The Buhari Administration and Economic Governance: Assessing Progress of Nigeria's Petroleum Industry Bill (PIB).

Policy Recommendations

- The executive and the legislature should constitute a team of carefully selected experts to continuously harmonize divergent positions and interests in order to smoothen the passage of the Petroleum Industry Bill (PIB)
- To protect the nation's earnings, the National Assembly should exercise stronger oversight in ensuring transparency and accountability within all the relevant agencies, especially future entities that will emerge from an unbundled NNPC.
- Rather than creating new institutions, the administrative structure of existing agencies should be strengthened to more robustly tackle challenges hobbling Nigeria's oil and gas industry.

Introduction

The Nigerian Petroleum Industry Bill (PIB) began its long journey to the Nigerian parliament in the early days of the former President Olusegun Obasanjo with the inauguration of the Oil and Gas Reform Committee (OGRC) on 24th April 2000. PIB seeks "to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of the upstream and downstream sectors, and for purposes connected with the same". The OGRC, consisting of over two dozen local and international experts, was charged with reviewing and streamlining all existing petroleum laws and establishing a regulatory framework for the sector to reflect and serve the interests of consumers, the environment and the operators.

The main objectives of the PIB include providing a framework for vesting of petroleum and natural gas assets and resources on behalf of the people of Nigeria, allocating acreage to qualified companies, managing petroleum resources and allocating petroleum resources and their derivatives in Nigeria for the total benefits that will accrue to the sovereign state of Nigeria. It also aims to enhance government participation, ensuring that institutions such as the National Oil Company are guided by principles of the Nigerian Extractive Industries Transparency Initiative (NEITI) Act of 2007; safeguarding the environment and air quality emissions; promoting development of the petroleum producing areas of the Federation; and ensuring that Nigerian content is promoted by utilizing indigenous companies and manpower, and the use of locally produced goods and services.

After four years of extensive work by the OGRC, the Oil and Gas Implementation Committee (OGIC) was set up on 21st June 2005 by the government "to develop strategies for the implementation of the content of the policy documents earlier developed by the National Committee on Oil and Gas Policy". The OGIC made wide-ranging recommendations including the restructuring of the Nigeria National Petroleum Corporation (NNPC), deregulation of the sector, incentivizing private investment in refineries, and harmonization of existing petroleum laws etc. These were all integrated into one document to be presented to the National Assembly. However, a draft law could not be submitted to the National Assembly before the end of the tenure of the Obasanjo administration. In September 2008, the President Umaru

Yar'Adua administration finally presented the first draft of the bill to the 6th National Assembly but this soon stalled over disagreements on the sharing of oil profits among international oil companies (IOCs), host communities and the federation.

PIB's progress through the National Assembly

In January 2012, four years after the presentation of the first draft, ex-President Goodluck Jonathan set up a special task force to fast-track the passage of a reworked PIB with more than sixteen existing laws harmonized into the new draft bill. The new draft bill was presented to the 7th National Assembly in July 2012. The disagreements over the provisions of the bill this time was more serious and led to the emergence of different versions of the same bill representing the conflicting interests of different stakeholders. This led to the complete withdrawal of the bill from the National Assembly amidst much confusion. A revised version of the bill presented to the National Assembly in 2014 also suffered the same fate until the end of the tenure of the 7th Assembly. This is in spite the costly and extensive legislative work including a public hearing, carried out on modifying the bill. For these failures, experts have clarified that the PIB was not stalled because of poor understanding of the problems or the deficiency in expert inputs. There were no questions about intention, shortage of activity or lack of stakeholder engagement and representation in past processes.

The difficulty in passage of the PIB by the Nigerian parliament despite the amount of human and financial resources put into it is bewildering. In contrast, the Ghanaian parliament recently passed into law a similar bill first presented to it in November 2014, less than two years after it was first presented. The Ghanaian version was withdrawn once to ensure it reflects new realities and once done, the bill was passed. It is important to note that the issues around the nascent Ghanaian oil industry are not as complicated as Nigeria's. Nonetheless, there are lessons to be learnt in the conduct of the stakeholders in ensuring smooth legislation over the issue.

Successive administrations in Nigeria over the years failed to respond to the global trend and changing realities in the oil and gas sector. The Federal Government continued to rely on outdated laws enacted when oil was not the country's economic mainstay. Among the many issues bedevilling the Nigerian PIB are the extent to which the Petroleum minister can exercise discretional powers, inefficient institutional framework, conflict of interest between politicians and bureaucrats, mutual distrust among state actors (executive and legislature), ownership and control of natural resources, host community benefits, environmental concerns, appropriate fiscal regime and mutual suspicions among the geo-political zones that make up the country. Public suspicion and allegations that several versions of the PIB had found their way into the National Assembly was only the most recent cog in the efforts to enact the bill into legislation. This led to the latest decision to break the PIB into smaller, more manageable parts for easier passage which is not without its own downsides.

Experts estimate that the loss to the country during the first eight years that the PIB languishing in parliament is as high as $120 billion (about $15 billion annually). This is due to prospective oil sector investments being withheld or diverted to more predictable climates. Likewise, the Nigeria Extractives Industry Transparency Initiative's (NEITI) 2013 audit of the oil and gas sector revealed that a cumulative $10.4bn and N378.7bn was lost, under-remitted or outstanding due to inefficiencies, theft or absence of clear fiscal regime in the sector. All these came to N1.74 trillion at 2013 value. The report concluded that a proper governance framework and clearer fiscal regime for the sector could have addressed most of the underlying causes. The Organisation of Petroleum Exporting Countries (OPEC) says Nigeria only refines about 3% of its crude oil production, suggesting that it could not even meet up with its local demand which is about seven times the total volume of its locally refined products. According to OPEC's annual statistic bulletin of 2016, Nigeria's proven crude oil reserves is put at 37,062 (million barrels), crude oil production at 1,748,200 barrel per day (b/d) and a refining capacity of 445,000 b/d.

PIB's importance for National Development

The group managing director (GMD) of the NNPC, Dr Ibe Kachikwu in an interview in 2015 said "for refusing to put in place the Petroleum Industry Act due to the non-passage of the PIB over the years, Nigeria has been losing about N3trillion worth of investment in the oil sector on yearly basis. He claimed the non-passage of the PIB in any form over the years had created a lot of uncertainty in the oil sector.

The extant economic recession facing the country also needs to be competently addressed to put the country back on her feet in pursuit of economic and social prosperity. Crucial here is the extent to which the government can quickly implement the hard and far reaching reforms necessary to deliver the much-desired improvements in the oil and gas sector, which alone accounts for nearly 90 percent of Nigeria's exports and 70 percent of government revenues that are needed for development spending. Efforts to dialogues with all stakeholders especially the militants in the oil-producing Niger Delta region should intensify so that trust is rebuilt to attain the necessary peace needed to optimize the potential of the sector. The passage of the bill amongst other things can reduce the severe economic downturn and loss of benefits to the country and can ultimately boost revenue and employment creation...

Reforms by the Buhari administration

The Buhari administration has introduced several economic reforms and fiscal policies since it came to power in May 2015. For the oil and gas sector reform, the Vice President, Professor Yemi Osinbajo said that the government would adopt and execute a comprehensive National Oil and Gas Masterplan (NOGM), as the roadmap for the petroleum industry's development, diversification, privatisation and governance. He further stated that the administration "will adopt and execute a roadmap of gas development and flare elimination, set a deadline to be self-sufficient in refined petroleum products and become a net exporter. [Government will also] work with the national assembly on the passage of a revised PIB or bills to give effect to the NOGM and to resolve fiscal and governance issues of the sector….and conclude negotiations to deal with all funding gap issues in the upstream sector".

As part of the efforts of the Buhari administration on reforms in the industry, a new version of the PIB, otherwise known as the Petroleum Industry Governance Bill, (PIGB) was introduced and presented to the National Assembly. In specific terms, the bill seeks to: (i) clarify the role of government and that of the Petroleum minister in the oil and gas industry, (ii) eliminate multiple regulatory entities and establish a new regulatory commission for Nigeria's oil and gas industry and (iii) unbundle the portfolio of the NNPC. To achieve this, the PIGB will establish 3 principal commercial entities – the Ministry of Petroleum Incorporated

(MOPI), the National Petroleum Company (NPC) and the Nigerian Petroleum Assets Management Company (NPAMC).

The PIB originally allowed the minister to advise, recommend and appoint members of the board of several agencies subject to the president's confirmation and approval. This has been done away with. In the current bill, the President is empowered to appoint executive and non-executive members of the Board of the Petroleum Regulatory Commission (PRC), which is to be established in pursuant to the bill as the industry regulator, subject to confirmation by the Senate. Extant laws allowed the minister to appoint the Chief Executive of the Petroleum Inspectorate subject to the approval of the National Council of ministers. The PIB originally vested the power to make regulations on the minister. This has been removed and vested in the PRC. It is important to note that this provision deals specifically with the provisions of the bill and does not affect the provision of other laws which grants the minister power to make regulations such as the Nigerian Oil and Gas Content Regulation Act, 2010.

The PIGB maintains the minister's right for pre-emption. However, penalties for contravening the rights have been increased in line with current economic conditions. Failure to comply with the minister's directive issued in respect of a right of pre-emption and interference with the exercise of the powers of the minister under the Petroleum Act attracted a fine of 2000 Naira and 200 Naira respectively or a maximum prison term of six months or both upon conviction. Under the PIGB, the fines have been increased to 2,500,000 Naira and 5,000,000 Naira respectively or a maximum prison term of six months. The minister is also empowered to make regulations to increase financial penalties imposed under the bill. Under extant legislation, the Petroleum Act grants the minister exclusive and unfettered power to grant licenses and leases, to amend, renew, extend, or revoke same in pursuant to the provision of the Act. The PIGB removes this right from the minister. The minister may now only exercise such powers based on the recommendation of the Commission.

Currently, the granting of license is governed by the Petroleum (Drilling and Production) Regulations with new applications directed to the minister's office. Future applications for licenses under the proposed new bill must be directed to the Commission. Also, the power to revoke a license or lease can only be exercised by the minister upon recommendation by the Commission. Most importantly, the bill stipulates that the provisions of all existing enactments or laws including the Petroleum Act, the Petroleum Profit Tax Act and the Companies and Allied Matters Act shall be read with such modification as to bring them in conformity with the Petroleum Industry Governance Bill.

The 8th Senate, is currently considering the draft PIGB, which seeks to streamline the troubled PIB and its many conflicting issues into smaller, more manageable legislative pieces. The PIGB deals exclusively with a governance framework for the oil and gas sector. It passed the first reading at the Nigerian Senate in April 2016. However, on 13 June 2016 the senate once again suspended debate on the PIGB as new realities emerged. At the second reading of the draft bill on the floor of the Senate on 2 November 2016, the Chairman of the Senate committee on Petroleum Resources (Upstream), Senator Tayo Alasoadura, averred that the bill proposed "a slim, focused yet robust framework" for effective and institutional governance of the Nigerian petroleum industry. However, a proposed roadmap of the Federal government for the oil and gas policy and regulation emerged yet again as a threat to the smooth passage of the bill. Two industry reform bills - Petroleum Industry Reform Bill (PIRB) and Petroleum Fiscal Reform Bill (PFRB) - have been proposed. The PIRB is expected to address all governance and operational industry reform issues much like the PIGB. The roadmap outlines an objective of concluding and passing the PIRB and the PFRB either by the end of December 2016 or by the end of the first quarter of 2017. If the PIGB and the PIRB are not the same, then the two bills will likely provoke a return to the battle for supremacy between the National Assembly and the Presidency.

Conclusion

The debate on the PIB is long over stretched and should have been concluded by now. However, the continuing non- passage of the bill has seen Nigeria incur losses from regulatory uncertainty in the oil and gas sector. With the attempt by some individuals and corporate organisations in the sector to take advantage of legal loopholes, it is now critical to make all efforts towards repositioning the industry which accounts for 90% of the Nigeria’s foreign exchange earnings and over 70 percent of government revenues. The regulatory framework and institutional structures espoused in the PIGB could facilitate better regulation and the creation of shared prosperity in the sector to the benefit of the average Nigerian citizen.

Experts concluded after the public hearing that the key issue for the bill is getting the institutional framework right and ensuring that there are clear standards on accountability and transparency. Unbundling NNPC is vital and should be done with the utmost sense of duty to the nation. The executive and the legislature should constitute a team of experts comprising representative from the Ministry of Petroleum Resources, Nigeria National Petroleum Corporation (NNPC), Department of Petroleum Resources (DPR), National Petroleum Investment Management Services (NAPIMS), the Private sector, international and national oil companies, host communities and civil societies to harmonize various positions and interests. The leadership of the National Assembly should exercise stronger oversight to ensure more transparency and accountability in the existing agencies with a view to protect the nation’s earnings. Ultimately, rather than creating new institutions, it will be far better to strengthen the administrative structure of existing agencies better to tackle the debilitating challenges that have hobbled the sustainable development potential of Nigeria’s oil and gas industry.