The Nigerian Petroleum Industry Bill 2012: Some Observations and Suggestions

By

Dr. Momodu Kassim-Momodu* and Professor Cornelius S. Nwajide**

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Abstract
It has been argued that both the Nigerian Petroleum Act and all the associated Petroleum regulations, other subsidiary legislation made under the Act, as well as the other pieces of petroleum legislation are now obsolete and outdated. It has also been observed that the present licensing regime, tax regime, permit to flare or vent gas, use and grant of tax holidays to multinationals, operational and organizational structure of Nigerian National Petroleum Corporation (NNPC) and the Department of Petroleum Resources (DPR) need to be comprehensively reviewed and necessary holistic changes effected in the overall strategic interest of Nigeria. As a consequence of stakeholder outcry for change, the Federal Government over the last six years has been working on a Petroleum Industry legislation that will satisfy the yearnings of stakeholders and meet the needs of the nation. This article examines the Petroleum Industry Bill that the Government has submitted to the national legislature and makes suggestions that will be useful in the passage of the Bill by the legislature.

Preamble
In the modern world, petroleum and its energy and enormous other derivatives, are unarguably the most important commodity and industrial feedstock. At the present time and in the foreseeable future, petroleum is the mainstay of Nigeria’s economy. With Nigeria’s reserves currently stated at about 40 billion barrels, and ranking seventh in global reckoning, the wonder has been why Nigeria is not classified among the rapidly developing nations. To ensure that the Nigerian nation and people truly take full ownership of the commodity and the industry around it, a comprehensive statute has been overdue. For the past sixty years, several laws have been enacted on numerous aspects of the oil and gas industry, but time and various developments have rendered them obsolete and inadequate for the effective management of the modern complications in both technology and economics of the industry. Therefore there has arisen for quite some time now the need for update of such laws, especially with respect to global best practices, and the integration of national and local realities.

In the last six years, efforts have been made to consolidate all these laws into single petroleum legislation. About $40 billion in exploration and production investments by the multinationals has been put on hold as the government procrastinated on the Bill and remained undecided on how to deal with the issues raised by stakeholders on an earlier version of the Bill. However the delay coupled with the hesitation and reluctance of the multinationals to invest gave indigenous industry players, the needed opportunity to secure some lucrative oil deals and choice exploration blocks that would otherwise have gone to the multinationals.

*Managing Counsel, Kassim-Momodu & Associates and Editor, Petroleum Technology Development Journal
**SITP Shell Petroleum Development Company of Nigeria, Warri and Member Editorial Board Petroleum Technology Development Journal
2 Momodu Kassim-Momodu, Address delivered at the public presentation of Petroleum Technology Development Journal, at the International Conference Centre Abuja, Nigeria on 19 July 2011
3 Ibid
The 2012 Bill

A new Petroleum Industry Bill 2012 (PIB) was finally approved by the Federal Executive Council of Nigeria on 11 July 2012 and forwarded to both Houses of the Nigerian National Assembly by the President of the Federal Republic of Nigeria on 18 July 2012.

The PIB covers all aspects and all areas of the petroleum industry. It makes provision on the structure of the organizations and regulatory agencies that drive the industry, oil exploration, production, logistics and pipelines, upstream and downstream management and regulation, gas exploration, production and sales, gas flaring, environmental quality management, health and safety, reserves management, etc.

Provisions of the PIB will strip the Nigerian National Petroleum Corporation (NNPC) of management of the joint ventures with the emergence of an asset management company established to take over the management of the joint ventures from the NNPC which will be dismantled to make way for the new competitive profit-driven National Petroleum Assets Management Corporation. Also to be established and incorporated under the Companies and Allied Matters Act are - the National Oil Company and the National Gas Company. In the same vein, the Petroleum Products Pricing and Regulatory Agency (PPPRA) as well as the Department of Petroleum Resources (DPR) will eventually seize to exist and their functions will be taken over by a new Agency – the Downstream Petroleum Regulatory Agency. The Bill also creates the Upstream Petroleum Regulatory Agency to among other things take over DPR’s regulatory role in the petroleum upstream.

The Bill gives the Petroleum Minister a very powerful supervisory role over all aspects of oil exploration and production including power to determine when gas flaring and venting will be stopped by any company. Powers that could be effectively used to the benefit of the nation and that could also very easily be abused to the detriment of the industry and the nation.

The Bill makes the Petroleum Minister Chairman of the boards of the organizations established by the Bill such as Petroleum Technology Development Fund (PTDF), National Petroleum Assets Management Corporation and Petroleum Equalisation Fund. The Minister will also be responsible for recommending to the President who to appoint as Chief Executives and as members of the boards of these organizations. The Minister will directly supervise the activities of the Petroleum Technical Bureau and the Upstream Petroleum Regulatory Agency, and be responsible for recommending persons to be appointed as operating officials of the organisations. Indeed the Petroleum Technical Bureau is created by the Bill as a special unit in the office of the Minister and is to take over and carry out inter alia, functions of the former Frontier Exploration Services of NNPC. Both the Petroleum

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4 Petroleum Industry Bill 2012
5 The Senate and The House of Representatives
6 Section 120 (1)
7 Section 148
8 Section 159
9 Section 43
10 Section 13
11 Section 6
12 Section 9. Section 10 of the Bill details the functions of the Bureau.
Training Institute\textsuperscript{13} established under the Petroleum Institute Act\textsuperscript{14} and the Nigerian Content Development and Monitoring Board\textsuperscript{15} established by the Nigerian Oil and Gas Industry Content Development Act 2010 will be organizations of the Petroleum Ministry and under the supervision of the Minister.

The Bill also provides for the establishment of a Petroleum Host Community Fund\textsuperscript{16}. Petroleum producing companies will pay 10 per cent of their profit from upstream operations into the Fund, thereby providing further source of funding for the rapid development of the petroleum producing areas, in addition to the statutory funds that accrue to the Niger Delta Development Commission (NDDC) and the Ministry of Niger Delta through annual budget.

Under the Bill, assessable tax for any accounting period for a company shall be a percentage of the chargeable profits for that period aggregated separately as follows:

\begin{itemize}
  \item a. 50\% for onshore and shallow water and
  \item b. 25\% for bitumen, frontier acreages and deep water area.\textsuperscript{17}
\end{itemize}

The initial Bill that was sent to the previous session of the National Assembly provided for 85 and 50\% respectively. The multinational corporations criticized that provision and some of them\textsuperscript{18} made it quite clear that they could not operate in that tax environment.

**Natural Gas**

The Bill pays special attention to natural gas development, making special provisions on natural gas,\textsuperscript{19} but very weak (to say the least) in its gas flaring plans. It is clear from the Bill that the government expects that natural gas will be the next area of exploitation for the country, and there appears to be a determination that natural gas takes over from crude oil as the major source of revenue. Indeed Nigeria is a gas nation considering the enormous gas reserves.\textsuperscript{20} As at 26 July 2012, Nigeria’s natural gas reserves stood at 5.292 trillion m\textsuperscript{3} and the country ranked 8 in the world.\textsuperscript{21}

As expected, The Bill makes provision on gas flaring and venting with the aim of stopping and outlawing flaring and venting of natural gas. It provides in section 275 that:

\textbf{"Natural Gas shall not be flared or vented after a date ("the flare-out date") to be prescribed by the Minister in regulations made pursuant to this Part, in any oil and gas production operation, block or field, onshore or offshore, or gas facility such as}

\textsuperscript{13} Section 361 (1)
\textsuperscript{14} Cap 16 Laws of the Federation of Nigeria 2004
\textsuperscript{15} Section 361 (2)
\textsuperscript{16} Section 116
\textsuperscript{17} Section 313
\textsuperscript{18} E.G. Shell Petroleum Development Company of Nigeria.
\textsuperscript{19} From Section 230
\textsuperscript{20} Proved Reserves are those quantities of natural gas, which, by analysis of geological and engineering data, can be estimated with a high degree of confidence to be commercially recoverable from a given date forward, from known reservoirs and under current economic conditions.
\textsuperscript{21} CIA World Factbook. The first nine countries in order of natural gas reserves are Russia, Iran, Qatar, Turkmenistan, Saudi Arabia, United States of America, United Arab Emirates, Nigeria and Venezuela
processing or treatment plant, with the exception of permits granted under sub-section (1) of section 277 of this Act”

Section 227 (1) provides that:

“A person shall not direct, permit or otherwise aid, empower or authorize any company engaged in petroleum operation to flare or vent gas with the exception of such permit granted under this section”

These provisions appear like special concession to the multinational corporations that have been reluctant and indeed unwilling to stop gas flaring over the decades. Section 275 is a significant watering-down and backward move from the provision in the initial Bill sent to the National Assembly which set a 2012 definite date for total halt of gas flaring or venting. For comparison, the earlier provision that the multinationals kicked against was that:

"Natural gas shall not be flared or vented after 31st December, 2012, in any oil and gas production operation, block or field, onshore or offshore, or gas facility,"

except under exceptional and temporary circumstances. It provided further that

"Any licensee who flares or vents gas without the permission of the Minister in (special) circumstances ... shall be liable to pay a fine which shall not be less than the value of gas."

The gas flaring provisions of the Bill look like moving five steps forward and then moving seven steps backwards. The provisions made are not new and same approach since the Associated Gas Re-injection Decree was promulgated on 28 September 1979 has failed to stem the tide of gas flaring and its disastrous environmental and economic consequences. Nigeria flared some 30 billion standard cubic feet (scf) of gas in January 2012, according to figures released by the Nigerian National Petroleum Corporation (NNPC). That is equivalent to a third of the annual consumption of an industrialised country like the United Kingdom.

ExxonMobil topped the list of flaring operators, flaring 9.85 billion cubic feet out of 38.64 billion produced. Chevron flared 8.25 billion cubic feet out of 19.23 billion. Shell flared 5.44 billion cubic feet, a relatively small part of the 76.4 billion it produced.

Coverage and Repeals

The PIB 2012 is a comprehensive petroleum industry legislation covering the entire industry. It repeals all other petroleum industry related legislation and regulations that are inconsistent with provisions of the Bill and make provisions that in essence reenact improved versions of the repealed pieces of legislation.

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24 Shell runs Nigeria’s Liquefied Natural Gas (LNG) plant.
25 Ibid.
Enactments that will stand repealed by operation of law from the effective date of the Petroleum Industry Act include:

e. Petroleum Equalization Fund (Management Board, etc) Act, CAP P11 Laws of the Federation of Nigeria 2004

Any subsidiary legislation made under the repealed laws where not inconsistent with the new Act will remain in operation until revoked or replaced by subsidiary legislation made under the Act, and is deemed for all purposes to have been made under the Act.\textsuperscript{26} The Nigerian National Petroleum Corporation Act, the Nigerian National Petroleum Corporation (Projects) Act and the Nigerian National Petroleum Corporation Amendment Act will be deemed to be repealed on the date that the Minister of Petroleum signifies by legal notice in the gazette that the assets and liabilities of NNPC are fully vested in the successor entities.\textsuperscript{27}

Licenses, leases, and permits granted under the repealed laws continue to have force and effect as if granted under the new Act.\textsuperscript{28}

The Bill also protects tariffs, prices, levies or surcharges which were payable to the Department of Petroleum Resources (DPR) or the Petroleum Products Pricing Regulatory Agency (PPPRA) prior to the effective date of the new legislation. Such tariffs, prices levies or surcharges remain in force until the expiration term or until alternative provisions are made under the new Act or any regulation under it, whichever is earlier.\textsuperscript{29}

\textbf{Observations and Suggestions}

The document is good example of professional drafting. It leaves little or no room for manipulation, partisan or exploitative interpretation. Its main strengths include the forthright tackling of the long-festering community affairs, unequivocal specifications on the local content development (regarding men and material), and clear provisions for environmental restoration and conservation. When passed into law, it would constitute an easily adaptable template for use, in near or far future, for addressing potential issues in the exploration for,
and exploitation of, other earth materials resources, wherever located within Nigeria and her territorial waters, that may in due course surge into prominence, as is predictable for some solid minerals.

The Federal executive Council and the National Assembly should consider the following suggestions:

a) The Nigerian Geological Survey Agency, a parastatal of the Ministry of Mines and Steel Development is the organ of the Federal Government of Nigeria charged with the acquisition, collation, packaging, archiving, administration, dispensing of geological data for multifarious developmental and academic/research purposes. The new law should provide that the Agency be availed of all subsurface data acquired by petroleum companies operating in all the acreages covering the inland basins.

b) There should be a provision in the law to stipulate the minimum number of appraisal and development wells from which full length rock cores must be acquired by every company operating in every inland acreage. Such rock cores, along with the accompanying lithologic wireline logs and all related information shall, after five years of acquisition and custodianship by the operating company, be turned over to the Nigerian Geological Survey Agency for final storage and administration. The Nigerian Geological Survey Agency shall in turn provide suitable core storage facilities as well as allow access to the cores by the public for academic research and other fair use. This particular provision is to ensure that no opportunity is lost for the acquisition of subsurface geological data which is absolutely essential for comprehensively systematising the stratigraphy of Nigeria’s sedimentary basins. Such is also the data required for discovering and assessing any deeply buried solid minerals within Nigeria’s vast hinterland subsurface which is so far unexplored. It is the practice in other parts of the world – developed or developing.

b) In view of the functions and pivotal position of the Nigerian Geological Survey Agency regarding the acquisition and management of geological information for the whole country, and since the Upstream Petroleum Regulatory Agency is charged with overseeing the acquisition of subsurface data by the operating companies, the Agency should have a place on the Board of the Upstream Petroleum Regulatory Agency.

c) The Nigerian Mining and Geosciences Society (NMGS), and Nigerian Association of Petroleum Explorationists (NAPE) are two professional associations whose memberships consist of geologists, geophysicists, geochemists, petroleum and mining engineers, practicing in the upstream petroleum industry. It is strongly recommended that these two geosciences associations be represented on the Board of the Upstream Petroleum Regulatory Agency. Indeed, by the Council of Nigerian Mining Engineers and Geoscientists Act. 1990\(^{30}\), nobody, is permitted to practice geosciences in Nigeria except he is registered by the Council. Registered mining engineers and geoscientists are all members of the NMGS.

\(^{30}\) Act No. 40, Laws of the Federation of Nigeria 1990
d) Under Part III, Section 204 of the PIB: **Abandonment, Decommissioning and Disposal**, a part of the provisions should stipulate that extra care must be taken to ensure that after a well has been decommissioned, there is no chance, due to repressurisation, that oil rises in the well to pollute the ground water. Should such pollution occur any time after the decommissioning, the responsible operating company shall be recalled to repair the damage. In the event that the said company has left Nigeria, the Upstream Petroleum Inspectorate shall have the responsibility of making good the damage.

e) The new act should make specific provision on a terminal date for gas flaring and venting. We suggest not more than one year from the effective date of the Act. Penalty for violation should be the current market price of gas flared plus 25%. Where a company is fined for a third time, the chief executive of the company should in addition to the penalty be sentenced to six months imprisonment without the option of a fine.

**Conclusion**

The introduction of the PIB is a step in the right direction. No one expects that the Bill will come out of the National Assembly legislative process the way or as it was sent in by the President of Nigeria. Stakeholder input and world-wide best practices are expected to guide the National Assembly in passing a petroleum industry legislation that meets the demands of this century and also satisfies the strategic interest of the nation. Our expectation is that the National Assembly will treat the Bill as urgent and very important and ensure that it is passed and take effect before the end of 2012.