



RusselSmith

# PETROLEUM INDUSTRY BILL (2020)

Presented By: George Onuma & Uchechi Ngonadi

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# Background

Since 2008, Nigeria has been working to improve transparency and accountability in the oil sector. Despite being one of the largest suppliers of crude oil in Africa, the country has traditionally been unable to significantly translate its oil wealth into sufficient national development.

There have been many reasons for this, including insufficient governance, weak sector regulation, and inefficiencies in oil operations. These have resulted in declining investment and returns in the industry, owing to the uncertain investment climate, incessant fuel shortage and insecurity.

In response to these challenges, the Petroleum Industry Bill (PIB) was developed.



# PIB - The Legislative Journey

The main idea behind the 2008 version was to increase transparency in the petroleum sector, namely in the National Nigerian Petroleum Corporation (NNPC), as well as increase the country's share of revenue in oil projects. The passing of the bill failed due to objections from both the international operators and the NNPC over some of its content.

In 2015, Ibe Kachikwu, then Minister of State for Petroleum Resources, requested the Bill to be amended to facilitate the process.

Consequently, and to facilitate the passage of the legislation, the PIB was split into four parts:

- the Petroleum Industry Governance Bill (PIGB);
- the Petroleum Industry Administration Bill (PIAB);
- the Petroleum Industry Host Community Bill (PIHCB); and
- the Petroleum Industry Fiscal Bill (PIFB).

# Introduction

The Petroleum Industry Bill (PIB), an omnibus law meant to regulate the entire sphere of the industry and repeal all current existing oil and gas legislation, had struggled to see the light of day despite its introduction to the National Assembly over 12 years ago.

The PIB 2020 is expected to provide a framework to boost oil and gas output while enhancing the sector's attractiveness for international investors, thus increasing foreign direct investment. The Bill proposes reforms to governance, administration, host community and fiscal matters in the oil and gas industry.

It establishes the streamlining and the reduction of some oil and gas royalties, with the *underlying objective to encourage international operators to invest* in exploration and production, taking advantage of Nigeria's extensive petroleum reserves.



# The Objectives Of The PIB 2020

Given oil's prominent role in the economy, Nigeria will struggle to break in to the top 20 economies without such reforms. Nigeria's National Oil and Gas Policy—implemented by the PIB—prioritizes “increasing transparency and accountability” as one of its goals.

Since the Petroleum Industry Bill (PIB) 2020 contains strong transparency and accountability provisions, Nigeria's oil sector performance has real opportunity to improve. Transparency encourages competition, discourages illicit behaviour and attracts investment.

Accountable institutions reassure investors, improve regulation and revenue collection and result in higher production and earnings.

The PIB 2020 has been drafted to fulfill at least six basic objectives in this area.



# Objective 1 - Open, Competitive and Transparent Upstream Awards

Oil production licenses and contracts are some of Nigeria's most valuable assets. To maximize returns, government should allocate them through open and competitive processes to well-qualified companies.

In the past, contracting and licensing have suffered from deep abuses of secrecy and discretion. Irregularities marred all major bid rounds held in the 2000s, bringing about lawsuits, indictments, sackings, cancelled or revoked awards, and legislative probes.

Many of the promised signature bonuses went unpaid, deals fell through, and awarded blocks remain undeveloped.

# Objective 2 - Strong Rules For Lifting Crude, Midstream and Downstream Licenses

The Government awards licenses for lifting crude oil, and for midstream and downstream activities. In a major oversight, no PIB draft guards against manipulation of such award processes.

These too are high- value transactions: in 2008, crude sales through lifting contracts earned over \$40 billion, or 69% of total government oil revenues.

However, each year elite-controlled “briefcase companies” snatch up discounted licenses to lift government crude.

Current licensing procedures in the downstream allow the capture of valuable state subsidies.



# Objective 3 - Defined Processes For Selling Shares in NNPC and Joint Venture Operations

The PIB announce potentially huge sales of public assets without saying how to conduct them.

NNPC and JV incorporations are potentially welcome steps towards commercializing the sector and ending chronic funding woes. If left to chance, however, they could leave young, vital institutions corrupted and un-bankable.

# Objective 4 - Increased Access To Information

Nigeria has shown great enthusiasm for oil sector transparency programs. The Nigerian Extractive Industries Transparency Initiative (NEITI) set an early “gold standard” for the global EITI movement with its comprehensive reports.

President Jonathan has further advanced transparency by signing the Freedom of Information Act.

Neither NEITI nor the FOI Act replaces the need for regular disclosures by oil sector participants. By opening more kinds of documents and data to public scrutiny, the PIB would improve incentives for performance, attract investment and financing, and protect against illicit practices.

# Objective 5 - Clarity On Revenue Flows

As revealed in NEITI audits, Nigeria's laws and practices for capturing oil revenues show widespread weaknesses that reduce government earnings. Oil companies pay taxes and royalties through "unregulated self-assessment."

NNPC calculates its crude sale revenues with little oversight and keeps a share without clear rules.

Signature bonuses are underpaid and enter a maze of bank accounts. Annual reports by the Auditor-General of the Federation find significant oil revenues missing or mislaid.

A PIB that tackles these problems would help net Nigeria billions in extra development revenues.

# Objective 6 - Better NNPC Oversight And Corporate Governance

Nigeria's oil sector will not reach its full potential without a new corporate culture for the NNPC. Greater oversight of the firm's operations and financials will encourage a more commercial orientation.

Added transparency will also help plug leaks while sending good signals to partners, lenders and investors

# The 1<sup>st</sup> Key Provision Of The PIB 2020

## 1. The Minister of Petroleum:

The Minister of Petroleum is empowered to formulate, monitor and administer government policy in the petroleum industry; exercise general supervision over the affairs and operations of the petroleum industry in accordance with the provisions of this Act; report developments in the petroleum industry to the government; represent Nigeria at international organizations on petroleum matters; promote an enabling environment for investment in the Nigerian petroleum industry; negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the Government, shall have rights of pre-emption of petroleum and petroleum products marketed under any license or lease, in the event of a national emergency.

# The 2<sup>nd</sup> Key Provision Of The PIB 2020

## **2. Establishment of the Nigerian Upstream Petroleum Regulatory Commission:**

This commission is to administer and enforce policies and regulations relating to all aspects of upstream petroleum operations and to issue, administer and enforce compliance on the issuance of licenses and leases in the upstream sector.

It is also to establish, monitor, regulate, and enforce health and safety measures relating to all aspects of upstream petroleum operations, publish reports and statistics on the upstream sector, validate and certify the evaluation of national hydrocarbon reserve, manage and administer all upstream petroleum data for all unallocated acreage.

This Commission on the approval of the minister, is to allocate petroleum production quotas, and develop cost benchmarks for upstream petroleum operations performance amongst other functions, as laid out in the bill.



# The 3<sup>rd</sup> Key Provision Of The PIB 2020

## **3. Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority:**

This authority is to administer and enforce policies, laws and regulations relating to all aspects of midstream and downstream petroleum operations, and to issue and administer licenses in the midstream and downstream sectors.

The agency is also to ensure and enforce compliance with the terms and conditions of all licenses, permits, and authorizations issued in respect of the midstream and downstream petroleum operations; set and enforce approved standards for designs, procurement, construction, and maintenance for all plant; installation and facilities pertaining to midstream and downstream operations.

# The 3<sup>rd</sup> Key Provision Of The PIB 2020 (Cont'd)

This authority is also laden with the responsibility of inspecting measurement equipment, and other facilities for midstream and downstream petroleum operations.

It is also to facilitate the supply of gas to the strategic sectors, in accordance with the approved national gas pricing framework, implement customer protection measures in accordance with the provisions of this Act, regulate and ensure the supply, distribution marketing, and retail of petroleum products as may be prescribed by regulations, and shall also do other things that are necessary and expedient for the effective and full discharge of any of its functions under this Act, amongst other functions as stipulated in the bill..

# The 4<sup>th</sup> Key Provision Of The PIB 2020

## **4. Incorporation of the Nigerian National Petroleum Company Limited:**

The Minister of Petroleum shall within 6 months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National Petroleum Company Limited (NNPC Limited).

The Minister shall at the incorporation of NNPC Limited, consult with the Minister of Finance to determine the number and nominal value of the shares to be allotted, which shall form the initial paid-up share capital of NNPC Limited, and the Government shall subscribe and pay cash for the shares.

Ownership of all shares in NNPC Limited shall be vested in the Government at incorporation, and held by the Ministry of Finance Incorporated on behalf of the Government.

# The 4<sup>th</sup> Key Provision Of The PIB 2020 (Cont'd)

The Minister of Petroleum and the Minister of Finance shall determine the assets, interests, and liabilities of NNPC to be transferred to NNPC Limited or its subsidiaries, and upon the identification; the Minister shall cause such assets, interests, and liabilities to be transferred to NNPC Limited.

Assets, interests, and liabilities of NNPC not transferred to NNPC Limited or its subsidiary, shall remain the assets, interests, and liabilities of NNPC, until they become extinguished or transferred to the Government.

NNPC shall cease to exist, after its remaining assets, interests, and liabilities other than its assets, interests, and liabilities transferred to NNPC Limited or its subsidiaries under subsection (1) of this section, shall have been extinguished or transferred to the Government.

# The 5<sup>th</sup> Key Provision Of The PIB 2020

## **5. Granting of Licenses and Leases:**

Petroleum exploration license may be granted to qualified applicants, to explore petroleum on a speculative and non-exclusive basis.

Petroleum Prospecting License may be granted to qualified applicants, to carry out petroleum exploration operations on an exclusive basis. A Petroleum Prospecting License for onshore and shallow water acreages, shall be for duration of not more than 6 years, comprising of an initial exploration period of 3 years, and an optional extension period of 3 years.

A petroleum prospecting license for deep offshore and frontier acreages, shall be for duration of not more than 10 years, comprising of an initial exploration period of 5 years, and an optional extension period of 5 years.

Petroleum mining lease may be granted to qualified applicants to search for win, work, carry away and dispose of crude oil, condensates, and natural gas. A petroleum mining lease may be granted for a maximum period of 20 years, which terms shall include the development period.

# The 6<sup>th</sup> Key Provision Of The PIB 2020

## **6. Abolition of Gas Flaring:**

Gas flaring has been said to be a major destroyer of the ozone layer, and this has a very detrimental effect on climate all over the world, as is presently occurring. The United Nations Framework Convention on Climate Change (UNFCCC), has called on countries to put an end to greenhouse effect. Despite not having any binding emission target under the UNFCCC, Nigeria in its own way, has responded under the proposed bill to legalize and abolish gas flaring.

Accordingly, the new bill demands strict adherence to a gas flaring plan, along with gas utilization plans, to be submitted by all oil and gas operators within six months of the coming into effect of the law, indicating data on their daily flare quantity, reserve, location, composition. Statistics posit that Nigeria loses a lump sum of money every year to gas flaring, such that its abolition is a wise way of saving this money, and making it available for the usage of the economy and its development.



# The 7<sup>th</sup> Key Provision Of The PIB 2020

## **7. Domestic Gas Obligations:**

The PIB provides that the Nigerian Upstream Regulatory Commission shall, having regard to the needs of the domestic gas market and in accordance with the National Gas Master Plan, impose Domestic Gas Supply Obligations (DGSO) on lessees.

As proposed, a lessee who fails to comply with its DGSO, shall not be permitted to make supplies to gas export operations, and where the lessee only supplies gas to export operations, the lessee shall be directed to suspend operations.

This section will oust the existing Department of Gas in its functions and responsibilities.

# The 8<sup>th</sup> Key Provision Of The PIB 2020

## **8. Deregulation of the Downstream Sector:**

The PIB provides that the pricing of petroleum products in the downstream product sector, shall be deregulated to ensure market related pricing, adequate supply and removal of economic distortions, and creation of a fair market value for petroleum products in Nigeria's economy.

However, although pricing is to be left to market forces, the Bill proposes to safe-guard the interests of consumers, by providing that the Nigerian Midstream and Downstream Petroleum Regulatory Authority shall oversee tariffs for transportation by pipelines, bulk storage for petroleum products, and regulated open access facilities.

The Nigerian Midstream and Downstream Petroleum Regulatory Authority will also be responsible for market monitoring and promotion of competition. This will oust the present Petroleum Pricing Products Regulatory Agency (PPPRA), which is charged with the same responsibilities, but has largely been inefficient till date.

# The 9<sup>th</sup> Key Provision Of The PIB 2020

## **9. Petroleum Host Communities Fund:**

The objective of the Bill is to provide direct social and economic benefits from petroleum operations to host and impacted communities. Also, the Bill seeks to enhance peaceful and harmonious coexistence between E & P companies on one hand, and host and impacted communities on the other – with an objective to foster sustainable and shared prosperity amongst the oil and gas companies and host communities.

The bill stipulates that an annual contribution of 2.5% of the actual operating expenditure (OPEX) of the E&P Company, will be placed into a fund. The funds available in the Endowment Fund are to be allocated in the following manner; 70% of the Endowment Fund shall be allocated to the Capital Fund, out of which the Board of Trustees shall make disbursements for projects in each Host Community, as may be determined by the Management.

Any sum not utilized will be rolled over and utilized in subsequent years; 20% of the Endowment Fund shall be allocated to the Reserve Fund.

# The 9<sup>th</sup> Key Provision Of The PIB 2020 (Cont'd)

The money is to be invested in the Trust when there is a cessation in the endowment payable by the settlor; 10% of the Endowment Fund shall be allocated to the settlor's Special Project Fund to be utilized solely by the settlor for special projects, aimed to assist and support the host and impacted communities, provided that at the end of each financial year, the settlor shall render a full account of the utilization of the Special Project Fund to the Board of Trustees, and where any portion of the Fund is not utilized in a given year, it shall be returned to the Capital Fund.

If the PIB is eventually passed into law, it will contribute to lowering the oil theft rates and regular rifts, if host communities are satisfied.

# The 10<sup>th</sup> Key Provision Of The PIB 2020

## **10. Fiscal Regime under the PIB:**

The Bill proposes to replace the existing petroleum profits tax with a Nigerian Hydrocarbon Tax (NHT), at the rate of 50 per cent for petroleum operations onshore, and in shallow water fields; and 25 per cent for petroleum operations in deep-water, bituminous and frontier acreages.

In addition to NHT, the Bill also proposes companies income tax at the rate of 30 per cent on upstream petroleum operations (which under the existing regime are not subject to companies income tax). Where petroleum operations fall in geographical areas that are subject to different tax rates, NHT shall be levied on the proportionate parts of the profits arising from such operations.

# The Legal Implications PIB 2020

- Contracts
- Assets & Liabilities
- Tax Appeal Tribunal
- Legal Proceedings & Notices
- Offences & Penalties



# Conclusion

The background of the slide features a dark blue, semi-transparent image of a person in a suit, likely a man, looking down. In the foreground, there are several clear plastic water bottles. The top right corner of the slide is decorated with a bright orange triangle.