POLICY DOCUMENT

THE PETROLEUM INDUSTRY BILL

OUR 14 ISSUES WITH THE PIB

Before the National Assembly passes the PIB, these 14 issues must be considered lest we fail to optimize the opportunity to fix Nigeria's major source of revenue.

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DISCLAIMER

This document has NOT been produced with the intent to attack persons currently occupying positions of governance in Nigeria's oil and gas industry. It takes a long-term view of the implications of not institutionalizing procedures, which leave room for abuse and inefficiency.

Our three-fold objective is to advocate for:

(a) The removal of exclusive rights that retard the progress of the oil and gas industry.

(b) Less political interference in relevant institutions to enable their effectiveness.

(c) A fair system for all stakeholders.

Produced by BudgIT Research

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THE PIB IN INFOGRAPHICS

WHY THE PIB?

75% of Nigeria's revenue comes from crude oil sales, royalties and taxes.

95% of Nigeria's foreign exchange comes from the sale of oil and gas.

37bn Amount of Nigeria's oil reserves in barrels. 10th largest in the world, these reserves can last for at least 30yrs

1969 The major law guiding the Nigerian oil and gas industry was enacted in this year.

182tr Amount of Nigeria's proven gas reserves in cubic feet. At current production level, it can last us for 80 years.

WHAT WILL THE PIB DO?

ENERGIZE THE GAS SECTOR
To ensure that: gas production targets are achieved, in order to meet domestic and industrial market demands

INCREASE CRUDE OIL CAPACITY
Improved crude oil production both onshore and deepwater platforms

REFORM INSTITUTIONAL FRAMEWORKS
Improved dialogue and transparency, for effective policy and regulatory oversight

IMPROVE FISCAL TERMS
TAX

Increased revenues for government as operators in the oil and gas Industry will pay Company Income Tax and increased royalties.

ENHANCE BENEFITS TO BROADER ECONOMY
Will ensure oil industry gains lead to a boom in other sectors, creating jobs and funds for community development.

PIB FAQs

THE PIB AND INSTITUTIONS

7
New institutions to be created in the oil and gas industry

36
Number of times"The President" is mentioned. He/She approves boards of regulatory agencies and has the power to make discretionary awards of oil blockOs to individuals.

7
Number of times "The National Assembly" is mentioned in the Bill.
The National Assembly plays no role, other than PTDF oversight, and routine budget approvals for regulatory agencies.

187
Number of times the "The Minister" of Petroleum is mentioned.
He/She makes discretionary rules from time to time; and chair boards - making him/her the most powerful person in the Petroleum Industry.

2
Number of times the Bureau of Public Enterprises is mentioned. There is no clarity on BPE's role in the privatisation of the new national oil and gas companies.

PIB UPDATE

900
The PIB has spent almost 900 days in the National Assembly

$109bn
The cost of Nigeria in investment terms, due to a delayed passage of the PIB. Nigeria lost these funds because investors' appetite cooled while our lawmakers deliberated for almost 900 days.

Senate

"As the Vice-Chairman of the Senate Committee on Petroleum Resources (Downstream), I am deeply involved in the whole exercise. It is like the Federal Government does not want this Bill to be passed. I am also of the view that the leadership of the Senate does not want this PIB to be passed. We even want to conduct public hearings in the six geo-political zones to get the feelings of Nigeria on the PIB but we were not given the funds to do that. In fact, we are being starved of funds in the Joint Committee. We are not being encouraged; we are not given the facilities to do the work. That is why I said in the Senate, it looks like, some people somewhere, are not interested in getting this Bill passed."

Danjuma Goje, Vice-Chairman, Senate Committee on Petroleum Resources (Downstream)

House of Representatives

As at time of publication, the House of Representatives was yet to present its Ad hoc Committee's report on the Petroleum Industry Bill (PIB).

1

Discretionary powers of the President and Minister/ Significant ministerial authority:

Section. 6(1) (g)-(i), Section 191 of the PIB:

What the PIB says

Section. 6. Functions and Powers of the Minister

6. The Minister shall have;

g. Upon advice of the Inspectorate, grant, amend, renew, extend or revoke upstream petroleum licenses and leases pursuant to the provisions of this Act;

S. 191 Powers of the President to grant licenses and leases in special circumstances

Notwithstanding the provisions of subsection (3) of section 190 or any other provision of this Act, the President shall possess the power to grant license or lease under this Act.

Our Interpretations

The Bill - contrary to its intended objectives of fostering transparency and accountability in the oil and gas sector - disproportionately confers enormous powers and authority on the Minister of Petroleum Resources over policy, regulatory and operational matters. It also gives the Minister exclusive responsibility for issuing regulations in the sector, meaning these powers cannot be delegated. These powers can therefore be easily abused by any serving Minister.

The President can also overrule a transparent bidding process as stated in the Bill (Section 191). These laws inhibit performance. As seen with marginal oil fields being mostly used as kickbacks within the political class. The Award of licences should strictly follow institutional processes.

Host Community Fund:

S. 116. Establishment of the Petroleum Host Community Fund

2

What the PIB says

There is established a fund to be known as the Petroleum Host Communities Fund (in this Act referred to as 'the PHC Fund') - Act.

Our Interpretations

The Bill provides for a 10% Host Community Fund for inhabitants of communities hosting oil and gas resources. This is an initiative to address a variety of developmental problems in the Niger Delta and to bring peace to the region.

The Bill only makes provisions for allocation of funds. It does not:

(a) Define "host communities",

(b) Provide details of how the funding would be sought

(c) Provide details on the auditing of the funds

(d) Provide details delineating the process of disbursements for these funds.

The Bill also gives the Minister the power to make regulations on entitlement, governance and management structure with respect to the PHC Fund. This provides an opportunity for the politicization of this fund, which may lead to inter-tribal and communal clashes, thereby defeating its initial purpose.

3

Domestic Gas Supply Obligations and Infrastructure:

Section. 183 of the PIB:

What the PIB says

S. 183 Domestic gas supply obligations

(1) The Inspectorate shall determine in accordance with section 269 of this Act, the needs of the domestic gas market in accordance with the Domestic Gas Demand requirement and shall on such basis impose Domestic Gas Supply Obligation ("DGSO") and ensure that all lessees comply with such Domestic Gas Supply Obligations.

Our Interpretations

In the PIB, it will be compulsory for gas operators in the country to prioritize gas for domestic obligations before export. An argument by the IOCs is that the imposition of DGSOs without addressing key issues including the infrastructure deficit and low pricing would not increase gas supply needed for power generation.

Though the government has set out bold objectives to optimize gas supply for power generation and industrial development, Nigeria still lacks the necessary gas supply infrastructure that would link upstream gas fields to all main domestic consumer regions.

Licenses and Leases:

4

Section. 6 & Section 15

What the PIB says

S. 15 Functions of the Inspectorate

(1) The Inspectorate shall in collaboration with other relevant government agencies, where applicable –

(o) with the prior approval the Minister; conduct bid rounds for the award of Petroleum prospecting licenses and petroleum mining leases pursuant to provisions of this Act.

Our Interpretations

(a) Section 6(1)(g) of the Bill gives the Minister of Petroleum Resources powers to grant and revoke upstream licenses on the recommendation of the regulator, which should be the agency responsible for issuing licenses and leases. While the Minister should have oversight functions over entities in the petroleum sector, the regulator should have primary responsibility for issuing licenses. There is scant coherence in defining all roles and responsibilities with regards to this section, and this is critical to ensuring transparency across the board.

(b) Another major concern with this sub-section is that the PIB does not provide for the frequency of bid rounds or note when they will take place

(c) The vast discretionary powers included in the Bill may also result in the wanton award of acreage in ways that may ultimately not benefit the Federal Republic

5

Tax Regime/Fiscal Issues:

S. 299, S. 353 of the PIB:

What the PIB says

S. 299 Imposition of the Nigerian Hydrocarbon Tax

1) There shall be levied upon the profits of each accounting period of any company engaged in upstream petroleum operations during that period, a tax to be known as the Nigerian Hydrocarbon Tax ("the tax") which shall be charged assessed and payable in accordance with provisions of this Part.

Our Interpretations

The Bill also leaves out other key fiscal provisions such as royalties and fees. This leaves room for political interference and manipulation.

Highly confusing to the experts, it is difficult to analyze the fiscal terms in the PIB. A keen examination of the Hydrocarbon Tax clauses shows they strengthen the atmosphere of opacity and secrecy that looms in the industry. Section 302(1) states that: Every person having any official duty or being employed in the administration of this Part shall treat and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits and related items of any company, as secret and confidential.

Gas Flaring

Section . 201, 275- 276 of the PIB:

What the PIB says

S. 201 Gas flaring penalties

(1) The lessee shall pay such gas flaring penalties as the Minister may determine from time to time.

(2) The lessee shall install all such measurement equipment as ordered by the Inspectorate to properly measure the amount of gas being flared.

S. 275 General terms

Natural gas shall not be flared or vented after a date ("the flare – out date") to prescribed by the Minister in regulations made pursuant to this Part, in any oil 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 subsection (1) of section 277 of this Act.

Our Interpretations

The provisions, which criminalize and penalize gas flaring, do not adequately take into consideration the state of Nigeria's gas infrastructure. Also,

(a) There is no timeline for the elimination of gas flaring and

(b) Flaring penalties are now solely left to the Minister to determine through regulation. These provisions are too vague to suitably police gas flaring; an area equally vital to economic/environmental prosperity or failure.

Transitional Timelines and Arrangements for the Implementation of the PIB:

Section . 201, 275- 276 of the PIB:

What the PIB says

S. 152 Transfer of assets and liabilities

(10) The assets of the subsidiaries of the NNPC listed under the Public Enterprises Privatisation and Commercialisation Act shall be de-listed from the Effective Date of this Act and the power of attorney earlier assigned to the Bureau of Public Enterprises shall stand vacated.

Our Interpretations

(a) The Bill does not provide a clear roadmap for the commercialization/privatization of the NNPC or timelines for attendant transition and implementation procedures.

(b) Also, the Bill gives the Minister responsibility for carrying out these reforms and expressly excludes the National Council on Privatization and the Bureau of Public Enterprises from its ongoing of overseeing all processes concerning the privatization and commercialization of government-owned agencies, in line with the Privatization and commercialization Act.

Transparency Provisions:

Ss. 33, 63, 92,139 of the PIB:

What the PIB says

S. 63 Power to accept gifts

(1) The Agency may accept gifts of money or other property upon such terms and conditions as may be specified by the person or organization making the gifts provided such gifts are not inconsistent with the objectives and functions of Agency under this Act

Our Interpretations

The Bill allows the new regulatory agencies to receive gifts of money or property, provided such gifts are consistent with the objectives and functions of the agencies. This is a vague provision which contradicts the Bill's intent to foster transparency and accountability in the Sector. This could compromise the integrity and objectivity of the agencies, and weaken the admirable qualities of the Bill.

Lack of Clarity in Proposed Institutional Framework: Part II of the PIB:

9

Section. 6(1) (g)-(i), Section 191 of the PIB:

Our Interpretations

- **The proposed dismemberment of the NNPC into different entities begs additional elucidation. The PIB establishes 9 institutions. The companies that will inherit the NNPC's assets now consist of (i) the National Oil Company (NOC), (ii) the National Gas Company PLC (NGC) and (iii) the National Petroleum Assets Management Company LTD (NPAMC). The ownership structure and allocation of assets amongst the institutions still require further clarification in the Bill. Corporate governance of the companies, prior to privatization, is not thoroughly addressed.**

Other concerns raised by the PIB in its current state are:

- The Bill fails to provide clear provisions on the shareholding rights of government, or address the composition of the NOC or NGC boards and exposes the companies to no direct legislative oversight;
- There are also no precise declarations on how the NOC and NGC would fund their operations;
- The Bill does not discuss the process of domestic sale of crude oil, which is currently handled by the NOC;
- The regulators do not appear to have sufficient independence to effectively carry out their functions and are subjected to major Ministerial supervision, which could introduce far-reaching political considerations into decision-making.

Exclusion of Agencies from the PPA & FRC Section 124 of the PIB:

10

Section. 6(1) (g)-(i), Section 124, Section 191 of the PIB:

What the PIB says

S. 124 Exemption from certain existing laws
The Management Company to be established shall not be subject to the provisions of the Fiscal Responsibility Act, 2007 and Public Procurement Act, 2007

Our Interpretations

The approach of removing these agencies from the Public Procurement Act or Fiscal Responsibility Act requires qualitative argument.

This should not happen, as transactions within this space should carry no exclusive tags as regards procurement. Full respect must be accorded to institutions that provide checks and balances and agencies must remain obliged to the former, in the spirit of transparency.

The exclusion of the National Petroleum Assets and Management Corporation from current procurement and fiscal responsibility laws, as stated in Section 124, tramples on the need to ensure that the same broad rules apply to an investment vehicle of the Federal Government. That the National Oil Company and Nigeria Gas Company are also exempted calls for an objective explanation of the rationale behind this particular pronouncement.

Other Issues

Our Interpretations

11

Refineries

The Bill does not provide sufficient information on the refineries or their medium to long-term development, maintenance and performance.

12

Public Registry

To properly sanitize the Nigerian oil and gas sector, a definitive guide has to be released, documenting the ownership of oil blocks and mining leases within the upstream structure, as well as all beneficiaries of oil blocks. A categorical, detailed guide into the bidding process, tendering and payment of signature bonuses should also be provided, to bring down the steel curtain enshrouding the industry.

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Audit Institutions

As a whole, the PIB needs a better definition of roles within entities, especially regarding audit agencies such as the Nigerian Extractive Industry Transparency Initiative (NEITI), the Nigerian Environmental Standards and Regulations Enforcement Agency (NESREA), and the Office of the Auditor-General of the Federation. The roles of these agencies to clearly stated to check abuse of processes, specifically those concerning oil acreages, the subsidy system, and also the evaluation of contractual obligations.

14

Metering

With the rising scale of oil theft and inaccurate data persistently emanating from the industry, the PIB has to come with adequate defined measurement mechanism. This Bill should make a break with the past and have provisions that mandate clear, and unambiguous yardsticks which will accurately and regularly appraise production, supply and sales data. This would aid the determination of the amount of crude pumped at the wellhead; the back bone of this industry. In addition, the PIB should make a provision for a pipeline-monitoring framework, to ensure that any differences at the terminal end are grossly minimal.

FIX OUR OIL
PASS THE PIB NOW

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