



SOCIAL ACTION BRIEFING

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The Amended 2012 Petroleum Industry Bill (PIB)



**Opportunities and Limitations for the
Environment and Development**



1. Introduction

The Petroleum Industry Bill (PIB), is an important effort to enact a single legislation that addresses the legal, fiscal and regulatory frameworks for the oil and gas industry in Nigeria. It aspires to regulate the different sectors of the industry in the country with the aim of making petroleum resources more positively impactful to the country's overall growth and development.

First introduced in 2008 by the Yar'adua administration, the bill has suffered several setbacks in Nigeria's parliament even as it has undergone several alterations and amendments. Perceived strong economic and political interests have stunted the progress of this bill making it one of the oldest bills pending in the chambers of Nigeria's National Assembly.

Civil society and community groups have raised strong issues of concern on the process and content of the PIB while advocating for a bill that promotes transparency and accountability in the affairs of the industry, recognizes and upholds the rights of host communities as well as protects the environment and supports standard best practices. They also advocated for its expedited consideration and passage.

In 2012, the Senate and House of Representatives (respectively), instituted committees on the PIB to review the bill and make recommendations for amendments. In 2014, the committees submitted their reports to the National Assembly after holding public hearings and collating views from stakeholders. Based on the reports, the Assembly introduced significant amendments to the bill and made far-reaching recommendations that addressed some of the initial concerns of communities and civil society groups.

This briefing takes a look at these amendments and recommendations, analyzing them to highlight their strengths and/or inherent weaknesses in order to engender a fair and standard legislation that governs the industry.



2. General Synopsis

It is encouraging to note that the new amendments to the bill featured and incorporated some of the salient issues advocated for by rights groups such as Social Action.¹ These issues include the promotion of host community rights (such as providing clear operational framework for the Petroleum Host Communities Fund, defining status of host communities etc.), the pruning of the overwhelming ministerial powers, transparency (repeal of the retrogressive confidentiality clauses; open contracts etc.), environmental remediation and protection in varying degrees and forms.

There are, however, critical aspects of the bill which the new amendment sadly failed to address to bring the PIB into conformity with international best practices. For example, despite the clear expectation of Nigerian citizens for the outlawing of gas flaring due to its deleterious effect on humans and the environment, action to stop the pollution is again being left to the discretion of the Minister of Petroleum. We proceed to outline other fundamental flaws as well as strengths of the PIB as amended, and proffer recommendations for further reviews.

3. Institutions and Objectives

Poor regulation of the oil and gas industry in Nigeria stems from weak institutions and laws. The duplicity of agencies has been prevalent in the industry with often overlapping and conflicting roles. With agencies not always taking responsibility at critical moments, buck-passing is done often at great costs to the economy, environment or the citizens. This problem is not ameliorated by the open-ended powers which the federal minister responsible for petroleum has in determining virtually every issue or transaction in the sector. The minister wields a lot of power in award of oil leases or licenses, appointment to boards and parastatals, and penalization for offences. Quite often, the exclusive power of the minister retards progress in the sector and strongly compromises transparency and accountability as it creates room for power-abuse with impunity.

¹ SDIC 2009. *Communities And The Petroleum Industry Bill*. Available at <http://saction.org>
 SDIC 2011. *Issues Of Concern: Joint Position Paper On The Petroleum Industry Bill (PIB)*. Available at: http://saction.org/PIB/pib_joint_position_paper.pdf
Memorandum To The Joint Senate Committee On The Petroleum Industry Bill (PIB) 2012, by The Social Development Integrated Centre, Social Action. (18-19 July, 2013).
Memorandum On The Petroleum Industry Bill 2009 submitted To The House Of Representatives By Civil Society Working On Extractives Revenue Transparency, Accountability & Good Governance in Nigeria. 28 July, 2009.



- * Sections 5, 6(g), 8, 9 and 11 of the amendment prunes down some of the extensive and exclusive powers of the minister such as to grant, amend, renew, extend or revoke petroleum licenses. It transferred some of these powers to the supervising agency or body (the Petroleum Inspectorate and the Downstream Petroleum Regulatory Agency). This is beneficial as it would strengthen the institutions in the industry shielding them from the overbearing influence and control of the minister and thus making them more effective.
- * Sections 13, 14 and 43 of the amended bill also streamlines bodies and institutions in the industry scrapping the multiple regulatory departments, parastatals and agencies to create two distinct bodies; the *Petroleum Inspectorate* (for the upstream industry) and the *Downstream Petroleum Regulatory Agency* (for the downstream industry). This step will boost better co-ordination and oversight of the industry.

3.1 Other Provisions

- * The bill's amendment scraps the Nigeria National Petroleum Corporation (NNPC); establishes *National Oil Company* as a partly public liability company (Section 181).
- * Establishes a new body; *Frontier Exploration Services* to explore/exploit for petroleum resources within Nigeria's frontiers (Section 74).
- * Deregulates the petroleum industry (Section 254).
- * Privatizes (existing) refineries (Section 255).
- * Provides for establishment of private refineries (Section 256)
- * Provides for establishment of independent pipelines, depots and oil and gas facilities (Section 258).

With the drive towards total deregulation of the petroleum industry, which the amendments express, there doesn't seem to be provisions for protecting Nigerian citizens from the excesses of private accumulators. In particular, there is concern that Sections 254, 255 and 256 may be against the spirit of Sections 16 (1)c; 16(2)b; and 16(2)c of the 1999 Constitution of the Federal Republic of Nigeria which states that Government shall manage and operate the major sectors of the economy; that the material resources of the nation are harnessed and distributed as best as possible to serve the common good; and that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or group.



3.2 Objectives

Part 1(e) of the bill advances objective of establishing "commercially - oriented and profit driven oil and gas entities". This negates the principles of the African Mining Vision, (AMV) as well as the ECOWAS Mineral Resources Development Policy (MRDP). Both the AMV and the MRDP proceed with the understanding that natural resources governance should prioritize the wellbeing, interest and overall development of a people over and above pecuniary gains and monetary profits. There are positive (albeit, vague in some cases) provisions in the PIB amendment in relation to environmental protection and management. For example, Section 212 provides for the requirement of a field development plan for commercial discoveries.

4. Environment

The development plan is to meet adequate health safety and environment standards. In addition, the plan must contain an approved environmental management plan and provide for the elimination of routine gas flaring. According to Section 233, the licensee's environmental management plan which is to be submitted to the Inspectorate for approval must contain information on environmental and social impact of the proposed oil and gas exploration and exploitation.

Interestingly, one of the grounds for revocation of license or lease, provided in the bill is where a licensee or lessee fails to implement its environmental management plan in line with good oil field practice. Operations of oil companies are expected to be in line with good oil field practices as expressed in Section 326 of the bill. Also, Section 327 places an obligation on oil and gas companies to use the "precautionary approach to environmental challenges" and to develop and use "environmentally friendly technologies for exploration and development in Nigeria." Section 326 obligates all industry operators to comply with "internationally acceptable principles of sustainable development which includes the necessity to ensure that the constitutional right of present and future generations to a healthy environment is protected".

These provisions (Sections 325, 326 and 327) require compliance with internationally accepted environmental law principles of sustainable development, inter-generational and intra-generational equity and the precautionary principle, but failed to define these principles. Not being properly defined, it will be difficult to enforce and apply such provisions in the PIB.



Also Section 292(b) provides that *"every company engaged in activities requiring a license, lease or permit in the upstream and downstream sectors of the petroleum industry shall encourage the use of environmentally friendly technologies for exploration and development in Nigeria"*. The mere 'encourage' in the provision is weak and non-binding and thus prone to flouting; it should be replaced by an enforceable clause as the subject matter is fundamental to the protection of lives and preservation of the environment.

Other specific areas on the bill's amendment on environment include;

4.1 Environmental Rehabilitation

Sections 237(2)(3)(4)(6)a,b,c,d provide for the proper decomposition and winding down of petroleum wells and installations upon termination of drilling. This is against the practice by oil and gas companies operating in Nigeria of haphazard abandonment of oil wells or other similar creations upon cessation of oil flow from such facility.

Section 328 obligates oil and gas operators to rehabilitate and restore the environment; 328(b) specifically provides that;

"As far as is reasonably practicable, rehabilitate the environment affected by exploration and production operations, whenever environmental impacts occur as a result of licensees' and leasees' operations; to its natural or pre-existing state before the operations or activities as a result of which the environmental impact occurred".

These provisions portend hope for the environment including that of the degraded oil-bearing communities of the country. However, the clause; *"as far as reasonably practicable"* should be struck off as it would compromise the laudable intent of this provision. The bill still leaves more to be desired. There is no incorporation of the polluter-pays principle and it fails to remove the controversial provision on sabotage(s.328). And so, though it in a way removes direct responsibility of sabotage from host communities (as was obtained in the original PIB), transferring same to local and state governments of the concerned community may however be a short-circuited relief as these local or state governments would likely end up transferring these costs on local government or communities in form of deductions or levies etc. Section 328(4);

"Where the act referred to in sub-section (3) of this section is found to have occurred as a result of sabotage, costs of remediation and restoration shall be borne by the local governments and the state governments within which the act occurred"



This imposes a heavy burden on poor communities. The bill seems to hold them responsible once the oil operators allege sabotage until the contrary is proved. What the bill failed to put into consideration is that even where there is sabotage, it does not necessarily follow that it was an act of a member of the community.

Furthermore, where there is a dispute as to the cause of the act that has resulted in harm to the environment, the licensee or affected person or persons may refer the matter to the Agency for a determination and the decision of the Agency shall be final. Nigeria has been known not to have the capacity to call oil multinationals to order. Thus, making a determination of the cause of oil spill to rest on officials of the regulatory institution would on the long run, be detrimental to oil bearing communities. The section should be reviewed as it also amounts to an attempt to oust the jurisdiction of the courts.

4.2 Environmental Remediation Fund

Communities and its dwellers in Nigeria have since the inception of oil extraction in the country in the late 1950s borne the brunt of exploitation activities. Crude, associated gas and other oil related wastes and products have polluted land, air and waters in large scale leaving these barren and unproductive to farming or agriculture; the main source of livelihoods of dwellers of these areas. While noting the existence of corruption-ridden development intervention agencies, government has in the main gleefully collected royalties and rents including penalties and fees for gas flaring from the oil and gas companies. In the process, there is no real impact of measures to ameliorate impoverishment of oil bearing communities. Government is doing absolutely nothing to rehabilitate the degraded environment thus leaving the people at the mercy of oil and gas operations.

Several reports from studies and tests carried out on the environment in these communities reveal alarming degradation and pollution such as was described in the 2011 United Nation's Environmental Program (UNEP) report² on oil pollution in Ogoni land, which revealed unprecedented degradation and pollution of both land and surface water of the area. Yet, the Nigerian government scorns tangible material plans to comprehensively rehabilitate these degraded environments.

²UNEP.(2011). *Environmental Assessment of Ogoniland*. Available at http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf



It is therefore some level of succour that the PIB 2014 amendment in section 236 provided for an *Environmental Remediation Fund* for the remediation of environmental damage. The bill stipulates this as a condition for the grant of oil license:

- * *all oil licensees or leasees are to pay the prescribed financial contribution to the fund in accordance with guidelines to be issued by the petroleum inspectorate for the rehabilitation or management of negative environmental impacts of license or lease.*
- * *"upon the termination of the license or lease and after having complied with all possible surviving environmental obligations, any amounts remaining in the fund shall be returned to the licensee or lessee" (Section 236(6)). This provision is counter-productive; negative impacts of petroleum operations are known to last long after the operation(s) might have been terminated. It should therefore be struck off.*

5. Gas Flaring

The flaring of associated gas is an environmentally destructive act that has become pervasive in the Nigerian petroleum industry. For decades, natural gas, which is 'associated' with crude oil in the reservoir, is burnt off while crude is piped to export terminals. The gas that is flared in several locations in the Niger Delta area of Nigeria is injurious to both human and environmental health. Another sad fact is that the associated gas that is flared could be used to generate electricity and for other domestic and industrial energy uses in Nigeria, a country suffering from chronic power shortages and lack of energy access for the majority of the population.

Under the existing law (Associated Gas Re-Injection Act of 1979 Cap. A25, Laws of the Federation of Nigeria), gas flaring is illegal and the oil producing companies were given a deadline of January 1, 1984 to stop all gas flare or be made to pay penalty for breach of the law banning gas flaring. This is the intendment of Section 3(1) of the 1979 Associated Gas Re- Injection Act which provides:

Subject to subsection (2) of this section, no company engaged in the production of oil or gas shall after 1 January, 1984 flare gas produced in association with oil without the permission in writing of the Minister.



The Minister's permission is on a field by field basis and on fulfilment of certain conditions. And by section 4 of the law, the penalty for breach of section 3 is forfeiture of the concessions granted.

However, the power granted the Minister under this legislation has led to abuses with the Nigerian government continuing to grant permissions for gas flaring in perpetuity.

While Nigerians generally desire a clear ban on gas flaring, the PIB (amendment) 2012 seems to legalise gas flaring by virtue of section 315(5) which mandates the petroleum inspectorate to impose and collect fines for gas flaring. The bill, by this provision proscribes gas flaring on one hand while on another legalizes it.

Also, while the amendments to the bill appears to make some progress with curbing gas flaring in the country, this progress becomes however defeated by the non-provision for a definite date to outlaw gas flaring in Nigeria. The provision in the amendment which retained ending gas flaring is open-ended and at the discretion of the Minister as stated in section 310 "*natural gas shall not be flared or vented after a date (flare-out-date) to be prescribed by the minister...*" is sadly a fundamental flaw on the bill and a huge set-back on efforts at environmental health and sustainability. The implication is that with the repeal of the Associated Gas Re-injection Act by the PIB when passed into law, gas flaring will become legal in line with Section 310 pending the date to be prescribed by the Minister. This would usher in a regime of grave uncertainty.

Of strong note is the fact that the current PIB negates the good work which the House had done previously on the issue of gas flaring in Nigeria. It is on record that the House of Representatives had in March, 2010 overwhelmingly passed the bill for an *Act to Amend the Associated Gas Re-injection Act No. 99 of 1979 Cap. A25, Laws of the Federal Republic of Nigeria*. In adopting the landmark report of the committee, the House of Representatives courageously fixed December 2012 as the deadline for ending gas flaring in the country.

Under that bill, which could not become law (as it was not backed by the Senate), all companies were prohibited from engaging in gas flaring whether routine or continuous. It stipulated that

"...any company so involved shall be liable to a fine to be determined at the prevailing international gas market price and such fines shall not be counted as part of Production Sharing Contract (PSC) or Joint Venture (JV) obligations. Such fines shall be in addition to the penalty for flare".



It further provided that:

"any company that declares an incorrect gas flared volume shall be liable to pay a penalty fee of \$100,000 in addition to the payment of the difference of such declared volume at the prevailing gas market price".

These landmark provisions were recommended and passed by the House of Representatives; allowing the PIB to pass through with its current porous and opaque provisions on gas flaring is therefore tantamount to the House of Representatives reversing itself. In other words, the country would therefore not have made any progress with curbing gas flaring and ultimately pollution and degradation of its environment.

We recommend that the National Assembly insert a clear deadline in the PIB 2012 to end gas flares in Nigeria while stipulating very strict penalty, including the forfeiture of licenses for failure to put out the flares on the day so provided.

Section 316 provides for fines as penalty for continued gas flaring while Section 312(3) stipulates *imposition of a fine at the market value equivalent of the quantity of gas flared* for flaring gas "without permit under such circumstances" as listed in section 312(2).

There is a positive development in Section 315 of the PIB which provides for community or persons to report cases of gas flaring within their vicinity or environment. The bill stipulates in Section 315(2)(3)(4) binding obligation on the regulating body to act (on such report). Sadly, Section 315(5) of the provision removes compulsory obligation to penalize confirmed cases of the reported offense making it discretionary by the petroleum inspectorate. There is inherent weakness in this: compromised officials of the inspectorate could exploit this provision and shield offending entities from discipline. It is our view that *once it is ascertained that a petroleum facility is flaring gas, the stipulated penalty should be applied.*

Section 316(1)b provides for public disclosure by the Petroleum Agency of the daily fines for continued gas flaring. While Section 316(2) stipulates a jail term of three months for refusal to make public such gas flare report.

The Bill also provides incentives in forms of equipment tax waivers etc. to encourage operators to embrace zero-flare technologies.



6. Provision of gas for the domestic

Apart from associated gas which is mostly flared by oil companies, non-associated gas has been produced in Nigeria without flaring. The bulk of the non-associated gas is exported, while Nigeria does not have enough gas for local electricity generation and other domestic and industrial energy uses. A positive aspect of the PIB (amendment) 2012 is that Sections 216 and 304 make elaborate provisions for domestic gas availability through the framework of the National Gas Master plan.

These provisions impose domestic gas supply obligations on every petroleum mining lease. These provisions are necessary legislations for the availability of gas in the domestic market. Bill should further provide for licensees to first meet domestic gas demand requirement, before exporting. Sections 304 and 406 provides for incentives for domestic gas supply;

"A supplier of gas destined solely for the domestic market shall be entitled to claim production allowance (per PML)"

Clause b Section 406

7. Petroleum Host Communities Fund

Section 142 of the amended PIB provides for the establishment of the Petroleum Host Communities Fund (PHC Fund), its purpose and beneficial entitlements to the communities. According to the provision, the fund shall be utilized " to ameliorate the impacts of petroleum operations on host communities".

On this matter, the amended bill is an improvement on earlier versions of the bill that created a lot of opaqueness around the equity fund owing to non-clear definition of status of host community. Also by virtue of s. 118(6) of the original bill, the administration, management and disbursement of the PHC Fund was political, non-transparent and open to abuse and manipulations as it is entirely within the discretion of the Petroleum Minister.



The original bill further set aside a staggering 10% of the host community fund for what it called its administration and management. It is thus encouraging that the PIB committee reviewed these grey provisions in line with the recommendations which community and civil society groups such as Social Action made in their submissions including memoranda to the PIB committees on the issues.

Accordingly, section 144 of the amendment, now clearly designates entities obligated to make contributions to the fund; *"...all companies involved in upstream and downstream petroleum operations or both to remit monthly "impact funding" amounts to the host community fund based on the following;*

- o *per hectare of lease area producing well.*
- o *diameter per meter length of each flowing gathering line, gas pipeline or oil product pipeline.*
- o *per square meter area occupied by any operational tank farm, filling station or similar facilities including oil and gas related.*

Also, amended bill stipulates the status and qualification as host community. It states that qualification for entitlement (shall be) based on the location of a community in;

- o *Petroleum Prospecting licenses.*
- o *Petroleum Mining leases.*
- o *Pipeline corridors.*
- o *Impact areas of Onshore petroleum facilities and*
- o *Impact areas of shallow water, petroleum wells, pipelines and facilities.*

Additionally, the amended bill in Section 145(4) abrogates the 10% provided for in the original bill as administrative cost for the fund stipulating rather that; *"...not more than two percent of the fund shall be used by the Board to administer the PHC fund"*. Despite these positive improvements, there however remains grey areas to be considered; for example, on the composition of the management board for the PHC Fund, apart from six persons said to be community leaders from the six geo-political zones of the country each, there is no community or civil society representative in this board. Also, the provision of the bill stipulating the transfer of funds to "Community Organizations" did not define what constitutes a 'community organization' to be qualified as recipient of this fund. This non-clarity is bound to create crisis in communities as amorphous organizations could spring up and begin to make claims to the funds. The Bill should clearly define the parameters for designation as a community organization.



Other significant provisions of the amendment on the host community fund include:

- *the PHC fund to be managed and administered by a "Board" which shall consist of (section 146);*
 - * *a Chairman*
 - * *an Executive Secretary*
 - * *six persons from the six geo-political zones*
 - * *six community leaders from the six geo-political zones*
 - * *one representative each of the upstream and downstream companies and*
 - * *Directors-General of the Inspectorate and the Agency.*
- *board appointment to be for five years only.*
- *PHC fund to transfer funds directly to community organizations.*
- *allocation procedures and formula to be established in subsidiary regulation to be made by the minister.*
- *impact funding shall not relieve a company from paying for any specific damage done to property or health of any party as a result of the upstream and downstream petroleum operations (Section 144(1)e).*
- *any stoppage of upstream or downstream petroleum operations of a petroleum asset or facility within a host community as a result of no fault of the operator shall deny such community of its entitlement to the PHC fund accruing from such asset or facility for the period in which such was not in use. Section 144(4). This provision also creates worry; it did not specify any way or means of determining the fault for stoppage. It did not also specify who is or shall be responsible for determining what constitutes a fault or otherwise.*
- *the annual audited financial report of the fund shall be published in the website of PHC fund not later than six months of each preceding year.*



8. Compensation, Protected Objects

Although the bill's amendments have introduced some helpful provisions to guarantee payment of fair and adequate compensation as advocated for in Social Action's Memorandum and other communication to the National Assembly on the issue,³ by including compensation for those whose land would be damaged or acquired for oil and gas activities as well as the participation of owners of properties, building and/or other objects of commercial value as spelt out in section 231;

In the course of upstream petroleum activities, no person shall: (a) injure or destroy a tree or object which is: (1) of commercial value; (ii) the object of veneration to the people resident within the license or lease area, as the case may be; (b) damage or destroy any building or property; (c) disturb or damage the surface of the land or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands. (2) A licensee or lessee who causes damage pursuant to subsection (1) of this section shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.

fulfillment of the intent of these provisions is however threatened by the letter and principle of section 232 subsection 1, which states that;

The amount of compensation payable under section 231(2) shall be determined by the inspectorate in consultation with designated persons and representatives of the person whose protected objects, property or land have been damaged and the licensee or lessees in accordance with regulations made by the minister on the advice of the inspectorate.

The concern for communities is a situation where the minister makes regulations that suit the Nigerian State and the Oil multinationals but unhelpful to them.

Our view is that the Nigerian Minerals and Mining Act (NMMA), 2007 (which guides the solid minerals sector) offers the minimum standard in dealing with communities on issues of land rights and compensation. It is our recommendation, therefore, that the provisions of the NMMA should be replicated in all extractive industry laws, including the PIB.⁴

³SDIC 2011. *Communities And The Petroleum Industry Bill*. Available at <http://saction.org>. Memorandum To The Joint Senate Committee on Petroleum Industry Bill (PIB), 2012 by The Social Development Integrated Development Centre (Social Action). 18-19 July 2013. *Issues Of Concern: Joint Position Paper On The Petroleum Industry Bill (PIB)*. Available at: http://saction.org/PIB/pib_joint_position_paper.pdf

⁴ This view was adopted by the Nigerian National Conference, 2014



Some of the more positive provisions of the NMMA, 2007 are as follows: Section 3(1)(c) of the NMMA, 2007 provides that:

- 1) *No mineral title granted under this Act shall authorise reconnaissance, exploration or exploitation of mineral resources on, or in, or the erection of beacons on or the occupation of any land*
 - a. *occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or situated within fifty metres of a railway, or which is the site of, or within fifty metres of, any Government or public building, reservoir, dam or public road.*

With respect to rent on land, the NMMA makes it clear in Section 102(b) that the owner or occupier of the land must participate in determining the annual surface rent for the use of land for mining operations.

In Section 107 of the NMMA:

"A holder of the Mineral title may, in addition to any other amounts payable under the provision of this Act and subject to valuation report by a Government licensed valuer, pay to the occupier of the land held under a State lease or the subject of right of occupancy

- (a) *reasonable compensation for any disturbance of the surface rights of the owner or occupier and any damage done to the surface of the land on which the exploration or mining, is being or has been carried; and*
- (b) *in addition pay to the owner of any crop, economic tree, building or work damaged, removed or destroyed by the holder of the mining title or by any of its agents servants, compensation for the damage, removal or destruction of the crop, economic tree, building or work.*

The above provisions for compensation under the Nigeria Minerals and Mining Act, 2007 creates more certainty on how the amount of compensation would be arrived at than the provisions of the PIB.



9. Right to Free and Prior Consent

While petroleum and solid minerals are both natural resources exploited in the country, regulations for petroleum resources exploitation has been most oppressive and skewed. Unlike the legal regime under the PIB, the Nigerian Minerals and Mining Act (NMMA), seeks to protect the rights of land-owners even before the granting of mining titles to mining companies. The mining law stipulates that government must obtain the consent of the private owner of land before mining title would be granted. In the event that the landowner refuses to give consent, no mining operation can take place in such land, as stated in Section 100 of the NMMA:

When an application is made for Mineral title in respect of an area which includes any private land or land occupied under a state lease or right of occupancy, the notice of the application, shall be given in the prescribed manner to the owner or occupier of the land and consent obtained before the license is granted, otherwise the license may be granted with exclusion of the private land in question.

These principles of community prior and informed community consent, which are internationally recognized best practice in the exploitation of natural resources are lacking in the PIB as amended. Individual or community lands could be leased out to entities without either the knowledge or consent of the owner(s) of such land. This situation is further aggravated by virtue of the obnoxious Land Use Act Decree Nos. 6 of 1978 (now Land Use Act, Cap. L5 Laws of the Federation of Nigeria 2004). The principles of free, prior and informed consent as obtainable in the Mining Act, 2007 should also be inserted in the PIB accordingly.

10. Transparency and Accountability

The bill professes objective of governance and management of petroleum resources in Nigeria in strict compliance with the principles of good governance, transparency and sustainable development (Section 3).



It stipulates public input and involvement in key actions of the sector (Sections 6, 5, 8, 178, 179).

"The minister shall prior to making any regulation under this Act, conduct a public hearing..." (Section 8).

Sections 92, 93, 6, 5, 8, 178 and 179 make compulsory public disclosure provisions:

"Agency shall publish its financial report on its website..."

This provision is healthy for accountability and proper management of public funds.

" Every company involved as licensee, lessee or contractor shall for each license and each lease provide a yearly summary of all revenues and costs on which the payments under subsection (1) of this section were based within three years after the expiration of each calendar year..." (Section 207(4)).

Section 207(1) repeals Confidentiality (secrecy) clause..

"Confidentiality clauses or other such clauses as contained in licenses, leases, agreements or contracts for upstream operations that are for the purposes of preventing access to information and documents by third parties in respect of any payments or royalties, fees and bonuses of whatever nature and taxes shall be void and of no effect". Section 207(1).

These are positive steps that should be firmly retained as they will go a long way in making the conduct of affairs of the sector which had hitherto been shrouded in vicious secrecy more transparent. Section 207(7) criminalizes non - disclosure of information in this regard.

Despite the laudable provisions mentioned above, there are others inserted into the PIB as amended that could jeopardise the quest for accountability in the petroleum sector. For example, unjustifiable tax havens and waivers as provided for in sections 186, 190 and 197 of the bill are hurtful to the nation's economy. Also, there are provisions of the bill (Section 182 etc.) that exempt some entities such as the 'to be established National Oil Company' from the application of the Fiscal Responsibility Act, 2007 and the Procurement Act, 2007. These exclusions negate the transparency and accountability objectives of the PIB.



11. Joint Ventures

The PIB amendment by virtue of section 394(b) reverses the trend and current practice by joint venture partners of calculating and deducting production sharing first before determining taxes and royalties. Section 394(b) states that

"Under any production sharing contracts, royalties shall be determined first and subsequently production sharing..."

This is a very laudable provision and should be firmly retained. This provision would save the country from the current economic sabotaging practices prevalent in the current production sharing contracts (PSCs), Joint Venture Contracts (JVCs) etc. through which oil and gas entities rip the nation of the economic benefits of its resources by systematically setting any figure as their production costs and deducting this before calculating and paying taxes and royalties to the Nigerian state. This deplorable practice has for decades ripped the country of due benefits from its oil and gas resources.

Conclusion

While the PIB amendment 2012 has good and progressive provisions which can potentially make the oil and gas resources more impactful for the country's overall development and its citizens generally, we have indicated in the above passages some of the provisions in the bill which could retard these potential gains.

As we have also noted above, the PIB expressed a pursuit to build a commercially vibrant and profit-making petroleum industry. However, private profit should be made without over-concentrating control of resources and wealth in the hands of a few. The objectives of commercialising and creating profitability must be structured to make them align with the goals of using natural resources for the overall development of Nigeria and for the benefit of the citizens of the country.



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