibid*, section 178(9) (10) and (11).

⁴ *Ibid*, section 178(12).

⁵ *Ibid*, section 178(16).

⁶ *Ibid*, section 180(1).

⁷ *Ibid*, section 180(4).

⁸ *Ibid*, section 180(3).

⁹ Etikerentse, G. (2004). *Nigerian Petroleum Law* (2nd ed.). Lagos: Dredew Publishers, p.136.

¹⁰ Cap.P10, Laws of the Federal Republic of Nigeria, 2004

¹¹ See generally, Petroleum Industry Bill 2012, section 354.

¹² Etikerentse, G., *op. cit.*, p.137. See generally, Petroleum Industry Bill 2012, section 15 for the functions of the Inspectorate.

5. BIDDING PROCESS FOR A LICENCE OR LEASE

The PIB in its determination to promote transparency and openness in the management of the Nigerian petroleum industry¹ encourages an “open, transparent and competitive bidding process” which is performed by the Inspectorate. The Minister charged with petroleum matters is required to direct the Inspectorate to call for bids. Such calls is to be brought to the attention of the general public by way of publications on the Inspectorate’s websites as well as publications in at least two newspapers that enjoy global and national coverage, respectively.²

With requisite ministerial approval, the Inspectorate is to prepare the technical, legal, economic and financial requirements and other relevant qualifications along with guidelines for choosing prospective licensees and lessees. This would be further supervised by the Nigerian Extractive Industries Transparency Initiative (NEITI).³ It is submitted that the positive influence of NEITI warranted the Nigerian government to enjoin that in the attainment and realisation of the worthy objectives of the PIB, it was material that all agencies and institutions established under the PIB should comply with the NEITI principles.⁴ Failure to comply with the NEITI principles or any falsification or misrepresentation made to NEITI amounts to a criminal offence with a corresponding sanction.⁵

6. RELINQUISHMENT OF LICENCE AREA

It is provided in section 186(1) that every PPL which initially exceeds 10 parcels is under an obligation to relinquish as a minimum fifty per cent of the original licence area upon the expiration of the initial exploration period, on the condition that any acreage included in the PMLs, appraisal and significant gas discovery retention areas may be retained by the licensee and will not necessitate relinquishment. The surrendered land shall be vested in the government of the federation and may be awarded based on a bidding process as required by section 190 of the bill.⁶

With respect to relinquishment from current licences and leases, the PIB in its section 193 makes elaborate provisions. Thus, a licensee or lessee is enjoined to decide prior to the surrendering or expiry date of such licences or leases the portion that the holder intends to continue to explore, develop and produce or to propose as discoveries for appraisal, significant gas discovery retention areas or a commercial discovery as required by the law. On the other hand, concerning the residue portion, the licensee or lessee has the option of selecting all or part thereof as a PPL commencing from the conversion period with the primary goal of performing additional exploration on the condition that the holder is devoted to the drilling of a well of a minimum level of 3000 meters beneath the ground surface or the sea bed during the renewal time.⁷

7. PRE-EMPTION RIGHT OF THE GRANTOR

The requirements of section 7(1) of the PIB regarding the existence of a state of national emergency or war and those of the First Schedule to the PIB, primarily authorise the pre-emption by the Nigerian government of all petroleum⁸ and petroleum products⁹ obtained, marketed or otherwise dealt with under any license or lease granted under the bill. Besides, the licence or lease holder can be ordered by the Minister of Petroleum to *inter*

¹ Petroleum Industry Bill, *ibid*, section 1(h).

² *Ibid*, section 190(4).

³ *Ibid*, section 190(6). The Extractive Industries Transparency Initiative (EITI) was launched by former British Prime Minister, Tony Blair, at the World Summit on Sustainable Development held in South Africa in September 2002. In order to accord it a legal backing in Nigeria, former President Olusegun Obasanjo brought a bill before the National Assembly which later translated into the Nigerian Extractive Industries Transparency Initiative (NEITI) Act No. 36 of 2007. Thus, Nigeria became the pioneer EITI-implementing nation. See Oluduro, O. (2014). *Oil Exploration and Human Rights Violations in Nigeria's Oil Producing Communities*. Cambridge: Intersentia Publishing Ltd., p. 365.

⁴ Petroleum Industry Bill, section 4. The main aims of NEITI include the following: ensuring due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients; monitoring and ensuring accountability in the revenue receipts of the Federal Government from extractive industry companies; eliminating all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies; ensuring transparency and accountability by government in the application of resources from payments received from extractive industry companies; and to ensuring conformity with the principles of Extractive Industries Transparency Initiative. See generally NEITI Act 2007, section 2.

⁵ NEITI Act, *ibid*, section 16.

⁶ Petroleum Industry Bill, section 186(7).

⁷ *Ibid*, section 193(1) (f).

⁸ "Petroleum" means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, bitumen and mixtures of any of them, but does not include coal and tar sands. *Ibid*, section 362.

⁹ "Petroleum products" in this regard include motor spirit, gas oil, black oil, diesel oil, automotive gas oil, fuel oil, aviation oil, kerosene, liquefied natural gas, compressed natural gas, natural gas liquids, liquefied petroleum gases and any lubrication oil or grease or other lubricant. See *ibid*, section 362.

alia, provide for the Federal Government, to the extent of any refinery or petroleum products storage capacity he may have in Nigeria, petroleum products in compliance with the requirement stated by the Minister; or supply to any person holding a licence to operate a refinery, sufficient quantity and quality of crude oil as may be indicated by the said Minister to the extent of which such licensee or lessee has quantity and quality of crude oil.¹

The Minister may equally take control of any works, plants or premises of the licensee or lessee and where this occurs, the licensee or lessee and his servants or agents shall comply with all directives issued by the Minister. In relation to any commandeering made, the bill enjoins that the licensee or lessee be paid reasonable compensation,² though the parties may resort to the use of arbitration in the event of any dispute concerning amount of compensation.³ Any person, who without justifiable reason,⁴ fails or neglects to comply with a requisition made by or on behalf of the Minister is penalised under the law and is liable on conviction to payment of a fine not exceeding ₦2.5million. On the other hand, any person who hinders or interferes with the Minister's directives as stipulated under paragraph 8 of the First Schedule to the PIB commits an offence and is liable on conviction to a fine not exceeding ₦5million or to imprisonment for a period not exceeding two years, or to both.⁵

However, the requirements of section 7(5) and (6) of the extant Petroleum Act⁶ which gives the Minister of Petroleum the advisory role of advising the President to declare a state of national emergency if the said Minister is satisfied that by reason of low level of availability of petroleum and petroleum products there is real breakdown of public order or safety or there is such probability in the Federation or any part thereof, and consequent upon which the President may declare a state of national emergency if the president is satisfied of the necessity to do so, is expressly omitted in the PIB. This may not be unconnected with the fact that the said provision is inconsistent with the provisions of section 305 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which requires that in the declaration of a state of emergency, the President should do so in collaboration with the National Assembly.

8. REVOCATION

Section 195 of the PIB stipulates ten reasons which may cause the Inspectorate to advise the Minister to revoke a licence or lease. These ten reasons may be classified as follows:

A. Alteration in the Ownership Arrangement of the Licence or Lease

The revocation would be carried out if there is evidence that the licence or lease is controlled directly or by necessary implication by a citizen or subjects of a country whose country's laws prevents Nigerian citizens or Nigerian companies from holding or operating petroleum associated business in such countries under conditions which the Minister considers to be reasonably comparable to the conditions obtainable in Nigeria.⁷

B. Failure of the Licensee or Lessee to Adhere to Stipulated Requirements

The revocation by the Minister would also be carried out if there are failures in the following situations:

- (i) failure to conduct operations continuously and in a vigorous and business-like approach and consistent with good oil field practice;⁸
- (ii) failure to fulfil stipulated requirements under the conditions of the licence or lease;⁹
- (iii) failure to pay relevant fees, rents or royalties as they become due;¹⁰
- (iv) failure to deliver or provide any prescribed reports on its operations as statutorily mandated;¹¹

¹ First Schedule to the Petroleum Industry Bill 2012, Para. 1(a) and (b).

² *Ibid*, paras. 6-9.

³ *Ibid*, para. 10.

⁴ However, the onus of establishing such reasonable excuse is placed on the accused person.

⁵ Petroleum Industry Bill 2012, section 7(3) and (4).

⁶ Cap. P10, *Laws of the Federation of Nigeria* 2004.

⁷ Petroleum Industry Bill 2012, section 195(1)(a).

⁸ *Ibid*, section 195(1)(b). According to the PIB, "good oilfield practice" refers generally to the reasonable and prudent diligent use of policies, procedures, methods, equipment and materials that result in effective and efficient exploration, appraisal and development of petroleum including optimum recovery of petroleum from a discovery area with minimal impact on the environment as permitted and use of efficient and effective practices for transforming produced petroleum into marketable form and delivering it to the market, having due regard for safety and other factors and means in particular, knowledge of and compliance with the latest standards developed by relevant professional institutions including but not limited to, the American Gas Association (AGA); the American Petroleum Institute (API); the American Society of Mechanical Engineers (ASME); the American Society for Testing of Materials (ASTM); the British Standard Institute (BSI); the International Organisation for Standardisation (ISO); and any other organisation considered acceptable by the Inspectorate. See *ibid*, section 362.

⁹ *Ibid*, section 195(1)(c).

¹⁰ *Ibid*, section 195(1)(d).

¹¹ *Ibid*, section 195(1)(e).

- (v) failure to obtain required ministerial consent before assigning the licence or lease;¹
- (vi) non-implementation of its environmental management plan in keeping with good oil field practice;² and
- (vii) failure to comply with other specific obligations for which revocation is a statutory consequential implication of such non-compliance.³

C. Corrupt Practices and Abuse of Office

- a) obtainment of the licence or lease based on false statements or corrupt practices;⁴ and
- b) the licence or lease is owned or controlled by a public officer, whether former or present, who has obtained the licence or lease through abuse of public office.⁵

However, where the Inspectorate brings to the notice or information of the Minister that any of the ten grounds enumerated above has occurred, the Minister shall within 30 days of receiving such information notify the licensee or lessee in writing of the reasons on which a revocation would be considered. The notification would similarly require the licensee or lessee to make its response within a reasonable time. The PIB is mute regarding what constitutes a “reasonable time” and who should determine the reasonableness of the time. The essence of notifying the licensee or lessee before exercising the revocation power is to ensure that the holder of the licence or lease is not denied a right to fair hearing and a possibility of making amends.

In the event that the clarification by the licensee or lessee is acceptable to the Minister, the revocation process would be terminated forthwith. Where on the other hand the response is unsatisfactory, the Minister may require the holder to rectify the matter complained of within a reasonable time otherwise the licence or lease would be revoked.⁶ Nonetheless, the cancellation of the licence or lease would definitely not absolve the holder of any obligation or claim incurred by the federal government against him prior to the revocation. The revocation notification is required to be published in the Federal Gazette.⁷

9. ASSIGNMENTS, MERGERS AND ACQUISITIONS

In a situation that a licensee, lessee or production sharing or service contractor is transferred to another business concern or merges, or is taken over by another company either by acquisition or exchange of shares, including an alteration in the control of a parent company outside Nigeria, such transaction would be considered as an assignment within Nigeria and shall be subject to the terms and conditions of the PIB and any regulations made under it.⁸

Prior written ministerial consent is required before any assignment occurs. The intended assignee must satisfy the Minister that:

- (i) the proposed assignee is of good reputation;
- (ii) the proposed assignee has adequate technical knowledge, expertise or financial resources to enable it effectively discharge the obligations imposed under the licence, lease or contract that is intended to be assigned; and

¹ *Ibid*, section 195(1)(f).

² *Ibid*, section 195(1)(g). It is notable that the environmental management plan shall *inter alia*, examine, assess and appraise the impact of the licensee’s or lessee’s anticipated exploration and production operations on the environment and the socio-economic conditions of any person who might be directly affected by the upstream petroleum activities. See *ibid*, section 200(3)(b).

³ *Ibid*, section 195(1)(h).

⁴ *Ibid*, section 195(1)(i). Recently, the Nigerian government has demonstrated her willingness to ensure that an oil company forfeits its oil block on grounds of corrupt practices. An anti-corruption agency, the Economic and Financial Commission (EFCC) has recently instituted a criminal charge, Charge No. CR/124/17 before the Federal Capital Territory High Court, Abuja against some oil titans, Shell Nigeria Exploration Production Company Limited [SNEPCO], Nigerian Agip Exploration Limited, ENI SPA and three Italians allegedly for fraud. The anti-corruption agency, EFCC, accused the oil companies of allegedly surrendering the sum of \$801,000,000 to some former Ministers of the Federal Government on account of the grant of Oil Prospecting Licence in respect of OPL 245. The said OPL was alleged to have been bought by Mr. Dan Etete, a former Minister of Petroleum Resources and owner of Malabu Oil and Gas Limited, under questionable circumstances in 1998 before same was offered later to oil giants, Shell and Agip in an alleged shady deal. The offences according to the prosecutor, EFCC, were in grave violation of section 9 of the Corrupt Practices and other related Offences Commission Act 2000. In this regard, a court has made an interim order of forfeiture of the oil block to the Federal Government. See Eniola Akinkuotu and Ade Adesomoju (2017, March 3). “Malabu scam: EFCC charges Shell, Agip, Adoke with fraud.” *The Punch*. Available at <http://punchng.com/malabu-scam-efcc-charges-shell-agip-adoke-with-fraud/>. Accessed on 3 March 2017. See also Ade Adesomoju (2017, January 27). “Court orders interim forfeiture of Malabu oil block to FG.” *The Punch*. Available at <http://punchng.com/court-orders-interim-forfeiture-malabu-oil-block-fg/>. Accessed on 3 March 2017.

⁵ *Ibid*, section 195(1)(j). See also section 15 (5) of the Constitution of the Federal Republic of Nigeria 1999(as amended) which provides that the State shall abolish all corrupt practices and abuse of power.

⁶ PIB *Ibid*, section 196(3).

⁷ *Ibid*, section 196(4) and (5).

⁸ *Ibid*, section 194(1).

- (iii) where the intended assignee is to act as an operator, there must be evidence that such an assignee has the requisite operating know-how or is supported by a competent operator under a technical service agreement in relation to operations to be performed under the licence, lease or contract sought to be assigned.¹

The payment of the prescribed fees may be waived by the Minister if he is content that the assignment is to be made to a company in a group of which the assignor is a member and is calculated towards restructuring so as to accomplish a greater proficiency or efficacy and to secure resources for more efficient petroleum operations.²

10. LIMITATIONS TO THE RIGHTS OF LICENSEES AND LESSEES

While discharging its upstream petroleum obligations under any lease or licence, the licensee or lessee is enjoined to ensure that there is no damage or destruction occasioned to any tree or object of commercial value or object of worship located in the host community. And in the event that such damage is caused, the licensee or lessee shall pay fair and adequate compensation to the affected persons or communities.³

Failure to pay the compensation within a stipulated time would result in the suspension of the licence or lease until the compensation awarded is paid, and where the default still continues within 30 days after the said suspension order has been made, the Minister may proceed to revoke the licence or lease.⁴ Whether the Nigerian government, which desperately needs its petroleum sector to fund its annual budget, would exercise a strong political will to revoke a licence or lease of an oil company on grounds of non-payment of compensation to victims of oil exploration and exploitation activities is yet to be seen. Similar provisions under the Petroleum Act were never upheld.

11. ENVIRONMENTAL MANAGEMENT MATTERS IN RELATION TO LEASES AND LICENCES

Each licensee or lessee involved in upstream petroleum operations is required, either within one year of the coming into operation of the PIB or within three months after obtaining the license or lease, to submit to the Inspectorate for necessary approval an environmental management plan containing the licensee's or lessee's written environmental policy, objectives, goals as well as commitments to comply with relevant enactments, regulations, guidelines and standards.⁵

Furthermore, as a condition for the grant of a licence or lease and before the approval of the environmental management plan, the licensee or lessee is required to make financial contribution for remediation of environmental damage with regard to the lease or licence. The Inspectorate may take into account the size of the operations and a reasonable degree of environmental risk that may be determined to exist in arriving at the amount of financial contributions that the licence or lease holder should pay.⁶ This stance may not be unconnected with the desire of the Nigerian government to ensure and encourage licensees or lessees to protect health, safety and the environment in the course of performing petroleum activities as well as promote a practicable and sustainable petroleum industry in Nigeria.⁷

12. INDIGENISATION POLICY/DISCRETIONARY AWARDS

In an attempt to encourage Nigerian indigenous oil companies' participation in the upstream petroleum industry, the Nigerian government introduced the indigenisation policy around 1990s whereby some oil concessions were granted to Nigerian indigenous oil companies to engage in the petroleum sector. The concessions granted were those that were comparatively simple to exploit, based on seismic and other data.⁸ The conditions to be fulfilled before such awards could be granted included the following:

- (i) the ownership of the grantee company must be vested in Nigerians who must not be agents or fronts for foreigners;
- (ii) the grantee may have expatriate technical partners who must not possess interest in the oil prospecting licence (OPL) or oil mining lease (Oml) exceeding 40%. The foreign partners must equally not engage in oil operations with any of the multinational oil companies;
- (iii) the managing director of the grantee company must be a Nigerian and if a foreigner he/she must be an employee of the grantee.⁹

¹ *Ibid*, section 194(2) and (4).

² *Ibid*, section 194(5) and (6).

³ *Ibid*, section 198(1) and (2).

⁴ *Ibid*, see generally section 199.

⁵ *Ibid*, see generally section 200.

⁶ *Ibid*, see generally section 203.

⁷ *Ibid*, section 1(j)(k).

⁸ Etikerentse, G. (2004). *Nigerian Petroleum Law* (2nd ed.). Lagos: Dredew Publishers, p.95

⁹ Etikerentse, G., *ibid*, p. 96. See also Agoro, B. (2001). "Impediments to Expansion: Why is the Upstream Sector of

Though the PIB prohibits the grant of discretionary awards¹ yet it recognises the powers of the President to grant licences and leases in special circumstances.² It must be borne in mind that the policy was initially targeted at increasing the opportunity of Nigerians' involvements in the upstream petroleum sector and diversifying the sources of investment and funds inflow as well as expanding the country's exploration activities and consequently raising the oil and gas base of the country.³ This resulted in the creation of strategic national production capacity.⁴ It is imperative therefore, that the presidential powers to grant licences and leases under exceptional circumstances as canvassed under the PIB must be exercised in such a manner as to "promote transparency and openness in the administration of the petroleum resources of Nigeria."⁵

It would be recalled that commendable as the indigenisation policy was, it was widely condemned on the ground that the award process lacked transparency and openness as it was mainly discretionary in nature and consequently, no level playing ground was accorded to the generality of the Nigerian people to bid for the specially reserved concessions.⁶ While competence and expertise played little or no role in the grant, award of licences and leases were basically influenced by the awardee's closeness to the government in power.⁷

13. SOME DISTINCTIONS BETWEEN THE PIB AND THE PETROLEUM ACT PROVISIONS REGARDING GRANT OF LICENSES AND LEASES

The Petroleum Industry Bill has changed the names and durations of the licences and leases granted under the Petroleum Act. Upon the passage of the bill, the Oil Exploration Licence (OEL), the Oil Prospecting Licence (OPL) and the Oil Mining Lease (OML) have been restyled Petroleum Exploration Licence (PEL) Petroleum Prospecting Licence (PPL) and Petroleum Mining Lease (PML), respectively.

Also under the Petroleum Act, the OEL is granted for a period of one year with a renewal option for an additional one year upon an application for renewal submitted at least 3 months prior to the expiration of the initial period.⁸ However under the PIB, the PEL is to be granted and effective for a term not exceeding 3 years.⁹ As noted earlier, under the PIB the PPL is to be granted for a period of not more than 5 years with respect to onshore/shallow water areas and it consist of an initial exploration period of 3 years and a renewal period of 2 years. For deep waters areas and frontier acreage, the PIB grants a period of not exceeding 8 years, covering an initial exploration period of 5 years and a renewal period of 3 years.¹⁰ This is an obvious difference with the requirement of the Petroleum Act whereby an OPL is granted only for a period not exceeding five years, inclusive of the renewal period.¹¹

In addition, under the PIB, the PML is granted for a maximum period of 20 years¹² like the position under the Petroleum Act for its equivalent OML, though subject to renewal.¹³ As pointed out earlier, the PIB provides that where a PML is derived from a PPL, the licensee shall be permitted to use up its initial renewal and appraisal period such that the PPL for onshore/shallow waters shall run for a cumulative period of 27 years. While that of deep water areas and frontier acreages shall run for an overall period of 30years.

Likewise where the PML is granted for a Petroleum Prospecting licence PPL that is yet to expire, the term of the PML shall be the mandatory 20 years period in addition to the remaining term of the PPL.¹⁴ It is pertinent to note that under the Petroleum Act, there was no distinction between leases covering land and territorial waters area and those granted in respect of the continental shelf and exclusive economic zone (EEZ) as all the areas enjoyed a similar grant of not more than 20 years as an initial term,¹⁵ though some pre-1969 leases were granted for 40 years regarding the continental shelf areas and 30 years in respect of land and territorial

Nigerian's Petroleum Industry Not Growing?" 19 (1) *Journal of Energy & Natural Resources Law*, p.20.

¹ Petroleum Industry Bill, section 190(3)

² *Ibid*, section 191.

³ Omorogbe, Y. (2001). *Oil and Gas Law in Nigeria*. Lagos: Malthouse Press Limited, p. 167.

⁴ Agoro, B., *op. cit.*, p. 22.

⁵ Petroleum Industry Bill, section 1(h).

⁶ Etikerentse, G., *op. cit.*, p. 96. See generally, Etikerentse, G. (1999). "Oil and Gas Exploration in Nigeria: Challenges for the 21st Century." A Paper Presented at the Nigerian Institute of Advanced Legal Studies, March 17-18, 1999.

⁷ Omorogbe, Y., *op cit.*, p. 167.

⁸ First Schedule to the Petroleum Act, Cap. P10, *Laws of the Federation of Nigeria* 2004, para. 3.

⁹ Petroleum Industry Bill, section 175(2).

¹⁰ *Ibid*, section 177.

¹¹ First Schedule to the Petroleum Act, para.6.

¹² Petroleum Industry Bill, section 184.

¹³ First Schedule to the Petroleum Act, para.6

¹⁴ Petroleum Industry Bill, section 184.

¹⁵ Akpambang, E. M. (2004). "Acquisition of Oil Rights under the Nigerian Petroleum Act 2004" In Ibidapo-Obe, A. & Yerima, T. F. (Eds.), *International Law, Human Rights and Development: Essays in Honour of Professor Akindele Babatunde Oyebo*. Ado-Ekiti: Petoa Educational Publishers, p. 241.

waters areas.¹

Furthermore unlike the position under the Petroleum Act which authorises the Minister solely to revoke a licence or lease where there is either an alteration in the ownership structure of the licence or failure of the holders of the OPL or OML to comply with statutory obligations,² the PIB has included an additional ground of abuse of office or corrupt practices as a ground to secure revocation of a licence or lease.³ In exercising the revocation power with regard to the upstream sector under the PIB, the Minister is to act in consultation with or on the advice of the Inspectorate.⁴

Another significant difference between the PIB and the Petroleum Act is that bitumen has been included within the meaning of the term, “petroleum” under the PIB⁵ unlike the Petroleum Act,⁶ which expressly excludes bituminous shales in its definition of the term. Also as noted earlier, the inclusion of the fundamental principles of the NEITI Act into the PIB is a new development which was not stated in the Petroleum Act.

14. CONCLUSION AND RECOMMENDATIONS

From the above discussion, it is obvious that ownership of petroleum resources has indisputably remained within the realm of the government of the federation. Thus, the PIB, like the Petroleum Act, acknowledges that the Minister of Petroleum Resources shall be charged with the co-ordination of the activities of the petroleum industry and shall exercise general supervisory roles over all operations and all institutions in the industry, whether in the upstream or downstream sector.⁷ However, unlike the position under the Petroleum Act, and possibly guided by a key objective of the PIB of ensuring transparency and openness in the administration of petroleum upstream operations, the Minister is to act upon the advice of the Inspectorate in granting, amending, renewing, extending or revoking upstream petroleum licences and leases pursuant to the provisions of the bill.⁸ This, to a greater extent, would curtail or checkmate the wide powers conferred on the Minister of Petroleum Resources under the bill.

But it is debatable what steps the upstream petroleum Inspectorate, whose chief executive and other board members are appointed by the President on the advice of the Minister⁹ would adopt if the Minister fails or refuses to act in accordance with its advice. It is a common knowledge that the Inspectorate is not only required under the bill to administer and enforce policies, laws and regulations relating to all aspects of upstream petroleum operations which are assigned to it under any law¹⁰ but is also mandated to execute government policies for the upstream sector as assigned to it by the Minister.¹¹ It likely possible that in the case of an all-powerful Petroleum Minister that has the ears of the President he may always have an upper hand over the Inspectorate’s advice. This is particularly worrisome where as in present dispensation the President is in charge of the petroleum ministry with only a junior Minister (Minister of State for Petroleum Resources) supervising for him. Thus, an Inspectorate or board members that may wish to go contrary to the position of the government in power may be sacked or sanctioned.¹²

It is not in doubt that for several years, secrecy, lack transparency and accountability had been major problems confronting the Nigerian extractive industry as the Nigerian government and the operating oil

¹ Etikerentse, G. (2004), *op. cit.*, p. 119, fn.10.

² First Schedule to the Petroleum Act, paras 24 and 25.

³ Petroleum Industry Bill, section 195(1)(i) and (j).

⁴ *Ibid*, section 195(1).

⁵ Petroleum Industry Bill, section 362, which defines petroleum as meaning, “hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, bitumen and mixtures of any of them, but does not include coal and tar sands.”

⁶ Petroleum Act, *op. cit.*, section 15, which defines the term to mean “mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.”

⁷ Petroleum Industry Bill, section 5.

⁸ *Ibid*, section 6(1) (g).

⁹ Petroleum Industry Bill, sections 6(1)(i) and 17.

¹⁰ *Ibid*, section 14(1)(a).

¹¹ *Ibid*, section 14(1)(f).

¹² See for example the recent case of the Executive Secretary of the Financial Reporting Council of Nigeria who was sacked barely 48 hours of implementing a controversial Corporate Governance Code of 2016 which was considered offensive to the Federal Government. The Federal Reporting Council Code is created under Financial Reporting Council of Nigeria Act No. 6 of 2011. The Council is under the supervision of the Federal Ministry of Industry, Trade and Investment. See, Taiwo-Obalonye (2017, January 9). “Buhari Fires Jim Obazee of Financial Reporting Council.” *The Sun*. Available at <http://sunnewsonline.com/buhari-fires-jim-obazee%E2%80E-of-financial-reporting-council/>. Accessed on 5 February 2017. See also “Buhari sacks official whose actions led to Adeboye’s exit as RCCG leader.” *Premium Times*, January 9, 2017. Available at <http://www.premiumtimesng.com/news/headlines/220007-breaking-buhari-sacks-official-whose-actions-led-adeboyes-exit-rccg-leader.html>. Accessed on 5 February 2017.

companies have been playing hide and seek game regarding the actual amount of oil produced in the country. An independent audit on the country's extractive industry management for the period of 1999-2004 conducted by Hart Group revealed some inconsistencies between the quantity of reserves in the country, the amount of oil exported and the volume produced from the oilfields.¹ A spokesperson of NEITI was once quoted as admitting that "[w]e know how much the industry sells, but we don't know how much they produced [...] there is a dark hole between the oil field and the terminal."² It is rather ironical that a country like Nigeria that depends on petroleum resources to fund its annual budget is in reality ignorant of the volume of oil extracted in the country. It is therefore, hoped that with the recognition and incorporation of NEITI fundamental principles under the PIB, transparency, openness, accountability and elimination of corrupt practices in the petroleum industry would be strictly upheld.

Moreover, the prohibition by the PIB of confidentiality clauses or other clauses contained in licences, leases, agreements or contracts for upstream petroleum operations, except proprietary industrial property rights owned by any of the parties thereto, which are calculated at thwarting access to information and documents by third parties regarding any payments of royalties, fees and bonuses of whatever nature, and taxes, is a welcome development. Hence, failure to publish the text of any subsisting or future licence or lease or contract with the National Oil Company³ and any amendments or side letters thereto on the website of the Inspectorate is rendered a criminal offence attracting a penalty of US \$ 10,000 for every day such information is withheld from the Inspectorate.⁴

Finally, as laudable as the goals, objectives and provisions of the PIB are, its non-passage into law has rendered its provisions inoperative on all persons and institutions, especially those engaged in the upstream petroleum operations. It is therefore, recommended that the current eighth National Assembly should demonstrate a strong political will to pass the bill into law and correspondingly forward same to the President for necessary presidential assent as constitutionally required. It is rather ironical that Ghana, which has just joined the league of oil producing countries in the sub-Saharan African region, has enacted its own equivalent of the Petroleum Industry Bill, while Nigeria is busy playing politics with her own version⁵ at the expense of providing a favourable business environment for petroleum operations in the country.⁶

¹ See Hart Group Audit. Available at <http://www.neiti.org.ng/Press%20Releases/pr260406.pdf>, referred to in Oxfam International (2009, December). "Lifting The Resources Curse: How poor people can and should benefit from the revenues of extractive industries." *Oxfam Briefing Paper*, p.18.

² Wasiri Adio, *Reuters/ International Herald Tribune*, 25 February 2008, quoted in Oluduro, O. (2014). *Oil Exploration and Human Rights Violations in Nigeria's Oil Producing Communities*, *op cit*, p.366. See also Oxfam International (2009, December). "Lifting The Resources Curse: How poor people can and should benefit from the revenues of extractive industries," *ibid*.

³ The Minister of Petroleum Resources is mandated to adopt all practical steps towards incorporation of the National Oil Company (as a replacement of the Nigerian National Petroleum Corporation, the extant national oil company) as a public liability company under the Companies and Allied Matters Act within a period of three months of the coming into force of the PIB. See Petroleum Industry Bill, section 148.

⁴ See generally Petroleum Industry Bill, section 174.

⁵ Ghana's legislature recently enacted the Petroleum (Exploration and Production) Act 2016 to replace its counterpart enacted in 1984. The bill was first introduced into the Ghanaian parliament in 2012. According to Ghana's then Energy Minister, Emmanuel Buah, the new law would establish an attractive environment for potential investors to participate in the petroleum sector by safeguarding certainty and transparency in the ground rules for petroleum activities. See Uze, F. (2016, August 17). "Ghana's Petroleum Act puts non-passage of PIB in limelight." *Business Day*. Available at <https://asokainsight.com/news/ghanas-petroleum-act-puts-non-passage-of-pib-in-limelight>. Accessed on 5 February 2017.

⁶ Petroleum Industry Bill, section 1(a).