AN EXAMINATION OF THE PETROLEUM INDUSTRY ACT 2021 AND THE QUEST FOR A NEW NIGERIA*

Abstract

The present paper attempts to examine the philosophy behind the various measures which have been put in place to transform the petroleum sector in Nigeria by successive administrations to attain global best practices in the oil and gas sector. The high-point of the drive was achieved most recently when President Muhammadu Buhari finally assented to the Petroleum Industry Bill ('PIB') into the Petroleum Industry Act ('PIA') on 16th August, 2021. Before now, the petroleum sector reform agenda had been in the offing for at least some 30 years. The Oil and Gas Sector Reform Implementation Committee (OGIC) inaugurated in 2000, led to the first National Oil and Gas Policy which identified the need to separate the joint commercial and regulatory roles fulfilled by Nigeria National Petroleum Corporation (NNPC). Thus with the unveiling of the new Act, experts have asserted that a new window has been opened to ignite massive investments in the petroleum sector with several other multiplier effects, including price stabilization. However, some stakeholders were of the view that the PIA has failed to address the nagging issue on adequate commitment to climate change and energy transition in line with the Paris Agreement. Also condemned was the 30% slated for the Frontier Oil Exploration Fund whereas the host communities rose with one voice to oppose the 3% settler's annual operating expenditure dedicated to them in the new Act, and thus requested for upward review. In that light, the present paper is an academic contribution to firstly recapture the pre-PIA era together with the expectations of the new law on one hand, and to highlight, on the other hand, the criticisms trailing its inauguration with a view to forging a way forward.

Keywords: petroleum, industry, climate, exploration

1. Pre- PIA Era in Nigeria:

The challenges that Nigeria has faced in fully developing its natural gas resources are complex and in many cases extrinsic to Nigeria[1]. Nigeria must compete for international capital and technology, and thus the preponderant view is that projects will only be sanctioned if would-be sponsors consider that there is sufficient demand to justify developing the supply[2]. More broadly, the central role of NNPC in Nigeria, oil and gas exploration, development and production activities, including as a joint venture partner to domestic and international oil company participants cannot be underplayed in understanding the progress of the sector to date, and its future direction of travel. According to the auditing and advisory firm, Keptigs, previous attempts in the past[3] to form the petro sector failed because of factors such as lack of ownership, misalignment of interests between the National Assembly and the Executive, perceived erosion of ministerial powers, stiff opposition by the petroleum host communities and push back by investors on the perceived uncompetitive provisions in those versions of the various bill introduced. Prolonged uncertainly had humongous costs in lost income and foregone investments. According to an industry source[4], of the $70 billion Foreign Direct Investment (FDI) that went into the oil and gas sector in Africa between 2015 and 2019[5]. For instance, a mere four percent came to Nigeria- despite the fact that Nigeria remains the largest producer on the continent[6]. According to Nigeria Bureau of Statistics (NBS)[7], of the total FDI of $9.680 billion that flowed into Nigeria in 2020, a paltry $53.5 million (0.55%) went into oil and gas[8]. Potential investors have stayed actions as would be expected of rational economical actors under conditions of extreme uncertainty. Thus we have been the worse for it. The industry has undergone profound transformation since

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[1] H McArdle & T Edwards, 'Nigeria's Petroleum Industry Bill: the path to Reform and Prosperity', *The Guardian Newspaper,* 6th August, 2021, centre-spread.

[2] *Ibid.*

[3] JT Adam, Petroleum Reform Agenda in Nigeria- Challenges and the way forward (2021) Vol. 3(4), *Tax Law Journal* 51-55.

[4] AS Adamu *et al,* challenges of Unbundling Petroleum Sector in Nigeria available at Oberon Source bed org/r/=8126037c/14/nw=espv/cgr-bin/wpp-pdf. Accessed on 21st May, 2021 at 2.03am.

[5] *Ibid.*

[6] *Ibid.*

[7] NBS Handbook on FBI in Nigeria (2016-2020) April- July Edition, 2020, pp.79-91.

[8] *Ibid* pp. 83-87.

oil was first discovered in Oloibiri, Delta State, in 1956[9]. Novel exploration techniques and the new technologies such as frocking have brought in new players. Thus there has been a tendency for supply to outstrip demand with OPEC's cartel power being eroded[10].

2. Emergence of PIA

After several years of missteps, intrigues, legislative summersaults, and restarts[11] the nation's President, General Muhamadu Buhari finally signed the Petroleum Industry Bill (PIB) into the Petroleum Industry Act (PIA)[12], We now have an Act providing for legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the Host Communities, and for related matters[13]. To state that this very important Act has been long in coming is to oversimplify the obvious. From the time the legislation was conceived, some 20 odd years ago, through the different transmutations, it underwent[14], and particularly following its recent passage into law and sequel to the presidential assent. Upon the development, there has been rave reviews and conversations by stakeholders around the contents of what has now finally become the PIA[15]. Perhaps, the most focal of the contentions attracting reviews is the 3% settler's annual operating expenditure to be dedicated to the host community trust funds[16] and also, the 30% fund for the frontier basin exploration development, which some commentators have described as a cover for defrauding the nation[17].

3. General Overview of PIA

The new Petroleum Industry Act contains a total of 319 sections and chapters with a categorization into numbered parts, Chapters 1 provides for the Governance and Institutions. Part 1 of chapter 1 containing sections 1 and 2, provides for the Vesting and Objectives; Part II (section 3) provides for Powers of the Minister while Part III, which covers sections 428, provides for the Nigeria Upstream Regulatory Commission. Part IV which contains sections 29-52 makes provisions for the Midstream and Downstream Petroleum Authority. Part V is the last part of the characterization and is dedicated to the Nigerian National Petroleum Company Limited and has a total of 13 sections (i. e sections 53-65). Chapter II of the PIA is dedicated to Petroleum Administration generally. Part I thereof from sections 66 and 67 contains General Administration – objectives and Management of the Petroleum Resources. Part II straddles section 68 to 110 and makes significant provisions for Administrations of Upstream Petroleum Operation and Environment. Part III which begins with section III and ends with section 124 focuses on the General Administration of Midstream and Downstream Petroleum Operations. Part IV is dedicated to the Administration of the Midstream and Downstream Gas Operations from sections 125-1755. Part V is for Administration of Midstream and Downstream Liquid Operations and addressed in sections 174-208. Other matters related to the Midstream and Downstream Operations are captured in Part VI from sections 209 to 215 while part VII provides for the Common Provision for Upstream, Midstream and Downstream Petroleum Operations in sections 216-233. Chapter III of the Act is the chapter for the Host Community. Packed in sections 234 to 357, it includes the objectives contemplated in introducing this segment of the Act, including methods, and procedures necessary for the implementation of the aims of the drafters of the Act and how to bring the benefits envisaged to the traumatized communities hosting the petroleum assets and operation. Creation of trust funds, sources of funding and such other important provisions necessary are also contained in this part. Petroleum Industry Fiscal Framework is contained Part 1V of the PIA. This chapter contains a total of eleven parts. Part I provides for Objectives and Administration aspects in sections 258 and 259, while sections 260 to 266 are dedicated to Hydrocarbon Tax. Part III is for the Ascertainment of Chargeable Tax (sections 267 and 268), whereas sections 269 to 272 is Part IV and centres on the Ascertainment of Chargeable Profits and Consolidation for Tax Purposes. Part V has Chargeable Persons in sections 273-276 while sections 277 to 287 are for Part V and it is entitled Applicability, Accounts and Particulars. Part VII contains sections 288-289 and it is for Appeals in respect of the Taxes. Part VIII is entitled "collections, Recovery and Repayment of Tax" and covers section 290-296. For Offences and Penalties, Part IX covers section, 297-301, while the

[9]S Guru and A Chamberlain on Petroleum Discoveries and Development in Nigeria via http/Www http://Www.TaxfoundationOrg/Blog/Tan-Principles-Of-Exploration-And-Development..Accessed on 29th at July, 2021.09pm.

[10] *Ibid.*

[11]P Olaoye, 'Nigeria: Behold the Brand New Nigerian Industry Act, 2021', *The Daily Trust Newspaper,* 20th August,2021, book-page.

[12] F Adesina, 'Buhari okays PIB into law today; *The Guardian Newspaper,* 16th August, 2021, front-stage.

[13] Petroleum Industry Act (PIA) LFN 2021 sections 4-28.

[14]*Op cit* The Guardian Newspaper front-page.

[15] *Ibid.*

[16] Op cit PIA chapter III sections 234-357.

[17] *Ibid* PIA Part IV sections 258 and 25.

lone section 302 is the Part X and provides for Application of Companies Income to Petroleum Operation. Chapter IV concludes with Part XI which is General Provision tucked into sections 363-306. Chapter IV is dedicated to the Miscellaneous Provisions which is in sections 307 to 319.

4. Mandate of the PIA

The ambitions of the Government are to attain 40 billion barrels of reserves and productions levels of four million barrels per day[18]. The PIA aims to drive that agenda. The PIA re-affirms the oversight and supervisory role of the Minister of Petroleum in driving government policy in the sector. The new provisions curtail the powers of the Minister in approving or revoking an oil license[19]. The Minister now has to act based on recommendation from the new Downstream Commission[20]. The new Act prescribes 30% of NNPC profits to fund exploration activities in "frontier basins[21]". Thus the new Act calls for setting up of a Nigerian Upstream Regulatory Commission (NURC)[22] to enforce, administer and implement laws, regulations and policies covering upstream petroleum operations while at the same time prescribing a creation of a Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)[23] for regulation of midstream and downstream operations. The new Act also requires that the Minister of Petroleum incorporates the NNPC into a Limited Liability Company with 100% Federal Government ownership not later than 6 months[24] after the coming into the effect of the new legislation. The new entity shall operate in accordance with the Companies and Allied Matters Act (CAMA)[25]. Other important aspects of the new Act include its provisions on finance, taxation, environment and centre gas supply, and regulation on gas-flaring.[26] Tax and finance provisions have been streamlined to ensure greater transparency. The Upstream Regulatory Commissions is empowered to monitor and ensure compliance with environmental regulation[27]. Thus, operators must submit environmental plans for both prevention and remediation on environmental pollution. The new Act further prohibits[28] gas-flaring, except under specialized condition which include (i) emergency (ii) exemption expressly granted by the Commission, and also, (iii) acceptable safety requirements under established regulations. While the industry will operate on a free market basis in terms of demand and supply, operators will have to give some considerations to ensuring adequacy of supply to the domestic market and local refineries. The new Act frowns at monopolistic behaviour while invoking the rules on free and competitive market forces and demand as contemplated by law to ignite for fair market competition

5. Perceived Grey Areas of PIA

The PIA seems to run short in many key areas; for instance, there is no evidence of adequate commitment to climate change and energy transition in line with the Paris Agreement[29]. The present authors would have loved to see the outlawing of gas-flaring altogether[30]. As we are all aware, the hydrocarbon industrial civilization that we have known for more than a century is now in retreat, thanks to global protocols on climate change[31]. Advanced industrial nations have given deadlines to their auto manufacturers to transition from petrol to electric vehicles[32]. That is true of Daimler-Benz as it is also of Volkswagen, Nissan, Toyota, Renault, Peugeot and Tata. Automobiles account for 70% of the market for oil. The perhaps the writing on the wall is clear. Globally, oil might continue to be important for another decade or two. But its sun has well gone past it zenith, thus the signs are very glaring[33].

[18] *Ibid* 2021 sections 4-28..

[19] O Marlafia, 'Unveiling Ambitions of Government on Petroleum Reform Agenda (2021) 1 (8) Business Tax Law Journal, 63-67.

[20] Loc cit at PIA Part II sections 3.

[21] *Ibid* PIA Part IV sections 29-52.

[22] *Ibid* PIA chapter III sections 234- 357. 'Frontier Basins' include Benue Trough, Chad Basin and Sokoto Basin.

[23] *Ibid* PIA Part II sections 68-110.

[24] *Ibid* part VI sections 209-215; sections 216-233.

[25] TO Salah, Southern Govs Forum Opposes PIA, *The Daily Trust*, 20th August, 2021. P.18 (Southern States Governors Forum has raised objection to the provision of the PIA conferring a complete ownership of the newly template NNPC on only the federal government alone. The forum was of the opinion that the proceeds of the now defunct NNPC ought to be disbursed to all the three tiers of government).

[26] Companies and Allied Matters Act (CAMA) LFN (As amended) 2004.

[27] *Op cit* PIA Part I sections 260-266.

[28] *Ibid* PIA Part VIII sections 216-233.

[29] *Ibid* PIA Part III sections 267 and 268.

[30] Federal Competition and Consumer Protection Act (RCCA) LFN (Act Amended) 2019 section 27 (ii).

[31] *Op cit* Business Tax Law Journal 65-66.

[32] We condemned and in strong terms too, that the recently unveiled PIA has failed to address the nagging issue on environment degradation which hitherto was and still a common cause to the host communities. The authors hereby urge the legislature to amend the New Act to fill up that gap.

[33] Paris Agreement to the United Nations Frame-work Convention on Climate Change, 2015, No, 16-1104.

Part of the criticisms against the new law is the 3% allocation of operating expenditure to the host communities. The communities had demanded 10% allocation. But many individuals and groups in the Niger Delta[34] were surprised and shocked that the President Buhari still signed the bill into law without amending the percentage allocation for host communities. Thus, in its reaction, the Pan Niger Delta Forum (PANDEF), has been of the new that it was unfortunate that President Buhari went ahead to assent[35] to the PIB despite the overwhelming outcry and condemnation that greeted its passage by the National Assembly, especially with regard to the paltry 3% provision for the Host Communities Development Trust Fund and "the brazen appropriation of an outrageous 30% of NNPC Ltd profit for a dubious, nebulous frontier Oil Exploration Fund"[36]. Meanwhile, Southern governors had also rejected the 30% aside for oil prospecting in frontier basins[37]. They also opposed three per cent share proposed for the host communities[38]. The National Assembly had increased the original 20% that was canvassed for exploration of oil in the Frontier Basins to 30%[39]. Some of the basins include the Benue Trough, Chad Basin and Sokoto Basin.[40] Thus the huge allocation for oil exploration is, in spite of Nigeria's search for alternative sources of income, is still a mirage, not just to a few but also to the present authors.

6. Conclusion and Recommendations

We hereby advocate, and in strong terms too, that the success of the PIA shall very much depend on political leadership and commitment to its effective implementation. The competencies of the new regulatory agencies will be crucial. Nigeria's oil industry has historically been full of sharks, jackals, hyenas and vultures, both domestic and foreign[41]. For succeeding governments, the sector only served to fuel the kind of pork-barrel political economy that has become a curse rather than a blessing[42]. Thus much will depend on construction of the Articles for the envisioned NNPC Limited liability company. There are successful models that we can draw from, such include Saudii Aramco, Petronas of Malaysia and to a lesser extent, Petrobras of Brazil. Far from the Byzantine behemoth of grand larceny and sloth that the petroleum company has been for years, we must be ready now to reinvent the NNPC to become a commercial enterprise that is anchored on merit, excellence and professionalism .Thus, in our firm view, we therefore propagate that repositioning the oil sector shall be the very first step in the current [43]quest for a New Nigeria.

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[34] Paris Agreement plans to banish all but electric cares by 2020 available at https/www the rent org-the-paris-declaration on-electro-mobility-and-climate-pdf .Accessed on 26th September, 2021.
[35] *Ibid.*
[36] *Ibid.*
[37] B Okaba, Ijaw Congress Rejects PIA Intoto', *The Vanguard Newspaper*, 23rd August, 2021, pp. 24-27.
[38]E Clark, 'PANDEF shall Rise Against PIA', *The Daily Trust*, 29th August, 2021, p.21.
[39] *Ibid* p.26.
[40] G Umaru, 'Gov's Forum Kicks Against PIA', *The Punch Newspaper,* 25th August, 2021, front page.
[41] *Ibid* p.21.
[42] *Ibid* p.23.
[43] SPA Ajibode et al, Challenges Before Petroleum Peform Agenda (2020) vol. 9(2) *Tax law journal,* 19-27. Also available at http://www google. Com/urlpq=/oil and gas sector only served to fuel the kind of pork barrel political economy. Pdf. Accessed on 17th March, 2021 at 30.5am.