



Federal Ministry of Petroleum Resources

PETROLEUM INDUSTRY GOVERNANCE BILL

Address

By

Dr Emmanuel Ibe Kachikwu

**Hon Minister of State – Petroleum Resources
Federal Republic of Nigeria**

RE: BILL FOR AN ACT TO PROVIDE FOR THE GOVERNANCE OF THE INSTITUTIONAL FRAMEWORK FOR THE PETROLEUM INDUSTRY AND OTHER RELATED MATTERS

[PETROLEUM INDUSTRY GOVERNANCE BILL]

PROTOCOLS

Distinguished Chairman of the Joint Committee on the Petroleum Industry Governance Bill,
and Chairman of the Upstream Committee of the Senate, **Senator Tayo Alasoadura**

Distinguished Chairman Downstream Committee of the Senate, **Senator Marafa**

Distinguished Chairman of the Gas Committee of the Senate, **Senator Bassey Akpan**

Distinguished Vice – Chairmen of the Committees

Distinguished Senators here present

Heads of Government Parastatals

Captains of Industry

Community leaders

Union leaders

Ladies and Gentlemen

2. I am honored to have the opportunity to present the views of the Executive on the proposed “*Bill For An Act To Provide For The Governance Of The Institutional Framework For The Petroleum Industry And Other Related Matters*”, otherwise known as the **Petroleum Industry Governance Bill**.

3. To say that the industry is well overdue for a revision to its legal, institutional and regulatory framework will be a huge understatement. Hence, this effort by the Senate in addressing the longstanding gap in the industry’s legal, institutional and regulatory framework needs to be commended by all.

4. When the matter of the PIGB was brought to my attention in the earlier part of the year, I was at that time working closely with His Excellency, the President in addressing

some critical governance and performance issues in NNPC, whilst simultaneously attempting to deal with some long standing problems that were threatening the sustainability of the industry.

These are issues such as:

- Oil spills
- Gas flaring
- Agitation in the Niger Delta
- JV funding challenges
- cost management
- funding of NNPC and NNPC
- contract cycles
- fuel crises and products market liberalisation
- importation of petroleum products
- refinery performance

5. Fundamental to the resolution of these problems is the question of the governance of the industry, and the role that the law could play in presenting a more effective governance and institutional model for the management of Nigeria's petroleum resources and the regulation of activities within the sector.

5. All studies conducted on the petroleum sector since 1999 are settled on the issue that the role of Government in the sector needs to be better clarified whilst the policy, regulatory and commercial institutions need to be given a refocused mandate to ensure better sector governance, transparency of regulations and operations, accountability of the institutions, and removal of opaqueness around the industry.

6. For these reasons, we took the position within the executive, to address these issues by commencing with an overhaul of sector policies. Internal dialogues have been held within the executive on critical sector issues and, recently, with stakeholders in industry and civil

society. The outcome of this process is a draft National Oil Policy, a draft National Gas Policy and a draft Fiscal Policy, all of which have undergone a public consultation process and are awaiting presentation to the Federal Executive Council.

7. To clarify, we have taken a root and branch effort to reform, which is the basis of these policies, and which I humbly commend to you. To ensure the sustainability of the policies, we have developed an executive bill and are in the process of developing fiscal Bill that captures the critical policy positions, and these bills will be submitted to the National Assembly very soon.

8. The first executive bill, titled: “**Petroleum Industry Reform Bill**” (PIRB), addresses similar issues relating to the institutional framework for the industry that the PIGB is seeking to address; however, it goes further to present the executive’s view of the future regulatory framework for the upstream petroleum sector, midstream and downstream gas sector, and the midstream and downstream petroleum sector (the latter covering the processing, bulk transportation, bulk storage, of crude oil and petroleum products, and the distribution and retail trading of crude oil and petroleum products).

9. The second bill will address purely fiscal issues around the industry segmentation that we have addressed in the sector policies and in the PIRB.

10. May I now, with your kind permission, present you with initial comments on the PIGB which you will find already covered in the PIRB, a copy of which we have already submitted to you for guidance.

- (i) We are aligned on the concept of a **single regulator** for the petroleum industry. What Nigeria needs going forward is a regulator that covers the field, as opposed to dissipated regulatory power amongst agencies. The regulator should cover upstream, midstream and downstream oil, gas and products regulation, as well as technical, economic and HSE regulation.

(ii) S.8 of the PIGB provides that the Commission will issue **regulations** in respect of a number of specified matters in order to give proper effect to the Act.

- There needs to be careful calibration of the relationship between the role of the Minister as the institution charged with overall supervision of the industry vis a vis that of the super regulator as the institution responsible for regulation. The calibration must ensure checks and balances on regulatory power through tools such as administrative law; however, it seems essential that the power to issue regulations should at all times reside with the Minister.
- This ensures that power to issue delegated legislation is placed in the hands of the appropriate member of the executive with responsibility both to the President and also to the National assembly in terms of oversight. The counter check on this is that the technical issues are handled by the regulator, for consideration of the Minister, who upon approval of the recommendation, will issue the appropriate regulation.
- There are several matters in the bill that are not regulatory in nature which will require regulations. It will be an aberration if these matters, which are squarely within the purview of the Minister, to be delegated to the Commission. Minister should issue regulations upon the advice of the Commission.

(iii) A core aspect of the reforms that we propose to the effectiveness of the Minister's powers to issue policies, supervise the industry and manage Nigeria's petroleum resources, is the need for a well-resourced and solid technical back office. Hence, the National Oil Policy and the National Gas Policy contains proposals for institutional reforms at the Ministry of Petroleum Resources in this regard. It is our position that the PIGB should address this long standing issue legislatively by creating a **Petroleum Technical Directorate**.

- (iv) S.13 Does not envisage a position for the **Minister on the Board of the Commission**. We propose that the Minister Chair the Board of the Commission to ensure effective interface between the regulatory and policy making institutions.
- (v) The PIGB proposes 4 year terms for Commissioners. May I respectfully suggest that we accord with best practice by introducing **staggered terms for Commissioners** be considered in order to ensure continuity in the governance of the Commission such that at no time would there be no executive commissioners in office.
- (vi) An essential regulatory tool for a sector that is being liberalized is the need for the Commission to be granted **competition regulatory powers**, especially in light of the nature of the midstream which is network bound and has several monopoly features that need to be carefully managed, otherwise we will be substituting government monopolies with private monopolies as we liberalise the sector.
- (vii) An essential issue, going forward, is the need to establish a **registry of records** for all the titles to be issued and managed by the commission. This will aid public access to information, and the due diligence reviews by third parties into assets.
- (viii) The **composition of the board of the Commission should ensure linkages to critical and related sectors**. As such, non-executive members of the commission should include the representatives from the Ministries of petroleum, power, finance and environment. Experiences from these sectors will no doubt enrich the work of the Commission.
- (ix) For focus, it is recommended that from the outset the Commission should be constituted with the following departments:
- Upstream regulation
 - Midstream and Downstream Oil Regulation
 - Midstream and Downstream Gas Regulation

- Health Safety & Environment

- (x) With respect to Government's role on the commercial side, the reforms that we commenced earlier on in the year need to be sustained through legislation. The critical issues here are governance, funding, efficiency and accountability of the commercial entities.

- (xi) A **National Oil Company (NOC)** needs to be created as a holding company for an integrated operation that will operate on a fully commercial basis.

The recommendations are as follows:

Funding

- A key plank of our reforms is to ensure that the national oil company is able to operate without recourse to the treasury such that funds that could otherwise be sequestered for our upstream commitments can be deployed by the treasury to meet urgent needs in other social sectors. Ultimately, the National Oil Company needs to acquire an investment grade status if it is ever to achieve these objectives.

- This will require a new way of governance and a different type of National Oil Company than currently exists. For one, it must be insulated from political interference in its operations. It must also run commercially and efficiently if it is to be able to attract funding from debt and capital markets. The governance structure and terms of reference must therefore be clearly stated and legislation must provide it a pathway to independently and sustainably raise its own funding.

- Hence, our recommendation is that there should be an explicit provision in the Bill that clarifies that the National Oil Company shall cease to be funded from the

federation account and shall have the power to raise funding for its operations from the debt and capital markets.

Governance

- The NOC which should be structured as a holding company to be chaired by the Minister
- The NOC to be an integrated holding company comprising semi – independent upstream, midstream and downstream with their own CEOs and Board of Directors
- CEO / GMD of NOC to be appointed by the President upon the advise of the Minister
- Position of CEO / GMD of the NOC to be tenured but subject to fulfilment of annual Key Performance Indicators and targets to be set by the board
- The CEO / GMD of Holding Company may only be removed for failing to fulfill KPIs and for misconduct
- We have noted that the PIGB requires a lower level of experience than one would ordinarily expect for the membership into the board. We recommend that this be revisited such that the Group Managing Director should have no less than 20 years managerial experience, whilst the executive directors should have a minimum of 15 years senior management experience.
- Stock exchange governance rules should apply to the NOC immediately it is incorporated right up till when it is eventually listed
- MDs of each subsidiary to sit on NOC Board

- Following best practice, independent board members should be appointed to the board.

(xii) As for the subsidiaries, similar rules relating to governance and funding should apply, the main difference being that the Group Managing Director should chair the board of each subsidiary.

(xiii) We also support the creation of an **asset management company** that will manage government's interest in specific upstream assets that will be transferred to the company, whilst leaving the National Oil Company to operate as a refocused integrated company.

On this note, I wish to thank you, Distinguished Senators, for inviting me to this public hearing. I wish you happy deliberations on the Bill.

**Dr. Emmanuel Ibe Kachikwu
Minister of State Petroleum Resources**

December 9, 2016