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Petroleum Industry Bill and the Challenge of Oil and Gas Taxation in Nigeria

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Abstract
Oil exploration and production activities in Nigeria in it's over fifty years of operation is yet to operate at standards and levels of efficiency expected of a twenty first century oil and gas industry. The operating landscape, business and competitive environments, both locally in Nigeria and internationally have continued to change rapidly in the last few years in such a manner that the Nigeria's oil and gas industry as it is currently set up, can no longer operate in a sustainable manner. Over the years, the laws regulating Nigeria's oil industry have not been comprehensively reviewed. The main laws are the Petroleum Act 1969 (as amended), the Petroleum Profits Tax Act 1959 (as amended), and the Nigerian National Petroleum Corporation Act of 1977 (as amended). There are also a number of other laws, mostly decrees which have become obsolete and proven to be impotent in regulating the country's petroleum industry. It is for these and many other reasons that the Federal Government of Nigeria embarked on a journey of a comprehensive reform aimed at re-positioning Nigeria's oil and gas industry to foster a long-term sustainability of the sector, ensuring greater efficiency and effectiveness to meet the aspirations of Nigerians and all the stakeholders, and also ensuring global competitiveness. The proposed Petroleum Industry Bill (PIB) coalesces all the existing 16 laws into one comprehensive, all encompassing legislation, which captures all the experience of past more than 50 years in addressing all institutional matters: policy, structure, legal and governance.
Keywords: Petroleum Industry Bill, Challenge of Oil and Gas Taxation in Nigeria

1. Introduction

Since oil discoveries in commercial quantity, particularly, in the early 1970s, oil has become the dominant factor in Nigeria's economy. The Nigerian economy is arguably a mono economy, relying heavily on the revenue derived from petroleum products, as they provide 70 percent of government revenue and about 95 percent of foreign exchange earnings. Apart from this, petroleum has contributed to national development in many and varied ways; employment generation, industrialization, and improvements in other economic variables.[1]

With Nigeria's reserves stated at a point, to be at about 40 billion barrels, and ranking seventh in global reckoning, the wonder has been why Nigeria is not classified among the rapidly developing nations. For the past sixty years, several laws have been enacted on numerous aspects of the oil and gas industry, but time and various developments have rendered them obsolete and inadequate for the effective management of the modern complications in both technology and economics of the industry. Therefore there has arisen for quite some time now the need for update of such laws, especially with respect to global best practices, and the integration of national and local realities.[2]

To ensure that the Nigerian nation and people truly take full ownership of the commodity and the industry around it, a comprehensive statute called the Petroleum Industry Bill (PIB) which proposes a new fiscal regime (new system of taxation) in the Nigerian oil and gas sector was introduced. The objectives of petroleum taxation in Nigeria are to achieve government's objective of exercising right and control over the public asset thus, government imposes very high tax as a way of regulating the number of participants in the industry and discouraging its rapid depletion in other to conserve some of it for future generation. This in effect will achieve government aim of controlling the petroleum sector development, satisfy government objective of raising money to meet its socio-political and economic obligations to the citizenry, re-distribute wealth between the wealthy and industrialized economics represented by the multinational organizations, who own the technology, expertise and capital needed to develop the industry and the poor and emerging economies from where the petroleum resources are extracted.[3]

This paper therefore examines the Petroleum Industry Bill (PIB), particularly as it relates to the challenge of its fiscal regime. To achieve its aim, the paper is divided as follows: a peep into the PIB, an evaluation of the current fiscal regime, the fiscal regime contained in the PIB, criticism of the PIB and the concluding remark. In

[1]Onaolapo A. Abdul-Rahamoh, Fasina H. Taiwo, and Adegbite T. Adejare, 'The Analysis of the Effect of Petroleum Profit Tax on Nigerian Economy' (2013) 1(1) *Asian Journal of Humanities and Social Sciences* 25, 26.
[2]Momodu Kassim-Momodu and Cornelius S. Nwajide, 'The Nigerian Petroleum Industry Bill 2012: Some Observations and Suggestions' (2012) 2(2) *Petroleum Technology Development Journal* 1, 2.
[3]Abdul-Rahamoh, Taiwo, and Adejare (n 1) 26.

between, the paper proffers criticism and solutions to certain identified lingering issues of legal and developmental importance.

2. A Peep into the Petroleum Industry Bill (PIB)

The Petroleum Industry Bill 2012[1] is an executive Bill introduced in the National Assembly by the President.[2] On 7th September 2007, the Federal Government inaugurated the Oil and Gas Reform Committee which was charged with the responsibility of formulating a blue print for the reform and restructuring of the petroleum industry. The work of the Reform Committee culminated in the introduction of the Petroleum Industry Bill (PIB) in the National Assembly.[3]Although the earlier PIB was thrown out by the National Assembly, a new Petroleum Industry Bill 2012 (PIB) was finally approved by the Federal Executive Council of Nigeria on 11 July 2012 and forwarded to the National Assembly.

The Proposed Petroleum Industry Bill seeks for the establishment of the Legal and Regulatory framework, Institutions and Regulatory Authorities for the Nigerian petroleum industry; establish guidelines for the operation of the Upstream, Midstream and Downstream Sectors. The Petroleum Industry Bill proposes a number of reforms in the petroleum industry. The proposed laws involve an overhaul of the existing petroleum laws including the fiscal system.[4]

Accordingly, from the effective date of its passage into law, all extant petroleum and gas legislation will stand repealed.[5]Any subsidiary legislation made under the repealed laws where, not inconsistent with the new Act will remain in operation until revoked or replaced by subsidiary legislation made under the Act, and is deemed for all purposes to have been made under the Act.[6] The Nigerian National Petroleum Corporation Act, the Nigerian National Petroleum Corporation (Projects) Act and the Nigerian National Petroleum Corporation Amendment Act will be deemed to be repealed on the date that the Minister of Petroleum signifies by legal notice in the gazette that the assets and liabilities of NNPC are fully vested in the successor entities.[7]

More specifically, the Petroleum Industry Bill (PIB) outlines the following objectives:

(a) Create a conducive business environment for petroleum operations;
(b) Enhance exploration and exploitation of petroleum resources in Nigeria and to promote petroleum production for the benefit of the Nigerian people;
(c) Optimise domestic gas supplies, in particular for power generation and industrial development;
(d) Establish a progressive fiscal framework that encourages further investment in the petroleum industry whilst optimising accruable revenues to the Federal Government of Nigeria;
(e) Establish a commercially oriented and profit driven National oil and gas (entities) Companies;
(f) Deregulate and liberalise the downstream petroleum sector;
(g) Create efficient and effective regulatory agencies;
(h) Promote transparency, simplicity and openness in the administration of petroleum resources of Nigeria;
(i) Promote the development of Nigerian Content[8] in the petroleum industry; and Protect health, safety and environment in the course of the petroleum operations; and attain such other objectives to promote a

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[1]A new Petroleum Industry Bill 2012 (PIB) was finally approved by the Federal Executive Council of Nigeria on 11 July 2012 and forwarded to both Houses of the Nigerian National Assembly.

[2]The previous version of the bill, i.e., the Petroleum Industry Bill 2008 was thrown out by the Sixth Legislative Assembly (House of Representatives) at the Committee of the Whole House. See John Ameh, 'Northern Reps plan to throw out PIB' *Punch Newspaper* (Lagos, 24 September 2012).

[3]Zacchaues Adangor, 'The Petroleum Industry Bill 2012 and the Niger Delta Region of Nigeria: Panacea or Placebo?' (2015) 38 *Journal of Law, Policy and Globalization* 47, 54.

[4]P. A. Donwa, C. O. Mgbame, and O. I. Ogbeide, 'Corruption in the Nigerian Oil and Gas Industry and Implication for Economic Growth' (2015) 14 *International Journal of African and Asian Studies* 29, 38-39.

[5]Petroleum Industry Bill 2012, s 135; Adangor, (n 6) 54; Enactments that will stand repealed by operation of law from the effective date of the Petroleum Industry Act include: the Associated Gas Re-injection Act, CAP A25, Laws of the Federation of Nigeria 2004, Motor Spirits (Returns) Act, CAP M20, Laws of the Federation of Nigeria 2004, Petroleum Act, CAP 10 Laws of the Federation of Nigeria 2004, Petroleum Products Pricing regulatory Agency (Establishment) Act, 2003, Petroleum Equalization Fund (Management Board, etc) Act, CAP P11 Laws of the Federation of Nigeria 2004, Petroleum (Special) Trust Fund Act, CAP P14 Laws of the Federation of Nigeria 2004, Petroleum Technology Development Fund Act, CAP P15 Laws of the Federation of Nigeria 2004, Deep Offshore and Inland Basin Production Sharing Act, CAP D3 Laws of the Federation of Nigeria 2004 and the Petroleum Profits Tax Act, CAP P13 Laws of the Federation of Nigeria 2004; Kassim-Momodu and Nwajide, (n 2) 2.

[6]Petroleum Industry Bill 2012, s 354(3)

[7]Ibid, s 345(4)

[8]The National Oil and Gas Development Act has stringent localization provisions requiring Nigerian companies to own over 50% of the equipment utilized, expatriate management positions to be limited to 5% and all other positions to be transferred to locals within four years of its promulgation.

viable and sustainable petroleum industry in Nigeria.[1]

As such, the PIB was drafted to address critical challenges such as: proliferation of inefficient and corrupt regulatory agencies carrying out over-lapping functions; rots in the NNPC and the need for a viable and profit oriented national oil company; industry structure that tilts the balance of oil assets in favour of IOCs at the expense of locals; the need for a fiscal framework that will ensure oil revenue is optimized; address concerns in host communities; mounting fuel subsidy burden and the need to deregulate the downstream sub-sector; and tackling the menace of lack of transparency and accountability in the Industry as a whole.[2]

3. Current Fiscal Regime in the Nigerian Oil and Gas Industry

Nigeria's oil and gas corporations are taxed under the PPTA[3] or the CITA[4] depending on the particular sector of the petroleum industry in which the corporation operates. The three major sectors of petroleum operations in Nigeria are upstream, downstream and service sectors.[5] The upstream sector relates to exploration and production of crude oil and gas and the companies in this sector are taxed under the PPTA. However, profits derived by an upstream company which are not related to "petroleum operations" are liable to tax separately under the CITA.[6] The downstream sector involves the processing of petroleum collected in the upstream stage into finished products.[7] This stage also includes the distribution and marketing of petroleum products to consumers. Companies operating in the downstream sector are taxed under the CITA.[8] Companies in the services sector provide support services to the upstream and downstream sectors.[9] Examples of these support services are seismic data acquisition, drilling services, production support services, refinery maintenance, banking, catering and related service.[10] Like the downstream sector, companies in the services sector are also subject to tax under the CITA.[11]

For the time being, extractive companies in the upstream sector pay royalties, various social contributions such as the Tertiary Education Tax and Niger Delta Development Commission (NDDC) Tax, and a special Petroleum Profit Tax (PPT), which replaces the Companies Income Tax (CIT) used for other private firms for instance in the downstream sector.

The Petroleum Profit Tax Act 1959 (PPTA) provides for the imposition of tax on the chargeable profits of companies that are engaged in petroleum operations in Nigeria. Petroleum operations are defined under the PPTA[12] as:

> *"the winning or obtaining oil in Nigeria by or on behalf of a company for its account 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 by or on behalf of the company."*[13]

Section 2 of the PPTA defines petroleum operations (upstream) that are taxable to include exploration, appraisal, drilling/mining, extraction, transportation by pipelines, sale of chargeable oil, and all other operations

[1]Donwa, Mgbame, and Ogbeide (n 7); Sayne, A. et al., 'The Petroleum Industry Bill and the Future of NNPC' (2012) *Revenue Watch Institute Briefing* www.revenuewatch.org accessed 15 August 2016; An Overview of the Petroleum Industry Bill, (2009) *PIB Inter-Agency Project Team* www.nnpcgroup.com/.../pdf/... accessed 26 August 2016; Juliet O. David-West, 'Oil, Gas and other Minerals Taxation' (2013) Special training programme of the Chartered Institute of Taxation of Nigeria (CITN) www.citn.org/.../tax.../ ... accessed 26 August 2016; Omano Edigheji et al, 'In the National Interest: A Critical Review of the Petroleum Industry Bill 2012, Centre for Africa's Progress and Prosperity. 1, 9-10. Omojuwa.com>upload.2013/07> Re... accessed 24 April 2017.

[2]Passage of the PIGB …taking a step away from "how NOT to run an oil industry" United Capital Research / Nigeria / Economics-United Capital PLC 30 May, 2017. www.unitedcapitalplcgroup.com > 2017/05 .accessed 21 June 2017;

[3]Petroleum Profits Tax Act, LFN 2004, c P13 (PPTA).

[4]Companies Income Tax Act, LFN 2004, c. C21 [CITA]

[5]Some literature also includes a "midstream" sector in the classification of the oil and gas industry. However, the midstream sector operations are usually included in the downstream sector. See KPMG Brief, KPMG Nigeria Oil and Gas Industry Brief (June 2014). P. 5. https://www.kpmg.com/.../... accessed 26 August 2016.

[6]Mobolanle O. Oduntan. 2015. The Role of Taxation in Nigeria's Oil and Gas Sector Reforms-Learning from the Canadian Experience. Master of Laws Thesis, College of Law, University of Saskatchewan, Saskatoon. Pp. 33-34. https://ecommons.usask.ca > handle > OD... accessed 22 April 2017; Companies Income Tax Act LFN 2004, c. C21 [CITA]; KPMG Brief (n 16)

[7]Ibid, p. 8.

[8]Oduntan (n 17); Companies Income Tax Act (n 17); KPMG Brief (n 17)

[9] KPMG Brief, ibid, p. 9.

[10]Ibid.

[11]Oduntan (n 19)

[12]PPTA (n 14) s. 2

[13]Festus A. Folajimi and Samuel F. Adeniran, 'Petroleum Profit Tax and Nigeria Economic Development' (2011) 1(1) *International Journal of Research in Computer Applications & Management* 11, 11.

incidental to any of the above. Companies operating in the downstream sector are not subject to the PPTA but under the Companies Income Tax Act (CITA).[1] Like the downstream sector, companies in the services sector are also subject to tax under the CITA.

Where a corporation's activities are categorized as "petroleum operations", the applicable tax rate for such oil and gas corporation under the PPTA is further dependent on the nature of the contractual arrangement the corporation has with the federal government. The terms of participation for oil and gas corporations are contractual arrangements which stipulate the rights and duties of the parties. The national oil company (NNPC) is the entity that negotiates and enters into such contractual agreements on behalf of the federal government and thus, is charged with the responsibility of giving effect to these contractual agreements. Examples of such contractual arrangements are Joint Ventures (JVs), Production Sharing Contracts, (PSCs) and Service Contracts (SCs). However, the JVs and PSCs are the most common types of contractual arrangements used by upstream petroleum corporations and these two arrangements are liable to tax under the PPTA.[2]

Under Nigerian petroleum law, JVs are described as any agreement or arrangements under which the NNPC "jointly owns and develops various oil and gas concessions in Nigeria".[3] In practical terms, the NNPC collaborates with international oil companies (IOCs) to exploit petroleum resources through a joint operating agreement (JOA) which provides a framework for the joint venture relationship.[4] Under a JV arrangement, ownership, funding and production sharing are all based on each JV partner's equity share - the parties jointly hold the OML and the costs for exploration, development and production of the petroleum (and the hydrocarbons produced) are shared among the parties in proportion to the participating interest held by each party under the JOA.[5] Generally, the NNPC holds a sixty percent (60%) interest in all the JVs except the JV operated with Shell Petroleum Development Company (SPDC) where the NNPC holds a 55% participatory interest on behalf of the federal government.[6]

Due to funding pressure from the JV arrangements, the federal government commenced the adoption of the PSC model as the preferred petroleum arrangement with oil companies.[7] PSCs have been defined as "an agreement under which a foreign company, serving as a contractor to the host country/its national oil company, recovers its costs each year from production and is further entitled to receive a certain share of the remaining production as payment in kind for the exploration risks assumed and the development service performed if there is commercial discovery".[8] In practical terms, the oil producing country (or national oil company) owns the concession and engages the oil producing companies as contractors to conduct petroleum operations on behalf of itself and the country.[9] However, the contractor bears all exploration and development risk and is exclusively responsible for financing the costs of the whole petroleum operation which includes the exploration, development and production. If the exploration is successful and oil is discovered in commercial quantities, the contractor recovers the exploration and development costs and will be entitled to reasonable profit upon commencement of commercial production. If the exploration is unsuccessful, the contractor will bear all the losses.[10]

Under the Petroleum Profit Tax Act, the income of companies engaged in petroleum operations is liable to tax at 85% (subject to the incentives contained in the Memorandum of Understanding (MOU)[11] as relevant), or 65.75% within the first five years of operation during which they are recovering their capitalized pre-production expenditure. However, for petroleum companies operating under PSC terms, the applicable PPT rate is 50% of

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[1]Emmanuel B. Amponsah, John A. Enahoro, and Abdallah Ali-Nakyea, 'Issues of Taxation in the Oil and Gas Sector in Selected Countries: Lessons for Ghana' (2012) 5(2) *International Business and Management* 167, 171; Companies Income Tax Act (n 23)

[2]Oduntan (n 22) 35; Nigerian National Petroleum Corporation Act, LFN 2004, c N123, s 5 [NNPC Act]. See especially, s 5 (1) (g). 88; CITA, ibid; Yinka Omorogbe. (2003) Oil and Gas Law in Nigeria. Lagos: Malthouse. Pp. 38-54.

[3]Deep Offshore and Inland Basin Production Sharing Contracts Act Decree No 9 of 1999, LFN 2004 c D3 s. 18 (DOIBPSCA).

[4]Omorogbe (n 26) 47.

[5]Ibid

[6]For details of the NNPC's participatory interests in the JV operations in Nigeria, see generally NNPC, "Joint Venture Operations", NNPC Business. http://www.nnpcgroup.com>. Accessed 20 June 2015.

[7]KPMG Brief (n 20) 7.

[8]Gao Zhiguo. (1994). International Petroleum Contracts: Current Trends and New Directions. London: Graham &Trotman. P. 72.

[9]Francisca Nlerum, 'Reflections on Participation Regimes in Nigeria's Oil Sector' (2010) 6 NCLR 145, 157.

[10]Oduntan (n 26) 38.

[11]The MOU sets out the commercial terms of the JV including the manner in which revenues from the JV are allocated between the partners such as the payment of taxes and royalties. See Yinka Omorogbe, "Fiscal Regimes" (Paper delivered at the Nigerian Extractive Industries Transparency Initiative Civil Society Capacity Building Workshop, at Presidential Hotel, Port Harcourt, Rivers State, 28 July 2005) (unpublished) p. 9.

chargeable profit for the whole duration of the contract.[1] Nigerian oil and gas corporations are also entitled to claim certain deductions in the computation of their taxable profits. For PPTA purposes, all expenses that are "wholly, exclusively and necessarily" incurred for petroleum operations are allowable deductions for computing adjusted profit[2] Examples of such expenses are royalties on exported crude oil, exploration costs, transportation costs, and shipping costs. Upon arriving at the adjusted profit after taking these allowable deductions into consideration, the assessable profit is determined by taking into account prior year losses yet to be recouped by the company.[3]127 Where such losses cannot be relieved from the current adjusted profits such unrelieved losses can be carried forward indefinitely to subsequent tax years.[4]128

In addition to PPT, The Petroleum Act (1969) requires the holder of an Oil Prospecting License (OPL) or an Oil Mining License (OML), to pay royalties to the Federal Government of Nigeria as soon as production starts.[5] The applicable rate of royalty depends on the water depth in which the upstream corporation carries out its petroleum operations. For example, most of the PSC fields in Nigeria are located offshore. Given the location of the PSC fields, a separate legislation called the Deep Offshore and Inland Basin Production Sharing Contracts Act (DOIBPSCA) regulates oil production activities in these fields.[6] Under the DOIB PSC arrangement, the ownership of the OPL and the OML is held entirely by the NNPC, which engages the petroleum and exploration company as a contractor to conduct petroleum operations on behalf of it and the NNPC.[7] The oil company, as contractor finances the entire cost of exploration and can only recoup such costs in the event of a commercial discovery.[8]

If oil is discovered and extracted under the PSC arrangement, a quantum of the oil is allocated to the NNPC that will generate proceeds equal to the royalty payable under the concession (referred to as "royalty oil").[9] After royalty oil is paid, the oil company will be allocated a portion of the oil produced that is sufficient to reimburse the operating costs incurred by the company (referred to as "cost oil").[10] Thereafter, a portion of the remaining oil is allocated to the NNPC as petroleum profits tax to enable the NNPC pay the applicable income tax on behalf of itself and the contractor in accordance with the provisions of the PPTA (referred to as "tax oil").[11] The balance of the oil, if any (after cost, tax and royalty have been paid), is shared between the parties in accordance with the terms of the PSC agreement (referred to as "profit oil").[12] Notably, the tax oil is also split between the parties in the same ratio as the split of profit oil stated in the terms of the PSC.[13]

The highest applicable rate for royalty in Nigeria's oil and gas industry is 20% for on-shore production and the lowest rate is 0% for water depths in excess of 1,000 metres.[14] Royalties are paid under PSC arrangements by allocating royalty oil to the federal government through the NNPC.[15] This is usually in the form of monthly cash payments at an agreed percentage of the quantity of crude oil/gas produced, after making adjustments for treatment, handling and related expenses.

More so, The Tertiary Education Trust Fund Act (TETFA), 2011 requires every company registered in Nigeria to pay 2% of its assessable profit as Tertiary Education Tax (TET) in each tax year.[16] However, this tax is an allowable deduction for purposes of arriving at adjusted profits for companies liable to tax under the PPTA.[17] Additionally, oil and gas corporations are also liable to pay the Niger-Delta Development Commission (NDDC) levy. Due to the environmental degradation in the Niger-Delta (the major oil producing area of Nigeria), the NDDC imposes a levy of 3% on the total annual budget of all onshore and offshore oil producing companies

[1]KPMG Brief (n 31) 1, 12; DOIBPSCA (n 27) s. 3(1); PPTA (n 23) s. 22.
[2]Oduntan (n 34) 39; PPTA, ibid, s. 10.
[3]Oduntan, ibid, p. 39; PPTA Ibid, s. 16.
[4]PPTA Ibid.
[5]Petroleum (Drilling and Production) Regulations, LFN 1990, c 350, reg 61 [PDRR] and reinforced by s. 9 of PPTA.
[6]Section 18 of the DOIBPSCA defines a PSC as "any agreement or any arrangements made between the Corporation or the Holder and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins".
[7]Oduntan (n 38) 38-39; DOIBPSCA, ibid, s. 18.
[8]Oduntan, ibid; DOIBPSCA, ibid, s. 8 (1-2).
[9]Whatever remains after these deductions is shared among the parties by the ratio stated in their PSC and is called "profit oil". See Oduntan, ibid; DOIBPSCA, ibid, s. 7.
[10]Oduntan, ibid, p. 39; DOIBPSCA, Ibid. In addition to cost oil, there is a payment of royalty (royalty oil) which is fixed according to the location of the particular oil field such that the deeper the concession is from onshore, the lower the royalty rate that will be applicable to such concession.
[11]Oduntan, ibid; DOIBPSCA, ibid, s. 9.
[12]Oduntan, ibid; DOIBPSCA, ibid, s. 10.
[13]Oduntan, ibid; DOIBPSCA, ibid, s. 12.
[14]PDRR (n 40); PPTA (n 40)
[15]DOIBPSCA (n 48) s. 18.
[16]Nigerian Tertiary Education Trust Fund (Establishment) Act, LN 2011, s. 1.
[17]Oduntan (n 48) 43.

as well as gas processing companies operating in the Niger-Delta area of Nigeria.170 The objective of the levy is to compensate the residents of the Niger Delta area for the environmental degradation caused by oil exploration activities.[1]

4. Fiscal (Tax) Provisions in the Petroleum Industry Bill

The fiscal provisions in the PIB is intended to regulate revenue streams accruing to the government of Nigeria, which are currently derived from the following sources in the oil and gas industry; Signature Bonuses, Rent, Royalties, Taxes (CIT and PPT), Production Share under Production Sharing Contracts (PSC) and Profit Share under Joint Ventures (JV). Companies in the Nigerian oil and gas industry on the other hand, currently derive revenue from the following sources; cost recoveries (Capital allowances, Cost oil in PSCs, etc.), incentives (e.g. profit during tax holidays), profit share (JVs) and production share (PSCs). The following taxes and charges are applicable under the envisaged new fiscal regime of the PIB.

4.1 Nigerian Hydrocarbon Tax

Instead of Petroleum Profits Tax (PPT) under the current fiscal regime, in the PIB a tax known as Nigerian Hydrocarbon Tax (NHT)[2] on upstream petroleum operations, which shall be administered and collected by the Federal Inland Revenue Service (FIRS), is proposed. Although the federal government participates as a major stakeholder in the general administration of oil and gas resources through various agencies,[3] tax administration is carried out exclusively by the federal government through the FIRS. The FIRS is the national tax authority charged with the responsibility for assessment, collection and general administration of the direct and indirect taxes in Nigeria's petroleum industry.[4]

The Petroleum Profit Tax (PPT) for Deep water offshore and frontier operations in Nigeria is currently put at 50% of profit for PSC contracts.[5] Under the provisions of section 313 of the PIB, the following percentages apply as assessable tax:

(i) 50% for onshore and shallow water areas:
(ii) 25% for bitumen, frontier acreages and deep water areas.[6]

Where a company engages in both upstream and downstream operations, NHT shall be levied on the proportionate parts of the profits arising from its upstream operations. Also, where a company operates in different geographical locations subject to different NHT rates, the appropriate NHT rate will be applied in each location.[7]

The PIB terms streamlined the NHT by abolishing the investment tax credits, investment tax allowances and the petroleum investment allowance (PIA) uplift on capital expenditures for existing arrangements and replaced them with allowances for small oil fields and new gas finds. It further proposes to disallow interests expense/financing charges and imposes an 80% limit on expenses incurred outside Nigeria for tax deductibility while introducing benchmarking, verification and approval of all costs for tax deduction purposes. The cost benchmarking would be conducted by the regulatory institutions or the National Oil Company (NOC) and the verification and approval process conducted by the FIRS.[8]

4.2 Companies Income Tax

Under the current tax regime, CIT is levied only on downstream operations and upstream gas operations. Under the PIB,[9] it will now apply to upstream petroleum companies. CIT will be 30% of all assessable profits from both upstream and downstream operations, and shall not be deductible from NHT.[10] By implication, the PIB proposes to replace Nigeria's current single tier tax system (PPT) applicable to upstream companies with a two tier tax regime (NHT and CIT). Therefore, upstream companies under the PIB regime will be liable to pay

[1]Niger-Delta Development Commission (Establishment etc) Act, LN 2000, s 14 [NDDC Act]; Oduntan, ibid, p. 44.
[2]Petroleum Industry Bill 2012, s 299-352.
[3]The federal government participates through the national oil company called the Nigerian National Petroleum Corporation (NNPC). Other stakeholders include the Federal Ministry of Petroleum Resources, the Department of Petroleum Resources, Ministry of Mines and Steel Development, as well as the Ministry of Environment.
[4]Oduntan (n 53)
[5]Sani Saidu and Abdel R. Mohammed, 'The Nigerian Petroleum Industry Bill: Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector' (2014) 2(2) *Journal of Business and Management Sciences* 45, 51; Petroleum Industry Bill 2008.
[6]See Uyi A, Darcy W, and Chris, B, 'From Promise to Performance Africa; Report on Current Developments in the Oil and Gas Industry in Africa' (June 2013) 3 *Africa Oil & Gas Review.*
[7]NEITI Position on the Petroleum Industry Bill 2012 1, 47-49 neiti.org.ng/.../neiti-position-final accessed 26 August 2016.
[8]Humphrey Onyeukwu, 'Who is afraid of Nigeria's Petroleum Industry Bill?' (2010) 4 ÆLEX Quarterly, 1, 2. www.aelex.com/...who_is_afraid_of_... accessed 26 August 2016.
[9]Petroleum Industry Bill 2012, s. 353.
[10]Ibid

resource tax and corporate income tax as opposed to the current regime where they are liable to pay only resource tax (PPT).[1] There are incentives in the Companies Income Tax Act such as tax holidays, which will be retained for LNG companies. A tax holiday is also available for any company that supplies gas solely for the domestic market.[2]

4.3 Fees and Royalties

There are no stated royalty rates under the PIB. However, in section 197,[3] which is under 'Upstream Petroleum Operations,' provision is made for royalties, fees and rentals to be paid 'as may be contained in this Act and any regulations made by the Minister pursuant to this Act.' Since the Act stipulates no royalty rates, it is clear that royalties, fees and rentals, if any, shall be as decided by the Minister.[4]The Legal Regime is also intended to introduce volume and price based royalties.

The PIB introduces higher royalties (i.e. volume and price based royalties) and increased government take. At present, the prevailing royalty regimes stands at a standard 20% royalty for onshore operations and 18.5% for prospects in swamp/shallow waters (1-100 metres). The rates build on a reducing sliding scale with offshore fields of water depth up to 200 metres attracting 16.67%, 12.0% for 201-500 metres, 8.0% for 501-800 metres, 4.0% for 801-1,000 metres and 0% when the depth exceeds 1,000 metres. However, under the fiscal provisions of the PIB, the royalty rate is progressively linked to production rate and oil price, replacing the existing depth-related royalty.[5]

The proposed royalties which are based on an aggregate of the royalties applied for production rate and oil prices are also differentiated for oil and gas. Productions in onshore fields below 2,000 barrels per day (b/d) attract 5% royalty rate and rising to 25% for production exceeding 5,000 b/d. The shallow water[6] areas attract 5% on up to 5,000 b/d ranging to 25% on production over 50,000 b/d while deepwater[7] attract 5% on production up to 25,000 b/d and above 50,000 b/d attracts 25%. The price-based royalty ranges on an incremental basis from 0% to 25% starting at $70 bbl with a price cap at $150. Therefore, in case of deep water fields and high oil prices, the maximum royalty accruing to Nigerian government will be 50%. This is certainly a mechanism for the government to capture windfall profits and increase government take on profitable fields front-end.[8]A minimum of 10% withholding tax on dividends and education tax of 2% on revenue existing under the current fiscal regime is retained.

4.4 Remittances to the Petroleum Host Communities Fund

The PIB 2012 proposes a PHC Fund,[9] which is to be utilized for the development of the economic and social infrastructure of the communities within petroleum producing region.[10] All upstream petroleum producing companies shall remit, on a monthly basis, to the Petroleum Host Community Fund (PHC Fund), 10% of net profits[11] from their onshore, shallow water and deep water operations thereby providing further source of funding for the rapid development of the petroleum producing areas, in addition to the statutory funds that accrue to the Niger Delta Development Commission (NDDC) and the Ministry of Niger Delta through annual budget.

Sub-paragraphs (a) and (b) of s. 118(1) of the Bill provide for two categories of beneficiaries of the PHC Fund– the host communities within the petroleum producing areas and the petroleum producing littoral states. Whereas under s. 118(1) (a) profit derived from upstream petroleum operations in onshore areas and in the offshore and shallow water areas shall be remitted into the PHC Fund for the benefit of host communities, sub-paragraph (b) on the other hand, provides that profit derived from upstream petroleum operations in deep water areas shall be remitted into the Fund for the benefit of the petroleum producing littoral states.[12]

This provision to our mind is a welcome development and a progressive departure from the *status quo*

[1]Oduntan (n 56) 46-47.
[2]Petroleum Industry Bill (n 61)
[3]Ibid, s. 197.
[4]Ibid
[5]Onyeukwu (n 60) 2.
[6]'Shallow areas' refer to offshore production in shallow water. 'Shallow water' means areas in the offshore of Nigeria up to and including a water depth of 200 meters. Petroleum Industry Bill 2012, s 363. Interpretations.
[7]'Deep-water' means areas offshore Nigeria with water depth in excess of 200 meters. Petroleum Industry Bill 2012, s 363. Interpretations.
[8]A Closer Look at the Petroleum Industry Bill (PIB), 'The Petroleum Industry Bill's Proposed Fiscal Regime' (September 2015) 1, 8. www.stakeholderdemocracy.org/.../v2-2... accessed 25 August 2016.
[9]Petroleum Industry Bill (n 64) s. 116.
[10] Samuel, Diminas, 'An Analysis of the Nigerian Petroleum Industry Bill 2012' (2013) 1 WESTPAQ 1, 7. www.westpaq.com/.../An-Analysis-of-the... accessed 25 August 2016; Petroleum Industry Bill, ibid, s. 117.
[11]Net profit for the purpose of Section 118, means adjusted profit, less royalty, allowable deductions and allowances, less Nigerian Hydrocarbon Tax, less Companies' Income Tax; Petroleum Industry Bill 2012, s 118(2).
[12]Adangor (n 8) 54.

where no specific consideration is made to carter for the developmental needs of the oil producing communities by way of legislation. Where properly utilized, Host Communities Fund can serve as a panacea for incessant agitation by Niger Deltans which has metamorphosed overtime to armed conflict with its attendant economic and environmental consequences. There is no gainsaying that the agitation is arguably based on quest for development.

4.5 Bonus

Bonus payments are ways through which a state derives revenues from its extractive industry, often prior to commercial petroleum production, and are payable at designated times, or upon designated occurrences. They are used in jurisdictions across the world. The most common types are signature, renewal and production bonuses. The PIB provides for the payment of bonuses,[1] directly and indirectly. Section 190 (2) provides for the use of signature bonuses as a bid parameter, while section 185(2) of the PIB provides for a lessee under a Petroleum Mining Lease (PML) arrangement to pay "a renewal bonus of an amount specified in the lease" at the time of renewing the PML.

4.6 Gas Flaring Penalty

The Bill makes provision on gas flaring and venting with the aim of stopping and outlawing flaring and venting of natural gas. It provides in section 275 that: "Natural Gas shall not be flared or vented after a date ("the flare-out date") to be prescribed by the Minister in regulations made pursuant to this Part, in any oil and gas production operation, block or field, onshore or offshore, or gas facility such as processing or treatment plant, with the exception of permits granted under sub-section (1) of section 277 of this Act" Section 227 (1) provides that: "A person shall not direct, permit or otherwise aid, empower or authorize any company engaged in petroleum operation to flare or vent gas with the exception of such permit granted under this section"[2]

These provisions appear like special concession to the multinational corporations that have been reluctant and indeed unwilling to stop gas flaring over the decades. Section 275 is a significant watering-down and backward move from the provision in the initial Bill sent to the National Assembly which set a 2012 definite date for total halt of gas flaring or venting. For comparison, the earlier provision that the multinationals kicked against was that:"Natural gas shall not be flared or vented after 31st December, 2012, in any oil and gas production operation, block or field, onshore or offshore, or gas facility," except under exceptional and temporary circumstances. It provided further in section 277(2) that "Any licensee or lessee who flares or vents gas without the permission of the Minister in (special) circumstances ... shall be liable to pay a fine which shall not be less than the value of gas flared." The gas flaring provisions of the Bill look like moving five steps forward and then moving seven steps backwards.[3]

Worst still, the gas flaring provision, like in previous oil and gas regulatory legal regimes, has empowered the Minister to literally do and undo. The conclusion is premised on the fact that no parameters to issuance or refusal of the permit to flare gas is provided for. The latitude given to the Minister in the PIB is serious draw back on part of the intention of the Bill in the first place.

5. Division of the Petroleum Industry Bill (PIB) into Four Piecemeal Bill

Many commentators and stakeholders in the Nigerian oil and gas industry have called for the Petroleum Industry Bill to be enacted into law in piecemeal.[4] Consequently, in September 2015, the Nigerian Senate commissioned a multi-disciplinary Technical Team comprising of industry experts to review past efforts in the passage of the PIB, recommend a way forward and prepare initial working drafts for consideration by the Senate. It was through this review exercise that the National Assembly and the Technical Team decided to divide the PIB into four different bills (legislation) guiding specific aspects of the industry in the hope of improving the likelihood of the bill's speedy passage. The four bills are:

1. The Petroleum Industry Governance Bill
2. The Petroleum Host Community Development Bill
3. The Petroleum Industry Fiscal Framework Bill
4. The Petroleum Industry Upstream Licensing and Downstream Oil and Gas Administration Bill.[5]

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[1] Petroleum Industry Bill (n 72) s 185-190.
[2] Kassim-Momodu and Nwajide (n 8) 4-5.
[3] Ibid
[4] Review of the Petroleum Industry Governance and Institutional Framework Bill. P. 1. www.banwo-ighodalo.com > resources accessed 21 June 2017.
[5] A Letter to Mr. BenjaminAuge...-Abubakar Bukola Saraki/Facebook https://wwwfacebook.com > posts accessed 21 June 2017; Patrick Akpuh. Senate to pass Industry Bill after April 25. Newspeakonline. Newspeakonline.com > senate-pass-pib-a... accessed 21 June 2017; Mayowa Tijani .Buhari, Kachikwu Split PIB into Four. http://www.thecable.ng > buhari-kachik... accessed 21 June 2017; Nupeng & Pengassan Position on the Petroleum Industry Governance Bill, 2016

The Petroleum Industry Governance Bill (which does not have details on fiscal arrangements (taxes and royalties) and host communities) is the first of several Bills. The Senate of the Federal Republic of Nigeria (FRN), on Thursday 25 May 2017, passed the Petroleum Industry Governance Bill (PIGB or the Bill). The Bill, which still needs to be passed by the House of Representatives and assented to by the President of the Federal Republic of Nigeria before it becomes law, seeks to create efficient and effective governing institutions with clear separate roles for the petroleum industry, establish a framework for the creation of commercially-oriented and profit-driven petroleum entities that ensures value addition and internationalization of the petroleum industry, promote transparency and accountability in the administration of the petroleum resources in Nigeria and create a conducive business environment for petroleum industry operations.[1]

The Petroleum Industry Governance Bill is the first in a series of long awaited petroleum industry Bill designed to reform the Nigerian oil and gas industry. The Petroleum Industry Fiscal Framework Bill, the Petroleum Industry Upstream Licensing and Downstream Oil and Gas Administration Bill and the Petroleum Industry Host Community Development Bill are currently before the Senate, which the National Assembly will debate and pass in due course.[2] Technically, the job is only 25 percent done as the Petroleum Industry Governance Bill is just one of the divisions of the ageless Petroleum Industry Bill (PIB).[3]

6. Criticisms against the PIB Fiscal Provisions and Challenges Facing its Passage

The proposed PIB has attracted so many criticisms and challenges which has delayed and hindered its speedy passage. Among these criticisms and challenges are: resistance from international oil companies on ground of multiple taxation; Resistance from Northern Leaders; Criticism from Advocacy NGOs and Niger Delta Activists; The Trade Union Perspective.

6.1 Resistance from International Oil Companies on Ground of Multiple Taxation

Fiscal provisions increase cost of doing business: The Bill provides for multiple taxes (Nigeria Hydrocarbon Tax, Company Income Tax), higher rents and royalties, and levies (Niger Delta Commission Levy, Petroleum Host Community Fund, Education Tax). This is most noticeable in the deep offshore operations.

International Oil Companies posed a strong resistance against the PIB because of the new fiscal regime which according to them do not only amount to double but multiple taxation thus, increasing the cost of doing business.[4] The Bill provides for multiple taxes (Nigeria Hydrocarbon Tax, Company Income Tax), higher rents and royalties, and levies (Niger Delta Commission Levy, Petroleum Host Community Fund, Education Tax). This is most noticeable in the deep offshore operations.[5]

They argue that the PIB is to cancel the single fiscal account which allowed them to compensate losses in non-producing wells onshore. In October 2009, a confidential report of the International Monetary Fund warned authorities of the excesses of a fiscal reform: 'insensitivity to project costs' could result in many projects being uneconomic and 'translate into a sharp and immediate drop in capital investment and an eventual decline in government revenues'.[6] One of the major IOCs in Nigeria noted that the some of the fiscal terms in the bill could translate to a loss of about $185 billion in new projects for the Nigerian petroleum industry. The primary reason that has been cited for the potential loss of investment by most stakeholders is the potential increase in government take under the PIB regime. A projection by the NNPC indicates that the PIB aims "to boost accruals to government coffers from the deep water offshore operations from the current level of 32 percent to 72.3 percent".[7]

International Oil Companies (IOCs) have expressed reservations over the proposed laws; for example, the following words of the Managing Director of Shell Nigeria (SPDC) succinctly sum up some of these

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wwwacademia.edu > PENGASSAN_POS... accessed 21 June 2017; Passage of the PIGB …taking a Step away from "How not to run an Oil Industry" (n 13); Kachikwu, E. I., (2016). The Petroleum Industry Bill: Getting to the Yes. Law Publishing & Conference Services, Lagos, Nigeria. Page 20.

[1] Analysis of the Petroleum Industry Governance Bill yourbudgit.com > uploads > 2017/05 > P... accessed 21 June 2017; Petroleum Industry Governance Bill 2016. P. 1.

[2] The Petroleum Industry Governance Bill. KPMG Newsletter, June 2017.

[3] Analysis Of The Petroleum Industry Governance Bill (n 42)

[4] Marc-Antoine Perouse de Montclos, 'The Politics and Crisis of the Petroleum Industry Bill in Nigeria' (2014) 52(3) *The Journal of Modern African Studies* 403, 416.

[5] Awele, O., 'Nigeria: Petroleum Industry Bill History, Objectives, Institutions, and Controversies' (2012) www.nextierlimited.com > ... accessed 22 April 2017.

[6] Perouse de Montclos, (n 83) 416.

[7] Oduntan (n 63) 48; Clara Nwachukwu, "PIB: Legacy legislation begging for passage" Vanguard (8 January 2014); NNPC, "PIB: Government to Reap over N300 Billion Annually", NNPC News and Update.

reservations: "The PIB proposes multiple increased royalties and fiscal terms that will slow down new investments in deep water considerably. It will also exclude a number of legitimate costs from being recovered. Uncertainties around these issues are already stalling development of major discovered resources discouraging companies from undertaking the aggressive exploration programmes they launched under the 1993 production Sharing Contracts (PSC's)"[1]

The crux of opposition to the PIB is that it will create a harsh environment that would materially change the economics of the existing and new operations particularly in the deepwater regions. Undoubtedly, the tax changes would instigate an increased government take from an average of 73% to a projected 82% under the PIB terms. This calculation is derived on projections of a mid-size deepwater oil field with production of around 50 million barrels a year and oil price of US$75bbl. Therefore, the groundswell of opposition to the PIB is not farfetched since the existing arrangements have put the oil companies in advantage positions of reaping greater share from higher production and current high oil prices.[2]

International companies indeed argue that their future is in offshore and that if they are overtaxed, Nigerian production would become one of the most expensive in the world. They hold that fiscal recovery based on a comparison with tax rates in Norway or the United Arab Emirates[3] is irrelevant if it does not account for extraction costs, which are higher because of security[4] requirements and the lack of infrastructure[5] in the Niger Delta. From roads to hospitals to schools, the international oil companies allege that they need to cover all costs themselves, including payment for police and military forces that protect the operators.[6]Our contention however, on this issue is that, with holistic and proper implementation of the new regime, security needs and social amenities would have been met thereby obscuring the need for the multinationals to expend on them. In other words, when the taxes are utilized in meeting the developmental needs of the host communities, agitations would be near zero.

6.2 Resistance from Northern Leaders

The Northern region of Nigeria, whose elite, governors and politicians, (not necessarily the masses), had benefited largely from the NDR's petroleum wealth has posed the strongest opposition to the passage of the Petroleum Industry Bill 2012. They argue for even economic development among all regions on the basis of need rather than derivation. They oppose the proposed 10 per cent Petroleum Host Communities Fund as being a back door avenue to increase derivation for the NDR.[7] In their eyes, the PIB is an attempt to definitively deny them their share of oil revenue, and to introduce disguised royalties free from government control. To them, Community Funds are more than local compensations for pollution: rather they reinforce the 'derivation' formula, which is currently fixed at 13% of the revenue that oil-producing states can retain in the Niger Delta. From their perspective, the PIB is unconstitutional.[8] Furthermore, the Northern elite have argued that the NDR governors have been unable to account for their utilisation of the 13 per cent derivation they have received since 1999. The NDR governors have countered that due to the swampy nature of the region, development in the NDR is about three times what will be required in the North.[9]

6.3 Criticism from Advocacy NGOs and Niger Delta Activists

The Niger Delta activists and ecologists have criticized the PIB on the ground that it does not meet their demands in terms of land ownership and environmental protection. They hold a strong resentment against the PIB since it confirms the prerogatives of the federal government over land ownership and does not authorize communities to own their land. They display strong resentment toward the central government, which claims to

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[1]Saidu and Mohammed (n 57).
[2]Onyeukwu (n 67) 2.
[3]The Nigerian fiscal terms are currently lenient compared to its peers, particularly the countries with the same geological character. For instance, Libya has 93% government take and UAE Abu Dhabi is on an average of 94%. Recent trends in global fiscal terms especially in this era of rising oil prices have built-in mechanisms of increased government share in windfall prices through increased royalty/taxes and linkages of royalty/tax rates to prevailing prices to ensure automatic adjustment of government share to price increases.
[4]Using Shell Petroleum Development Company (SPDC) as a case study, Shell spent about $383 million on security between 2007 and 2009 in Nigeria. In 2008 alone, Shell spent more on security in the Niger-Delta than in the Americas, European Union (EU) and Russia combined; Diminas (n 72) 8.
[5]Nigeria is also faced with the challenge of lack of sufficient infrastructure to run the oil and gas industry. Nigeria's Oil and Gas Industry Brief (n 16) 19; Okezie A. Ihugba, Alex Odii, and Asoluka C. Njoku, 'Challenges and Prospects of Entrepreneurship in Nigeria' (2013) 2(5) *Academic Journal of Interdisciplinary Studies* 25, 28.
[6]Perouse de Montclos, (n 85) 416.
[7]Pereowei, S., 'Towards a Functional Petroleum Industry in Nigeria: A Critical Analysis of Nigeria's Petroleum Industry Reform, (2014) p. 231. https://theses.ncl.ac.uk > Subai, P. 2014.PDF accessed 22 April 2017.
[8]Perouse de Montclos, (n 92) 415-416.
[9]Pereowei Subai (n 56) 231.

control and manage Community Funds and offshore production tax increases. Many activists consider that the authorities never truly intended to consult with host communities, nor promote their involvement in oil projects.[1] A true federalism, where States are allowed to develop at their pace while 'servicing' the government at the centre would go a long way in assuaging this challenge.

6.4 The Trade Union Perspective

Unions in the oil and gas sector of Nigeria have also criticized the PIB because of the transfer of public personnel to commercial entities without equivalent salary and retirement packages, etc. The TUC, the industry executives of PENGASSAN (Petroleum and Natural Gas Senior Staff Association of Nigeria) and NUPENG (National Union of Petroleum and Natural Gas Workers) support the privatization of the sector, contrary to their counterparts of the civil service in the NLC (Nigeria Labour Congress), who remain hostile to deregulation and who protested in January 2012 against astronomical fuel price increases after the removal of government subsidies. PENGASSAN and NUPENG advocate for a reform modeled after the NLNG (Nigerian Liquefied Natural Gas) plant at the Bonny export terminal, where the private sector is the majority shareholder (51%).[2]

PENGASSAN and NUPENG already favoured plans to privatize refineries. As far as production is concerned, they were hostile to the first version of the PIB in 2009, which intended to create international joint ventures wherein the government would remain the majority shareholder. Today, these trade unions are also opposed to the transformation of the NNPC into a corporate structure opened to only 30% of private shares. They distrust the continuation of a parastatals company whose staff size shrank from 17,000 in 2003 to 9,000 in 2007.[3]

They also fear that the PIB is a ploy to disengage Nigerians because it would compel all employees to take up new employment in the national and international oil companies. As for the NNPC, a public company, it is handicapped by federal laws that require the recruitment of locals and imposition of regional quotas irrespective of merit. Aside from failing to meet the expectations of unions in the way of job creation, the PIB is a further source of concern in that its section 356 does not guarantee the same salary and retirement plans for employees who would be transferred to parastatals commercial entities. The bill according to them does not plan to create a retirement fund in keeping with the current NNPC system, which guarantees payment of a full salary.[4]

7. CONCLUTION

The introduction of the PIB is a step in the right direction,[5]the benefits which the country hopes to realize from the implementation of the PIB include potential increase in the country's share of the revenue accruable to the Federal Government of Nigeria from crude oil production, increase in the participation of Nigerians in the industry through the enforcement of the Nigerian Content provisions and the realignment and integration of the various functions and departments in the Nigerian National Petroleum Corporation (NNPC), Department of Petroleum Resources (DPR) and Ministry of Petroleum Resources. The PIB also hopes to achieve the enforcement of international best practices in the Nigerian oil and gas industry, amongst others.[6]

It is evident that this Policy aims to increase take by the Nigerian government from the oil and gas industry especially the deep offshore while ensuring that incessant abuse of incentives is curbed and small players are given an enabling environment to thrive, albeit in the short term. Nevertheless, the Nigerian government needs to strike a balance between the country's drive for increased oil revenue in the short term, and the long term guarantee of revenue from the major players in the industry through taxation. We can only hope for the quick passage of the relevant legislation that will provide legal teeth to the thrusts of this current policy for the benefit of the industry.[7]

Although, the PIB holds enormous economic growth potentials for Nigeria, it had struggled to see the light of day despite its introduction to the National Assembly over 16 years ago. Delay in the passage of the PIB has lead to a reduction of investments in the Nigerian petroleum industry. To date, most of the oil companies have ceased investments in the sector until there is clarity as to what provisions will be contained in the final PIB and how it will affect the industry. With the rise of other attractive petroleum industries in Africa (Angola, Ghana, etc), Nigeria must understand that investments

[1]Ibid, p. 418.
[2]Ibid
[3]Pereowei Subai, ibid; Nwokeji U. (2007). The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions. James A. Baker, III Institute for Public Policy, Rice University.
[4]Perouse de Montclos, (n 94) 417-418.
[5]Kassim-Momodu and Nwajide (n 76).
[6]KPMG (n 36).
[7] Implications of Nigeria's Draft Petroleum Fiscal Policy (2017) Tax & Regulatory Services. 29 March 2017. Blog.deloitte.com.ng > uploads > 2017/03 accessed 22 April 2017.

are fungible and will eventually flow to alternative countries that are more receptive.[1]

Without a doubt, the passage of the Petroleum Industry Governance Bill by the Senate following its third and final reading on 25 May, 2017 is commendable.[2] The warm reception was also consistent with the performance of the local equity market which jumped 2.1% in the session following the announcement- the highest daily return in a fortnight-despite the fact that the PIGB is only a part of the actual Petroleum Industry Bill.[3] Whilst there are still a number of uncertainties on (i) the approach that the House of Representatives will take in its review and consideration of the Governance Bill; (ii) the scope and content of the harmonized Governance Bill that will be passed by the House of Representatives, and (iii) whether or when the President will give its assent to the Bill, the Petroleum Industry Governance Bill[4] is just one of the divisions of the ageless Petroleum Industry Bill (PIB).[5]

While the passage of the Petroleum Industry Governance Bill is commendable, it will not deliver the full benefits of the intended reforms except if the other aspects of the Petroleum Industry Bill (PIB) are also legislated. The Petroleum Industry Governance Bill (PIGB) only deals with one aspect of the Petroleum Industry Bill (PIB), that is, the governance and institutional framework of the Nigerian Petroleum Industry.[6] For example, the PIGB may not mean much for International Oil Companies (IOCs) or foreign operators. This is not surprising given that the provision of the PIGB does not necessarily address the concerns of IOCs which borders on fiscal administration and the fiscal provisions contained in the broader PIB. As noted earlier, the PIGB only seeks to strengthen the governance and institutional structure of the Nigerian petroleum industry. IOCs are more interested in the yet to be passed Petroleum Industry Fiscal Bill which defines the revenue and tax structure of the sector. Operators in the sector indicate that the Fiscal bill is the most important part of the PIB with the capacity to unlock investment into the sector. IOCs are particularly looking out for a flexible fiscal term to scale up the level of investment in the sector.[7]

One of the contentious items in the broader PIB is gas production for the benefit of the domestic economy. Although the PIB seeks to give tax breaks for gas production for local consumption, IOCs have insisted on gas export. This is partly due to lack of gas infrastructure to support domestic consumption. The other reason being a more attractive gas export market which tilts investment in favour of export-oriented gas projects despite pressing domestic need in the power sector. Other points listed by IOCs outside the purview of the PIGB include the issue of fixed tax rate (the Nigerian Hydrocarbon Tax and the Companies Income Tax), a new royalty and the requirement that IOCs should do more for the underdeveloped communities in the Niger-Delta region from their huge profit margins.[8]

Even though the text of the PIB suggests a positive and upward potential for growth in the Nigerian petroleum industry, the uncertainty about the delayed passing of the bill has capped investment in Nigeria's oil and gas industry under the current regime. Given that predictability of the regulatory and fiscal regime of any industry is needed to generate new investment, the delayed passage of the PIB discourages investment in the oil and gas industry. In order to determine future foreign investment into the Nigerian petroleum sector, certainty of the regulatory and fiscal terms proposed in the PIB is, to a large extent, very important. For instance, certainty of the regulatory and fiscal regime is required for new "deep water" investment – which is the production region with potentially the most scope for further oil exploration in Nigeria. Consequently, a number of upcoming projects which may be worth billions of dollars will be delayed until the passage of the PIB.[9]

Looking at the objectives of the Petroleum Industry Bill and the re-structuring of how petroleum issues will be handled in the bill, it is fair to conclude that the bill is just what Nigerians need to derive the needed benefit from petroleum resources[10] However, until the Petroleum Industry Bill (PIB) is unanimously passed in both houses of the National Assembly and subsequently signed into law, Nigeria's oil and gas industry will remain visionless, without strategy, direction and a model to compete in a globalized petroleum industry.[11] Therefore,

[1]Awele (n 48)
[2]The Petroleum Industry Governance Bill, 2017.
[3]Passage of the PIGB …taking a step away from "how not to run an oil industry" (n 13)
[4]The Petroleum Industry Governance Bill, 2017.
[5]Analysis of the Petroleum Industry Governance Bill.
[6]17 Years After, Senate Passes Petroleum Industry Bill-Leadership Hausa hausa.leadership.ng > 2017/05/26 > 17-y... accessed 21 June 2017.
[7]Passage of the PIGB …taking a step away from "how NOT to run an oil industry" (n 105)
[8]Ibid
[9] Oduntan (n 86) 48; KPMG, "Oil and Gas in Africa: Africa's Reserves, Potential and Prospects" (2013). https://www.kpmg.com> at 9 [KPMG Africa] accessed 20 June 2015.
[10]Donwa, Mgbame and Ogbeide (n 12) 39; Baghebo, M. and Atima, T. O., 'The Impact of Petroleum on Economic Growth in Nigeria' (2013) 2(5) Global Business and Economics Research Journal 102.
[11]Status of the Nigeria Oil and Gas Industry in Light of the PIB Controversy. www.magnartis.com > site > cms > uploads accessed 22 April 2017.

there is need for the National Assembly to resume and speed up debate on the passage of other aspect of the Petroleum Industry Bill namely, the Petroleum Industry Fiscal Framework; The Petroleum Industry Upstream Licensing and Downstream Oil and Gas Administration Bill; and the Petroleum Host Community Development Bill which are currently before the Senate. This is indeed, the moment to put the Nigerian oil and gas sector reform into action through the passage of the Petroleum Industry Bill.[1]

References

A Closer Look at the Petroleum Industry Bill (PIB), 'The Petroleum Industry Bill's Proposed Fiscal Regime' (September 2015) 1, 8. www.stakeholderdemocracy.org/.../v2-2... accessed 25 August 2016.

A Letter to Mr. BenjaminAuge...-Abubakar Bukola Saraki/Facebook https://wwwfacebook.com > posts accessed 21 June 2017.

Analysis of the Petroleum Industry Governance Bill yourbudgit.com > uploads > 2017/05 > P... accessed 21 June 2017.

An Overview of the Petroleum Industry Bill, (2009) *PIB Inter-Agency Project Team* www.nnpcgroup.com/.../pdf/... accessed 26 August 2016.

Companies Income Tax Act, LFN 2004, c. C21 (CITA).

Awele, O., 'Nigeria: Petroleum Industry Bill History, Objectives, Institutions, and Controversies' (2012) www.nextierlimited.com > ... accessed 22 April 2017.

Baghebo, M. and Atima, T. O., 'The Impact of Petroleum on Economic Growth in Nigeria' (2013) 2(5) Global Business and Economics Research Journal 102.

Clara Nwachukwu, "PIB: Legacy legislation begging for passage" Vanguard (8 January 2014).

Deep Offshore and Inland Basin Production Sharing Contracts Act Decree No 9 of 1999, LFN 2004 c D3 s. 18 (DOIBPSCA).

Emmanuel B. Amponsah, John A. Enahoro, and Abdallah Ali-Nakyea, 'Issues of Taxation in the Oil and Gas Sector in Selected Countries: Lessons for Ghana' (2012) 5(2) *International Business and Management* 167, 171.

Festus A. Folajimi and Samuel F. Adeniran, 'Petroleum Profit Tax and Nigeria Economic Development' (2011) 1(1) *International Journal of Research in Computer Applications & Management* 11, 11.

Francisca Nlerum, 'Reflections on Participation Regimes in Nigeria's Oil Sector' (2010) 6 NCLR 145, 157.

Gao Zhiguo. (1994). International Petroleum Contracts: Current Trends and New Directions. London: Graham &Trotman. P. 72.

Humphrey Onyeukwu, 'Who is afraid of Nigeria's Petroleum Industry Bill?' (2010) 4 ǼLEX Quarterly, 1, 2. www.aelex.com/...who_is_afraid_of_... accessed 26 August 2016.

Implications of Nigeria's Draft Petroleum Fiscal Policy (2017) Tax & Regulatory Services. 29 March 2017. Blog.deloitte.com.ng > uploads > 2017/03 accessed 22 April 2017.

John Ameh, 'Northern Reps plan to throw out PIB' *Punch Newspaper* (Lagos, 24 September 2012).

Juliet O. David-West, 'Oil, Gas and other Minerals Taxation' (2013) Special training programme of the Chartered Institute of Taxation of Nigeria (CITN) www.citn.org/.../tax.../ ... accessed 26 August 2016.

Kachikwu, E. I., (2016). The Petroleum Industry Bill: Getting to the Yes. Law Publishing & Conference Services, Lagos, Nigeria. Page 20.

KPMG Brief, KPMG Nigeria Oil and Gas Industry Brief (June 2014). P. 5. https://www.kpmg.com/.../... accessed 26 August 2016.

KPMG Newsletter, June 2017.

KPMG, "Oil and Gas in Africa: Africa's Reserves, Potential and Prospects" (2013). https://www.kpmg.com> at 9 [KPMG Africa] accessed 20 June 2015.

Marc-Antoine Perouse de Montclos, 'The Politics and Crisis of the Petroleum Industry Bill in Nigeria' (2014) 52(3) *The Journal of Modern African Studies* 403, 416.

Momodu Kassim-Momodu and Cornelius S. Nwajide, 'The Nigerian Petroleum Industry Bill 2012: Some Observations and Suggestions' (2012) 2(2) *Petroleum Technology Development Journal* 1, 2.

Mobolanle O. Oduntan. 2015. The Role of Taxation in Nigeria's Oil and Gas Sector Reforms-Learning from the Canadian Experience. Master of Laws Thesis, College of Law, University of Saskatchewan, Saskatoon. Pp. 33-34. https://ecommons.usask.ca > handle > OD... accessed 22 April 2017.

Mayowa Tijani .Buhari, Kachikwu Split PIB into Four. http://www.thecable.ng > buhari-kachik... accessed 21 June 2017.

Nigerian National Petroleum Corporation Act, LFN 2004, c N123, s 5 [NNPC Act].

Nigerian Tertiary Education Trust Fund (Establishment) Act, LN 2011, s. 1.

[1]Niyi Ayoola-Daniels, 'Legal Imperatives for the Speedy Passage of the Petroleum Industry Bill' (2015) Paper Presented at the Breakout Session of the 2015 Annual General Conference of the Nigerian Bar Association. Pp. 9-10.

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Niger-Delta Development Commission (Establishment etc) Act, LN 2000, s 14 [NDDC Act].

Niyi Ayoola-Daniels, 'Legal Imperatives for the Speedy Passage of the Petroleum Industry Bill' (2015) Paper Presented at the Breakout Session of the 2015 Annual General Conference of the Nigerian Bar Association. Pp. 9-10.

NNPC, "PIB: Government to Reap over N300 Billion Annually", NNPC News and Update.

Nupeng & Pengassan Position on the Petroleum Industry Governance Bill, 2016 wwwacademia.edu > PENGASSAN_POS... accessed 21 June 2017.

Nwokeji U. (2007). The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions. James A. Baker, III Institute for Public Policy, Rice University.

Okezie A. Ihugba, Alex Odii, and Asoluka C. Njoku, 'Challenges and Prospects of Entrepreneurship in Nigeria' (2013) 2(5) *Academic Journal of Interdisciplinary Studies* 25, 28.

Omano Edigheji et al, 'In the National Interest: A Critical Review of the Petroleum Industry Bill 2012, Centre for Africa's Progress and Prosperity. 1, 9-10. Omojuwa.com>upload.2013/07> Re... accessed 24 April 2017.

Onaolapo A. Abdul-Rahamoh, Fasina H. Taiwo, and Adegbite T. Adejare, 'The Analysis of the Effect of Petroleum Profit Tax on Nigerian Economy' (2013) 1(1) *Asian Journal of Humanities and Social Sciences* 25, 26.

Patrick Akpuh. Senate to pass Industry Bill after April 25. Newspeakonline. Newspeakonline.com > senate-pass-pib-a... accessed 21 June 2017.

Passage of the PIGB …taking a step away from "how NOT to run an oil industry" United Capital Research / Nigeria / Economics-United Capital PLC 30 May, 2017. www.unitedcapitalplcgroup.com > 2017/05 .accessed 21 June 2017.

P. A. Donwa, C. O. Mgbame, and O. I. Ogbeide, 'Corruption in the Nigerian Oil and Gas Industry and Implication for Economic Growth' (2015) 14 *International Journal of African and Asian Studies* 29, 38-39

Pereowei, S., 'Towards a Functional Petroleum Industry in Nigeria: A Critical Analysis of Nigeria's Petroleum Industry Reform, (2014) p. 231. https://theses.ncl.ac.uk > Subai, P. 2014.PDF accessed 22 April 2017.

Petroleum Industry Bill 2012.

Petroleum Profits Tax Act, LFN 2004, c P13 (PPTA).

Petroleum (Drilling and Production) Regulations, LFN 1990, c 350, reg 61 [PDRR]

Review of the Petroleum Industry Governance and Institutional Framework Bill. P. 1. www.banwo-ighodalo.com > resources accessed 21 June 2017.

Samuel, Diminas, 'An Analysis of the Nigerian Petroleum Industry Bill 2012' (2013) 1 WESTPAQ 1, 7. www.westpag.com/.../An-Analysis-of-the... accessed 25 August 2016.

Sani Saidu and Abdel R. Mohammed, 'The Nigerian Petroleum Industry Bill: Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector' (2014) 2(2) *Journal of Business and Management Sciences* 45, 51.

Sayne, A. et al., 'The Petroleum Industry Bill and the Future of NNPC' (2012) *Revenue Watch Institute Briefing* www.revenuewatch.org accessed 15 August 2016; An Overview of the Petroleum Industry Bill, (2009) *PIB Inter-Agency Project Team* www.nnpcgroup.com/.../pdf/... accessed 26 August 2016.

Status of the Nigeria Oil and Gas Industry in Light of the PIB Controversy. www.magnartis.com > site > cms > uploads accessed 22 April 2017.

Uyi A, Darcy W, and Chris, B, 'From Promise to Performance Africa; Report on Current Developments in the Oil and Gas Industry in Africa' (June 2013) 3 *Africa Oil & Gas Review.*

Yinka Omorogbe. (2003) Oil and Gas Law in Nigeria. Lagos: Malthouse. Pp. 38-54.

Zacchaues Adangor, 'The Petroleum Industry Bill 2012 and the Niger Delta Region of Nigeria: Panacea or Placebo?' (2015) 38 *Journal of Law, Policy and Globalization* 47, 54.

17 Years After, Senate Passes Petroleum Industry Bill-Leadership Hausa hausa.leadership.ng > 2017/05/26 > 17-y... accessed 21 June 2017.