

## Reform in a Limbo: The Politics and Politicization of Reforms in Nigeria's Petroleum Sector

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### ABSTRACT

Nigeria has been on a long-winding journey to reform its petroleum sector with no end in sight. The first version of the reform bill, the petroleum industry bill (PIB) was sent to the National Assembly in 2008. The sustained opposition to the PIB from both indigenous and international oil companies as well as other stakeholders led to the decision, in 2016, to balkanize it into four bills, with each bill focusing on an aspect of the reform. The first of the quadripartite bills, the petroleum industry governance bill (PIGB) was passed by both chambers of Nigeria's National Assembly and transmitted to the president for assent. The president declined assent, thus deepening the uncertainty that characterizes the sector. Drawing data from primary and secondary sources, the paper evaluates the trajectory of Nigeria's petroleum sector reform, including the long delay and its impact on the sector. It finds that the delay in passing the reform bills has negatively rubbed off on the country as it has stymied growth and closed off new investments. The paper advocates the depoliticization of the reform agenda in order to reposition the country's petroleum sector for national development.

**Keywords:** Petroleum Sector Reform, Petroleum Industry Governance Bill, National Development, Nigeria

**JEL Classifications:** P28, P48, Q35, Q38, Q48

### 1. INTRODUCTION

Oil occupies an important place in the political economy of Nigeria. For one, Nigeria is the largest oil producer in Africa and the tenth largest in the world. Secondly, it is the major source of the country's foreign exchange earnings: the sector accounts for over 95% of Nigeria's total foreign earnings and 85% of total government revenue (Ministry of Budget and National Planning, 2017). Lastly, with an average daily production of 1.92 million barrels/day and 36,972 billion barrels of proven oil reserves, Nigeria occupies the 10th spot among countries with the largest crude oil reserves in the world (OPEC, 2019) as well as projected to be the 40th largest economy in the world (CBN, 2011; AfDBG, 2013). Although Nigeria's stock of proven crude oil reserves dropped by 1.3% from its 2017 level of 37,453, the aspiration of the government to expand the volume of the country's proven oil reserves to the 40-billion-barrel mark and beyond by 2020 is still vigorously emphasized (Ejoh, 2017; OPEC, 2019).

Despite the key role that petroleum resources play in Nigeria's economy, the sector is plagued with multifarious problems, chief among them being undue political interference and attendant erosion of accountability. Another serious problem with the sector has been lack of confidence by industry observers and stakeholders resulting in the loss of critical investments necessary to grow the sector to other countries (Shosanya, 2015). On the basis of the foregoing, pressures were mounted by major stakeholders for far-reaching reforms, hence the pioneering efforts in this regard by former president Olusegun Obasanjo in 2000 (NEITI, 2016). The initial bill transmitted to the National Assembly in 2008 for the reform of the petroleum sector was an omnibus executive bill known as the petroleum industry bill (PIB). Essentially, the key objective of the PIB is the enthronement of international best practices through the comprehensive review and harmonization of all legal instruments governing the petroleum sector as well as the establishment of strong institutions that transcend individual

or group manipulation (Abuh, 2019). The establishment of strong institutions will definitely eliminate bad governance that motorizes inefficiency, rent-seeking and corruption in the petroleum sector.

As a result of concerted opposition to the PIB by stakeholders, no consensus was reached to enable its passage. It took a total 10 years and several revisions of the PIB, including its balkanization into four separate bills (namely the petroleum industry governance bill, petroleum industry fiscal bill, petroleum industry administration bill, and petroleum Host and impacted community bill) for a headway to be made in 2018. The idea behind the balkanization of the PIB was to facilitate their easy passage. However, the breakthrough that was recorded in 2018 in terms of the passage of the first of the quadripartite bills, the petroleum industry governance bill (PIGB) and its subsequent transmission to the president for assent was a stillbirth as it was returned back to the National Assembly without being assented to.

This paper evaluated the trajectory of reform efforts in Nigeria's petroleum sector since the initial groundwork was laid in 2000. The evaluation was guided by the question about whether indeed the governance and institutional structures in Nigeria's petroleum sector were inadequate and out of sync with global best practice to necessitate a reform. A related preoccupation of the paper was whether the delays in passing the bills necessary to spearhead the reforms in the petroleum sector were justifiable. In engaging with the questions that formed the fulcrum of this study, the paper adopted key informant interview (KII) to generate its primary data. The study was further enriched with secondary data generated from archival materials. The paper found that major stakeholders are favorably disposed to a comprehensive overhaul of the governance and institutional structures of the petroleum industry. There is unanimity in the positive impacts that reform would bring to the petroleum sector. The paper also found that the age-long delays in passing the reform bill created uncertainties, which negatively impacted on the sector in terms of lost investments, inability to meet the target for the expansion of crude oil reserves and lack of new investments in the sector.

## 2. EFFORTS AT OIL SECTOR REFORMS SINCE 1999

The discovery of oil in commercial quantities in Nigeria in 1956 and the subsequent appreciation of its price in the international oil market in the 1970s, led to a gradual abandonment of the range of agricultural produce, such as groundnut, cocoa, rubber and palm produce that had hitherto constituted the country's economic mainstay. The emphasis on oil, which led to the erosion of the agricultural sector created the Dutch disease in the Nigerian economy. The Dutch disease syndrome that characterized the Nigerian economy during the 1970s diminished the role of the agricultural and manufacturing sectors in national development (Olusi and Olagunju, 2005; Otaha, 2012). Apart from the retreat of these sectors in contributing to the foreign exchange earnings of Nigeria, the rentier system that emerged also created loopholes that undermined the effectiveness of harnessing the oil sector for national development (Ikpeze et al., 2004). Additionally, the non-adoption of international best practices in oil exploration and exploitation by operators created serious environmental crisis in

the Niger Delta, thus triggering host community agitations and other forms of insecurity (Nwozor, 2019a, Nwozor et al., 2019b).

The Nigerian oil and gas sector is characterized by all manner of sharp practices, which created the imperative for its reform. The expectation was that the reform would induce the modernization of the sector and ultimately have multiplier effects on other sectors of the Nigerian economy (Adelegan, 2017). The imperative of a reform was underpinned by the disconnect between the petroleum sector and other sectors of the economy. In other words, the petroleum sector did not have the desired impact in terms of generating employment and contributing to the diversification of other sectors of the economy. The failure of oil and gas to induce economic growth and development necessitated the various attempts at reforms since 1999. The Obasanjo administration set up the oil and gas reform committee (OGRC) on April 24, 2000 under the headship of the then honorary special adviser on energy and strategic matters, Rilwanu Lukman, to undertake a comprehensive study of the oil and gas industry, with the ultimate aim of reforming the sector. The major idea behind the attempt at reforming the petroleum sector was to boost Nigeria's development by ensuring the appropriate and transparent management of oil revenues (Iledare 2008). The OGRC evolved a national oil and gas policy (NOGP) whose thrust was the restructuring of the oil and gas sector on the basis of separating commercial institutions from the regulatory and policy-making institutions (Iledare, 2008).

On June 21, 2005, the government constituted the oil and gas implementation committee (OGIC) to oversee the development of strategies for the implementation of the reform agenda in the NOGP document (NEITI, 2016). Another area that Obasanjo attempted to institute reform was the governance structure of the oil and gas sector, which was characterized by corruption. As part of efforts to deal with the corruption that typified the sector and thus enthrone transparency, accountability, and good governance, Nigeria adopted the principles of the extractive industry transparency initiative (EITI) through the NEITI Act signed into law by Obasanjo on May 26, 2007. The diligent implementation of the act led to the declaration of Nigeria as EITI compliant in March 2011 (AfDBG, 2013). However, the Obasanjo administration left a lot of unfinished business with regard to the reform of Nigeria's oil and gas sector.

Former Nigerian president between 2007 and 2010, Umaru Musa Yar'Adua, inherited the task of revitalizing the pursuit of reforms in the oil and gas sector from his predecessor, former president Obasanjo's immediate successor, inherited the task of revitalizing the pursuit of reforms in the oil and gas sector. Yar'Adua reconstituted the OGIC on September 07, 2007. To ensure continuity, the Yar'Adua administration reappointed Lukman as the chairman of the committee. The mandate of the committee was to transform the oil and gas industry through the instrumentality of the NOGP, which had been approved by the federal executive council, into a model of functionality that ensures a long-term sustainability of the sector; greater efficiency, effectiveness and global competitiveness (NEITI, 2016; Nwapi, 2020). The Lukman committee submitted its report on August 3, 2008 and this formed the basis for the pockets of reforms in the oil and gas sector, especially the petroleum industry bill (PIB).

Further attempt at reform led to the passage of the Nigerian oil and gas industry content development act on April 22, 2010 with focus on broadening indigenous participation in the oil and gas sector (Nwaokoro, 2011). Table 1 below shows the key phases of the tortuous timelines of the PIB. As at the end of 2019, no aspect of the reform bill has been concluded.

The Goodluck Jonathan administration (2010-2015) initiated a development initiative codenamed the transformation agenda. The agenda was conceptualized as a medium-term development plan to holistically address the challenges of development in Nigeria with the target being to transform and usher the country into the league of twenty largest economies in the world by 2020 (NPC, 2013; AfDBG, 2013). The major thrusts of the transformation agenda with regards to the oil and gas sector reforms revolved around:

- i. Deregulating the oil sector with a view to promoting robust private sector investment
- ii. Promoting the adoption of environmentally-friendly exploration and exploitation methods by oil sector operators
- iii. Strengthening capacity building programs especially in core technical areas as part of national strategies for local content development
- iv. Eliminating the menace of gas flaring with a view to achieving multiplier goals in terms of reducing pollution, increasing revenue and ensuring adequate gas supply for domestic use and power generation (NPC, 2011).

The oil and gas sector reforms under the auspices of the transformation agenda focused on both the upstream and downstream subsectors. Driving reforms in the upstream subsector with expected multiplier effect on the downstream sector was the petroleum industry bill (PIB). Similarly, neoliberal reforms, anchored on subsidy removal and the establishment of the Subsidy Reinvestment and Empowerment Programme (SURE-P) constituted the ensemble of reforms in the downstream sector (Amakom, 2013).

### 3. THE URGENCY OF A COMPREHENSIVE REFORM AND THE PIB AS THE FLAGSHIP REFORM IN NIGERIA'S PETROLEUM SECTOR

The rationale behind the introduction of the PIB centered on strengthening the oil and gas sector in order to contribute more to the Nigerian economy. Thus, the key idea was to evolve an omnibus legal framework to anchor the various legislative, regulatory and fiscal policies in the country with a view to effectively dealing with oil exploration and exploitation fallouts as well as leveraging on the sector to deal with the challenges of pervasive corruption and lack of transparency (Gboyega et al, 2011; Usman, 2016). There was a consensus among stakeholders and political elites about the need to reform the oil and gas sector to deal with the perennial challenges of lack of transparency, accountability, and good governance. Notwithstanding the consensus among stakeholders, the PIB, which was designed to spearhead this reform, had many controversial provisions that attracted opposition (Usman, 2016). The result was that its enactment into law was stalled in the national assembly for 10 years.

#### 3.1. The PIB: Anatomizing the Key Issues

The PIB represented a major move by the government to catalyze the transformation of Nigeria's oil and gas sector. The PIB was an all-encompassing legislation that tended to unify and encapsulate the various laws in the oil and gas sector for the purpose of effective regulation. The PIB consisted of a single coherent document that embodied over 16 legislative and administrative instruments as well as the regulatory and fiscal policies and institutions governing Nigeria's petroleum industry (NEITI, 2016; Usman, 2016). The PIB has been in the works since 2008 with all manner of controversies surrounding its fiscal and non-fiscal objectives. In 2008, the PIB was sent to the national assembly as an executive

**Table 1: A summary of the long-winding journey of the PIB**

Timeline	Key action/deliverable
April 2000	President Obasanjo inaugurated the oil and gas reform committee (OGRC) on April 24, 2000 under the headship of the then honorary special adviser on energy and strategic matters, Rilwanu Lukman
June 2005	The OGRC evolved a national oil and gas policy (NOGP). The Obasanjo government constituted the oil and gas implementation committee (OGIC) to implement the recommendations of the reforms committee as contained in NOGP
September 2007	President Umaru Yar'adua, approved the national oil and gas policy (NOGP), and reconstituted the OGIC to implement the NOGP
September 2008	A petroleum industry bill (PIB) was presented to the 6 <sup>th</sup> national assembly
January 2012	The presidency under Goodluck Jonathan raised a task force to evaluate the bill, which was further enhanced and re-presented to the National Assembly
July 2012	The report of the special taskforce was submitted to national assembly after approval by the federal executive council
November 2013	National assembly concludes public hearing on PIB
2014	Revised version of PIB was again presented to the national assembly, owing to confusion due to conflicting versions in circulation
2016	Nigeria's eight legislative assembly broke the PIB into four separate bills in order to minimize opposition, namely, the petroleum industry governance bill (PIGB), petroleum industry fiscal bill (PIFB), petroleum industry administration bill (PIAB), and petroleum host and impacted community bill (PHICB)
April 2016	Petroleum industry governance bill (PIGB) was laid before the senate/house of representatives
May 2017	The Nigerian senate passed the senate version of the PIGB.
January 2018	The house of representatives passed the house version of the PIGB.
March 2018	The two versions of the PIGB were harmonized and passed by both chambers of the national assembly
July 2018	The harmonized copy of the PIGB was transmitted by the national assembly to the president for assent on 3 July
July 2018	The president communicated his decision to decline assent to the PIGB on grounds of constitutional and legal inadequacies on 29 July

Compiled by the authors from several sources

bill. The opposition to some aspects of its provisions, especially from investors and stakeholders, made the government to take a second look at it through a federal inter-agency technical review team.

The inter-agency team headed by Tim Okon (the then Nigerian National Petroleum Corporation's Group General Manager on Corporate Planning and Strategy) submitted its report in 2010, which stirred more controversies as it introduced more stringent fiscal provisions that guaranteed a higher share of oil revenues to the Nigerian state. The controversies surrounding the PIB were very deep, considering that in 2011 three versions of the bill existed, namely the version presented by the executive, the version adopted by the Senate and the one adopted by the House of Representatives (Pérouse, 2014). In addition, there were disagreements among members of the National Assembly on whether to continue where the sixth legislative assembly (2007-2011) stopped or to request the re-presentation of the bill afresh for consideration. But the presidency raised a task force to evaluate the bill, which was further enhanced and re-presented to the national assembly on 19 July 2012 (Pérouse, 2014).

The 2012 version of the PIB was an elaborate document designed to correct all that was wrong with Nigeria's oil and gas sector (AfDBG, 2013; Usman, 2016). It was a 223-page tome divided into nine parts comprising 362 sections and five schedules, which covered the broad spectra of the oil and gas sector. The overarching objectives of the PIB centered on creating a conducive operational environment that would be promotive of safety and protective of the environment, optimizing revenues accruing to the government and evolving a progressive fiscal framework that would encourage further investment in the petroleum industry (The Petroleum Industry Bill, 2012).

The PIB was designed to update, modernize and streamline earlier legislations that no longer met the watermark of international trends in the oil and gas industry. The outdated legislations to be replaced included the petroleum profit tax act of 1959, amended in 1967, 1970, 1973 and 1979; mineral oils (safety) regulations, 1963; oil pipeline act 1956, amended in 1965; petroleum act 1969 and petroleum (drilling and production) regulations, 1969 with amendments in 1973, 1979, 1995, 1996 and petroleum (amendment) decree 1996; the Nigerian National Oil Corporation (NNOC) Decree No 18 of 1971; Nigerian National Petroleum Corporation Decree 1977; Associated Gas Re-injection Decree 1979, amended in 1985 and the Associated Gas Framework Agreement (AGFA) of 1992; Financial (Miscellaneous Taxation Provision) Act of 1998; Financial (Miscellaneous Taxation Provision) Amendment Act of 1999; Nigeria Liquefied Natural Gas (NLNG) Act of 1999; Downstream Gas Act (DGA) and Natural Gas Fiscal Reform (NAGFRA) Act of 2005 (Section 354, The Petroleum Industry Bill, 2012).

On the basis of its elaborate provisions, the PIB represented not only the most detailed framework for boosting Nigeria's petroleum revenue system but also a platform for repositioning the Nigerian state as a major player in the oil and gas sector (AfDBG, 2013; Pérouse, 2014). Essentially, the PIB was designed to holistically

address fiscal and non-fiscal aspects of the oil and gas sector. The fiscal aspect was envisaged to expand the country's revenue base and thus put more money into the coffers of the government while cutting down associated wastes. The strategies for achieving this fiscal objective included simplifying the collection of government revenues; creaming off windfall profits in case of high oil prices; collecting more revenues from large profitable fields in the deep offshore waters; and, creating employment and business opportunities, by encouraging investment in small oil and gas fields (Ukiwo, 2018).

The philosophy that underpinned the fiscal reform in the PIB was motorized by three major considerations: the first was the imperative to expand revenue accruals from oil due to the projections of global oil peak and decline as well as the forecasts that Nigeria's proven crude oil reserve could last between 40 and 50 years (Peterside, 2004; Akuru and Okoro, 2011). The second was the need to plug various loopholes through which enormous oil revenues were lost on daily basis (AfDBG, 2013; NEITI, 2016). The third, and lastly, was the urgent need to prudently manage and maximize accruals from crude oil and gas in order to ensure the diversification of the economy and the deepening of the country's socio-economic development (Gboyega et al., 2011). Notwithstanding projections of peak and decline in Nigeria's oil reserves, the quest of the government to expand the country's proven oil reserves to the 40-billion-barrel mark by 2020, the discovery of new oil fields and the development of technologies for recovering additional supplies have all rolled back the dismal picture of dry oil wells in the nearest future (Akuru and Okoro, 2011; Ejoh, 2017).

### 3.2. The 2012 PIB: Evaluating the Fiscal and Non-fiscal Aspects

Relying on an extensive revision of allowable deductions for tax purposes, the fiscal framework in the PIB devised a simplified collection format. Under the proposed arrangement, only direct costs incurred in petroleum operations would be eligible for deductions. Thus, the emphasis was on a progressive fiscal framework that would encourage further investment in the industry whilst increasing accruable revenues to government (Section 1[d], The Petroleum Industry Bill, 2012). The fiscal reform proposed the replacement of the cost-based incentives with production-based incentives based on the consideration that government revenues are impacted by oil production and efficient cost management. The implication of this was the imposition of strict discipline on cost escalations and "de-incentivization" of gold-plating. The tax computation was simplified with no company likely to enjoy tax exemption. The oil companies would pay tax on a percentage of the chargeable profits as follows: 50% for onshore and shallow water areas and 25% for frontier acreage and deep-water areas (Section 313, subsection 1, The Draft Petroleum Industry Bill, 2012).

One of the major flaws in the fiscal provisions in the 2012 version of the PIB was the omission of some important provisions that were in earlier versions. For example, earlier versions of the PIB provided for priced-based progressive royalties. But this was missing in the PIB 2012 version. Within the context of priced-based progressive royalties, the share of accruable royalties would increase in line

with high oil and liquefied natural gas (LNG) prices beyond a certain threshold. The idea was to capture windfall revenues during high oil price situations. Analysts considered the omission as a serious basis for loss to the Nigerian economy considering that in situations of high prices and associated windfalls only oil and gas companies would benefit to the detriment of the country (Van Meurs, 2012). This omission detracted from one of the key objectives of the PIB in terms of optimizing the revenues accruing to the country.

Another serious flaw in the 2012 PIB was the retention of the current practice that created loopholes for stealing Nigerian oil and gas. Oil theft in various dimensions have always being a major challenge in Nigeria's oil sector. For instance, a recent report by the Nigerian extractive industries transparency initiative (NEITI) indicated that between 2009 and 2018, Nigeria lost about US\$41.9 billion to oil theft (NEITI, 2019). The oil thieves normally exploit various systemic loopholes in both the upstream and downstream subsectors. According the NEITI report already referred to, the breakdown of the losses indicated that Nigeria lost over 505 million barrels of crude oil and 4.2 billion liters of refined petroleum products valued at \$40.06 billion and \$1.84 billion respectively. A further breakdown showed that while crude oil theft accounted for about US\$38.5 billion, the domestic crude losses and refined petroleum product losses accounted for US\$1.56 billion and US\$1.84 billion respectively (NEITI, 2019). A disaggregated picture of the average losses to the Nigerian economy in the past 10 years showed a consistent daily loss of US\$11.47 million daily or monthly loss of US\$349 million or yearly loss of US\$4.2 billion dollars.

The current operational modalities in the oil industry tend to create exploitable loopholes for oil thieves. Under the current arrangement, the measurement of petroleum production output is done at a point down the line where oil or gas is delivered or sold, that is at the terminals instead of at the wellheads of flow stations (Van Meurs, 2012; Katsouris and Sayne, 2013; Nnodim, 2019). What this means is that the figures often presented by regulatory agencies are estimates as there is no appropriate method of measuring the amount of oil exploited in order to accurately calculate the amount stolen at the source. This practice is contrary to international practice of measuring oil and gas production in the fields, directly where oil or gas leaves the field area (Van Meurs, 2012). The retention of the current practice in the 2012 PIB created a distinct possibility that the stealing and diversion of oil or gas before it is measured would continue.

The 2012 PIB also has non-fiscal provisions, which essentially targeted the institutional and policy-making frameworks of the oil and gas industry. There is a general agreement among stakeholders and the government about the inadequacy of contemporary institutions in Nigeria's oil and gas sector to drive any major change or reposition the sector for enhanced role. The central issue in institutional reform was the unbundling of the state-owned national oil company, the Nigerian national petroleum corporation (NNPC). The rationale for the proposal was to enable the separation of functions necessary for effectiveness and efficiency in the sector. This entailed the distribution of the functions of policy

formulation, regulatory, monitoring, and commercial operations to various institutions.

According to the 2012 PIB, the unbundling of the NNPC would lead to the creation of some specialized companies whose focus would cover the development and promotion of indigenous operational capacity; the management of joint ventures (JV) and other NNPC's assets; and catering for domestic gas marketing and gas infrastructure development. Other areas of focus included the regulation of oil and gas production, enforcement of laws, granting of licenses and carrying out bid licensing rounds; carrying out duties hitherto performed by NNPC's frontier exploration service as well as assisting the minister of petroleum resources in formulating strategies; and the regulation of the downstream sector (The Draft Petroleum Industry Bill, 2012).

Another aspect of the non-fiscal reform was the provision for the creation of the Petroleum Host Community Fund (PHCF) (Sections 116-118, The Petroleum Industry Bill, 2012). This represented a novel provision that conferred relevance to communities where oil wells are domiciled. It was essentially designed to create a sense of communal ownership of oil installations, provide resources for developmental assistance and curb restiveness and militancy in oil producing communities. The PHCF was envisaged to be funded by upstream petroleum companies through the remittance of 10% of their net profits from operations in the onshore areas and in the offshore shallow water areas directly into the PHCF on a monthly basis. The caveat in the bill was that communities would be disqualified from benefitting from the fund if there was any act of vandalism, sabotage of the upstream facilities allocated to them or civil unrest. Under such circumstance, the erring community would forfeit its entitlement, which would be diverted to the repair and remediation of associated damages (Section 118[5], The Draft Petroleum Industry Bill, 2012).

### 3.3. Opposition and Contending Issues in the 2012 PIB

Despite the acknowledgement by stakeholders, industry operators and analysts about the elaborateness and necessity of the 2012 PIB, its consideration in the national assembly was stalled due to opposition to some of its provisions as well as concern about profitability and long-term sustainability of production by oil companies (Ugwuanyi, 2013; Pérouse, 2014). Notwithstanding the assurances by the government that the proposed changes in the fiscal architecture in the petroleum sector would still yield the same level of profitability as well as improve the economics of small fields significantly through generous production allowances and smaller royalty rates, the controversies and opposition to the bill continued, which ultimately blocked its passage into law.

The international oil companies (IOCs) and other stakeholders as well as some segments of the Nigerian state stoutly opposed the 2012 PIB for various reasons. Operating under the aegis of oil producers trade section (OPTS), 18 international and indigenous oil companies in Nigeria mounted sustained opposition to the PIB. While agreeing that the PIB possessed a unique opportunity to resolve the numerous challenges confronting the oil and gas sector, the OPTS posited that its provisions tended to aggravate rather than resolve them, thus potentially threatening investment potentials in

the sector (Ugwuanyi, 2013; Wahab and Diji, 2017). The crux of their opposition was the fiscal regime in the PIB, which the OPTS considered very harsh. The contention of the OPTS was that the proposed fiscal regime in the PIB significantly increased royalties and taxes instead of balancing them in terms of high royalties with lower taxes and vice versa. The group held that the proposed fiscal regime would increase their operational cost, undermine the profitability of their operations and serve as a disincentive, which ultimately would shut out investments necessary to grow the oil sector (Sweet Crude Report, 2013; Wahab and Diji, 2017).

Another area of contention was the gas sub-sector. The OPTS said the low-regulated domestic gas price, the enormous expenditure required to develop gas infrastructure and the high tax rate of 80% would create serious impediments to investment. Their recommendation was anchored on an incentive-based approach to domestic obligations as the best way to achieve the gas development and gas revolution needed by Nigeria (Sweet Crude Report, 2013). Other areas of concern highlighted by the OPTS and stakeholders like NEITI included: the difficulty that would arise in connection with oil exploration and exploitation due to the limiting of license area to field size with only a small perimeter boundary; retroactive provisions that conduce to the reversal of clauses in existing contracts to reflect the new fiscal regimes; the revocation of acreage that is yet to be developed by the allocated owners; extensive powers conferred on the minister; and agitation for regulatory independence (Sweet Crude Report, 2013; Wahab and Diji, 2017).

In addition to the foregoing opposition mounted by MNOCs and NEITI to the PIB, some former northern governors notably, Mu'azu Babangida Aliyu of Niger and Ramalan Yero of Kaduna states as well as the northern caucus in the National Assembly kicked against the proposed 10% host community fund (Sweet Crude Report, 2013; Ugwuanyi, 2013). They opposed the PIB on two interrelated grounds: firstly, that the Niger Delta already has a plethora of platforms through which it is adequately catered for, such as 13% statutory derivation from the Federation Account, the federal budgetary allocation to the Ministry of Niger Delta, the Niger Delta Development Commission (NDDC), and the Niger Delta Amnesty program. And lastly, that the proposed 10% earmarked for oil-producing communities might negatively affect the fiscal health of their states owing to the attendant loss of 10% of national income to the PHCF (Ugwuanyi, 2013). The revenue mobilization allocation and fiscal commission (RMAFC) also opposed the PHCF on the ground that it would put pressure on its purse (Sweet Crude Report, 2013).

#### **4. ROAD TO A COMPROMISE: BALKANIZING THE PIB FOR NATIONAL SUPPORT**

Since 2008 when the PIB was first sent as an executive bill to the national assembly, it had undergone several modifications, the major one being in 2012. However, the sixth and seventh legislative assemblies of Nigeria's National Assembly were unable to broker national consensus to pass it into law. The impasse that dogged the

PIB was demonstrative of how strongly the various interests that opposed some of its provisions felt about them and how unwilling they were to see the bill become law. From the various submissions of the various interest groups ranging from the IOCs, indigenous operators, regulators to other stakeholders, it was deducible that while they supported a holistic reform of the oil sector, and by extension the proposed PIB, yet they were strongly opposed to several of its provisions. Within the context of the foregoing, the eighth legislative assembly (2015-2019) adopted the strategy of breaking the omnibus bill into different thematic bills.

The non-passage of the PIB has had implications on the oil sector in particular and the Nigerian economy in general. Analysts have contended that the non-passage of the PIB created uncertainty in the oil sector, thus leading to the deferment of core investments, decline in revenues accruing to the government, contraction in the production and reserve profiles, and the erosion of the country's competitive attractiveness in the gas sector (NEITI, 2016; Wahab and Diji, 2017). The direct consequence of these developments has been the loss of investments to such countries as Ghana, Kenya, Sierra Leone, Tanzania and Uganda, with the worth of such foregone investments estimated at over US\$100 billion (Shosanya, 2015; NEITI, 2016). The estimated rate of loss in terms of withheld or diverted investments due to the non-passage was US\$15 billion annually (The Nation, 2017; Asu, 2018). On the whole, analysts have estimated that Nigeria has lost over US\$200 billion directly and indirectly as a result of the non-passage of the PIB (NEITI, 2016; The Nation, 2017). These losses prompted the eighth legislative assembly to seek for ways to address the logjam that blocked the processing of the PIB. The way out of the logjam was the balkanization of the bill into parts to facilitate quick legislative reviews and passage.

Thus, in 2016, the PIB was broken into four separate bills in order to minimize opposition, manage areas of controversy and contention against it and fast-track its passage into law (Asu, 2018). The emerging bills from this arrangement are the petroleum industry governance bill (PIGB), petroleum industry fiscal bill (PIFB), petroleum industry administration bill (PIAB), and petroleum host and impacted community bill (PHICB). The strategy of the National Assembly is to process these bills one after the other starting with the petroleum industry governance bill (PIGB).

It would appear that the choice of starting with the PIGB was predicated on the overall trajectory of the opposition to the hitherto PIB. In other words, the PIGB presented a more promising prospect of success in terms of garnering support necessary for its passage. The Nigerian Senate and house of representatives passed the PIGB on May 25, 2017 and January 17, 2018 respectively (Ovuakporie, 2018). After the harmonization of the two versions of the PIGB passed both chambers of the national assembly in March 2018, it was transmitted to the president for his assent. However, the president declined assent to the bill.

##### **4.1. The Key Thrust of the PIGB**

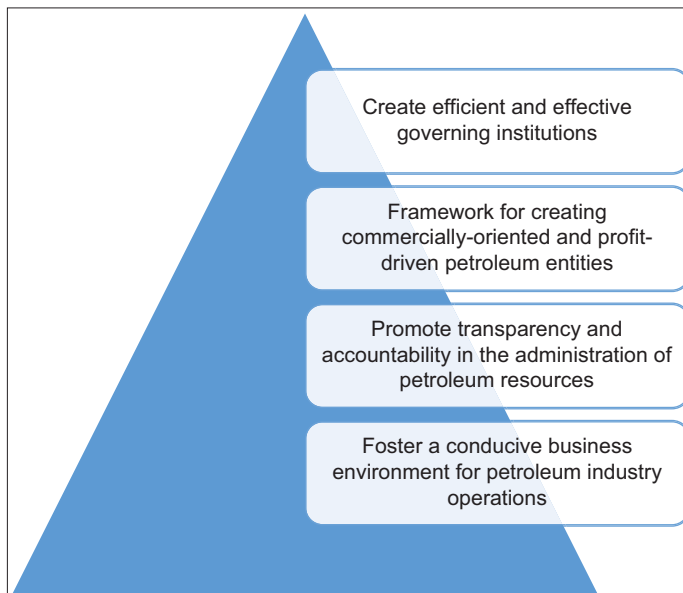
The PIGB is one of the quadripartite bills carved out from the erstwhile omnibus PIB. The PIGB focuses on reforming the governance and institutional framework of the oil and gas sector.

Figure 1 shows the major objectives of the PIGB. The PIGB is generally seen as an important piece of legislation with potential to facilitate the influx of massive investments into Nigeria's oil and gas sector. The PIGB's emphasis is the overhauling of the governance and institutional framework of the industry in terms of:

- i) Complete unbundling of the NNPC
- ii) Replacing the NNPC with three entities that would assume responsibility for various aspects of its liabilities. These new entities include: The national petroleum company (NPC) to handle joint venture assets in the upstream sector; the Nigeria petroleum assets management company (NPAMC) saddled with overseeing the production sharing contract assets; and the Nigerian petroleum liability management company (NPLMC) which would assume the responsibility of managing the liabilities of the NNPC and the pensions liabilities of the department of petroleum resources (DPR)
- iii) Establishing additional entities, namely, the ministry of petroleum incorporated (MOPI) and Nigeria petroleum liability management company, from the ashes of the NNPC
- iv) Fusing the current DPR, petroleum product pricing regulatory agency (PPPRA) and the Petroleum Inspectorate into a new independent regulatory commission known as the Nigerian petroleum regulatory commission (NPRC)
- v) Imposing 5% levy on all fuel sold and distributed in Nigeria subject to the approval of the minister of petroleum resources
- vi) Establishing petroleum equalization fund (PEF) whose sources of funding include the 5% fuel levy, subventions, fees and charges for services rendered as well as the net surplus revenues recovered from petroleum products marketing companies (Figure 2).

A major the departure of the PIGB from previous legislations in the petroleum sector is in the drastic reduction of the powers vested in the office of the minister of petroleum resources. In sundry legislations guiding operations in the petroleum industry, the minister exercises discretionary powers that span granting, renewing, extending or revoking licenses and leases

**Figure 1:** Major objectives of the petroleum industry governance bill



for oil exploration and exploitation. In the PIGB, the powers hitherto exercised by the minister, namely, issuance, renewal or cancellation of licenses, leases or grants are vested in the Nigeria petroleum regulatory commission (NPRC). The NPRC serves as the petroleum industry's supervisory body. Within its ambit, the NPRC is empowered to exercise powers and perform functions within the purview of the DPR, PPPRA, and the Petroleum Inspectorate. The NPRC, as a successor regulator, assumes the assets and liabilities of the replaced agencies.

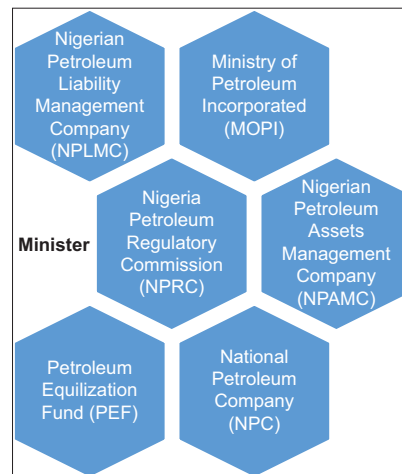
**4.2. The Politics Within: Different Interpretations of Presidential Decline**

Following the passage of the PIGB by both chambers of the national assembly and subsequent harmonization in March 2018, the national assembly transmitted the harmonized bill to the president on July 03, 2018 for his assent (Umoru, 2018). The transmission of the PIGB (the first of the quadripartite bills on the reform of the petroleum sector) to the president for assent represented some sort of victory considering that it took 10 years for this accomplishment.

The president literally shocked industry observers and stakeholders when, on July 29, 2018, he communicated his decision to decline assent to the PIGB on grounds of constitutional and legal inadequacies (The Nation, 2018). The areas of conflict raised as underpinning the presidential decline are:

- i. The provision empowering the NPRC to retain 10% of the revenues generated on behalf of the government (as contained in section 26[3] of the harmonized PIGB). The president believes that this provision would lead to an increment in the funds available to the commission while concomitantly starving governments across all levels of needed revenues
- ii. The expansion of the scope of the petroleum equalization fund (PEF) and inclusion of some provisions, which place the fund at variance with the economic policy thrust of the buhari administration
- iii. Legislative drafting anomalies with potentiality to create ambiguities, which could lead to conflicts in interpretation (The Nation, 2018; Adetayo, 2018).

**Figure 2:** Key institutional frameworks in the petroleum industry governance bill



Some analysts have contended that the NPRC seems like a new behemoth replacing another behemoth, the NNPC. The PIGB endows the NPRC with enormous powers, which in the view of industry observers and analysts could spawn the ground for abuse and bureaucratic inefficiency (SDN, 2018). But beyond this speculation, the president's justification is that the retention of 10% by the NPRC would unduly increase its financial profile to the detriment of accruable revenues to the federal government as well as other component units consisting of states, federal capital territory (FCT) and local government councils. The implication, therefore, is that the percentage of revenue to be retained by the NPRC should be pruned down so as not to create cash crunch for the various level of government. A 2018 report on the viability of Nigeria's 36 states showed that 17 states were insolvent as their internally generated revenues (IGR) constituted <10% of their receipts from Nigeria's Federation Account (Odunsi, 2019). The insolvency of the majority of states in Nigeria due to their weak capacity to generate reasonable volume of revenue within their states is responsible for their dependence on federal allocations for survival. In other words, without monthly receipts from the Federation Account, many states would be unviable and incapable of meeting their financial obligations including paying salaries of their workforce (Odunsi, 2019; Izevbogie and Ebohon, 2019). Apart from possible reduction in the accruals to the various governments, some analysts have contended that the proposed retention of 10% by NPRC is too much and could make it a reincarnation of NNPC in terms of arbitrary withholding of receipts meant for the Federation Account. The NNPC is notorious for withholding billions of dollars meant for the Federation Account every year without a clear or defined repayment plan (Ohaeri and Diminas, 2018). According to NEITI (2017), findings from a series of audits of the oil and gas sector showed that the NNPC and its upstream arm, Nigerian petroleum development Company (NPDC), failed to remit \$21.778 billion and N316.074 billion to the federation account.

The centrality of the petroleum in Nigeria's economy coupled with massive corruption associated with the sector had led Buhari to assign the ministerial portfolio of the sector to himself. The various provisions in the PIGB drastically whittled down the power of the minister. Thus, it has been suggested that beyond the issues raised by the president as constituting the grounds for his decline, the real area of contention should be seen within the context of the erosion of the power of the minister, which he currently holds (The Nation, 2018;). The letter conveying the president's decline did not have a proposal about specific changes expected to be effected on the bill to make it acceptable. However, a rework of the PIGB must address the observations of the president. This, therefore, requires that the national assembly must embark on wide consultations necessary to produce an acceptable version of the PIGB.

## 5. CONCLUSION

There is no doubt that Nigeria's petroleum sector is poorly managed and therefore requires a fundamental reform. Our respondents are unanimous in their belief that the quadripartite bills would address all the ills in the petroleum industry. Specifically they believed that the PIGB would catalyze development in the

petroleum sector, create the necessary enabling environment to attract massive investment into the sector, and thus position Nigeria as a world leader in the global petroleum industry, facilitate the expansion of Nigeria's oil reserve and enthrone peace in oil production activities by stabilizing relationship between host communities and industry players.

However, the politicization of the reform process, which made the passage of the original reform bill, the PIB, impossible thus necessitating its balkanization, is yet to be resolved. Considering the unanimity of stakeholders on the imperative of reforms in the petroleum sector and the hard-work put in packaging the PIGB, the refusal of Muhammadu Buhari, Nigeria's president, to assent to it was quite unfortunate. Anecdotal evidence and calculations by analysts have suggested that Nigeria has lost over US\$200 billion directly and indirectly as a result of the non-passage of the PIB (NEITI, 2016; The Nation, 2017). The continued delay in passing the quadripartite bills would undermine the sector and decelerate the pace of economic development, both of which have serious implications for meeting the sustainable development goals. The imperative of passing the reform bills is underscored by the general unwillingness of major petroleum industry players to commit their funds in an atmosphere of regulatory uncertainty, which the non-passage of the reform bills has created. According to US Energy Information Administration (2016. p. 4), "regulatory uncertainty has resulted in fewer investments in new oil and natural gas projects, and no licensing round has occurred since 2007."

This paper recommends that the presidency should downplay the politicization of the petroleum sector reforms by deemphasizing the whittling down of the powers of the Minister. The key considerations should be whether the PIGB is in line with global best practices, whether its provisions would lead to better management of the sector and thus translate to efficiency in the operations of the sector, and whether it would ensure operational transparency, plug wastes and lead to more revenues for the country. Thus the quadripartite bills should be expeditiously processed and passed into law so that the country can usher in a new era in its petroleum industry.

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