

# REVIEW OF THE PETROLEUM INDUSTRY BILL 2021 – PART ONE



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After almost two decades, the long and protracted reform process of the Petroleum Industry Bill 2020 (“PIB”, “Bill”) culminated in the splitting of the Bill into four smaller legislations for quicker passage covering industry governance, fiscal management, industry administration, and host and impacted communities development. These various segments have now been merged into one cohesive Bill under different chapters which has now been passed by the two houses of the National Assembly. The long title of the merged PIB describes it as “A Bill for an Act to provide Legal, Governance, Regulatory and Fiscal Framework for the Nigerian Petroleum Industry, the Development of Host communities; and for related matters”. This will replace the principal industry legislation, the Petroleum Act, 1969 (the “PA”) amongst other laws.

A process of reconciliation is now ongoing after which the Bill will be passed to the President for assent. Industry stakeholders do not foresee any hitches to this process and expect the President to assent to the Bill very soon. Fingers crossed we trust this indeed will be the case but it has to be said that we have walked this road before under various administrations. It would indeed be a big achievement for the Buhari led administration if the PIB is finally passed. We watch and wait...

However, as much as this sweeping industry reform is needed and has been long overdue, it is also important that Nigeria gets this right by ensuring that the provisions of this very important piece of legislation achieves its ultimate objectives amongst others, of transparency, creating a conducive business environment for petroleum operations and inflow of Foreign Direct Investment and generally promoting a viable and sustainable petroleum industry in Nigeria.

With this in mind and notwithstanding the plethora of reviews already done and currently being carried out by industry watchers and stakeholders, we aim by this series to conduct a concise review of each chapter of the PIB with a view to highlighting the important elements of each aspect of the Bill and give context to some of these provisions and what they mean for the industry and Nigerians as a whole.

## CHAPTER ONE – GOVERNANCE AND INSTITUTIONS

This Chapter captures the content of the former standalone Bill, the Petroleum Industry Governance Bill which was actually passed by the National Assembly in 2018 but did not receive the assent of the President. To put this in clear and simple terms, the aim of the provisions on governance and institutions is to create appropriate institutional structures with clear and separate roles for the various players in a manner that prevents role duplication and overlaps and ensures that policy formulation and supervision, regulatory oversight and commercial operations are handled by different players. This is intended to amongst others promote transparency in governance, clearer focus, and shorter approval cycles for an efficient industry.

### PART I – Vesting and Objectives

As is already the case in the PA, section 1 of the PIB vests the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and Exclusive Economic Zone in the Government of the Federation of Nigeria.

The objectives of this Chapter are to:

- (a) create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
- (b) establish a framework for the creation of a commercially oriented profit-driven national petroleum company;
- (c) promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria;
- (d) foster a business environment conducive for petroleum operations; and
- (e) deepen local content practice in Nigeria Oil and Gas Industry.<sup>1</sup>

<sup>1</sup> This is a recent inclusion in the Bill



## PART II – Minister of Petroleum

Traditionally under extant laws, the Minister of Petroleum Resources oversees amongst others, policy formulation and implementation, issuing of regulations, pre-emption rights, issuance, amendment, extension, renewal and revocation of licenses, control of petroleum products pricing, and general supervision of the industry through the Ministry of Petroleum Resources within which the Department of Petroleum Resources (“DPR”) is situate. In addition, the Minister also sat on the Board of NNPC which is supposed to be the commercial entity and so we have a situation in which the minister basically operated as a regulator and industry player with a lot of discretionary powers concentrated in that single office contrary to international best practice. Some stakeholders have criticized the extent of ministerial powers currently being wielded by successive Ministers. Whilst recognizing the important industry oversight role to be played by the Minister, an effective legislation should give room for the individual institutional regulators to perform their roles without undue interference and too many opportunities for abuse of power. This will no doubt to a large extent engender stakeholders’ confidence in the industry.

The PIB seeks to streamline these powers towards more broadly, general industry supervision and more particularly, policy formulation, monitoring and administration, reporting to the government and advising on developments in the industry, and diplomatic interface with the international community. A significant departure from the PA is in the powers of the Minister to grant and revoke upstream licenses and leases or suspend petroleum operations in any area. These powers which solely rested in the office

of the Minister may now only be exercised based on recommendations from the Nigerian Upstream Regulatory Commission (“Commission”). As for the grant, issuance, modification, renewal, review, suspension, cancellation or termination of downstream licenses, permits and authorisations for downstream petroleum operations, the Nigerian Midstream and Downstream Regulatory Authority (“Authority”) is now solely vested with that responsibility.<sup>2</sup>

Another major departure is in the power to make regulations which currently solely vests in the Minister and would now under the PIB vest in the Commission for upstream operations and the Authority for midstream and downstream operations respectively. This aligns more with international industry best practice even though there are concerns around multiplicity of regulators in some quarters. The Minister still retains the right of pre-emption over petroleum products in the event of a national emergency as contained in the PA. An interesting addition to the PIB is the right of the Minister to order a cutback of the levels of crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria. This becomes relevant in the wake of the COVID-19 pandemic and the significantly low demand for crude oil in the international market which resulted in the plummeting of oil prices and the need for the Organisation of Petroleum Exporting Countries (“OPEC”) to come to an agreement with the international oil producing community to cut back on crude oil production output from each member state in a bid to manage the crisis.

In our next publication, we will be taking a critical look at the new institutions created under the PIB.

<sup>2</sup> More will be said about these entities in our subsequent publications.

## ABOUT THE AUTHOR



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Aderemi is a Partner in the firm's Energy and Natural Resources Practice Group. With two decades of experience in the legal profession, she is well versed in corporate and commercial transactions with particular expertise in energy law and policy. She has consistently advised both indigenous companies and multinationals, including various government MDAs on legal and regulatory issues and has been involved in the development of legal, regulatory and policy framework documents and transactional documents particularly in the oil and gas, power and mining sectors.

Aderemi has been recognized by leading ranking firms such as Chambers and Partners Global and IFLR1000 for her expertise in the industry. She is a member of the NBA, member of AIPN, secretary to the Construction Projects and Infrastructure Committee of the NBA/SBL, member of the Policy and Advocacy Working Group of REAN, and was a member of one of the Working Groups that advised on the Ease of Doing Business in Nigeria initiative of the Federal Government.

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