

try in Light of the PIB Controversy

In any country in the world the government has the primary responsibility for developing its economy and its people and this is true of Nigeria in general and the Oil-producing Niger Delta communities in particular. It is a question of proper nomenclature to claim that Nigeria is developing with its huge oil and gas reserves and the accruable revenue from sales. Indeed, most of the 30 million people living in the Niger Delta remain poor despite the huge revenue that comes from oil. There is a realization that government policy on resource allocation is yet to achieve desired results at the macro level hence a concerted effort to restructure the Nigerian oil and gas industry and make it more relevant to the sustainable development of the Nigerian state (Report by Akin Akinsipe 08023173582)

The Nigerian Economy and the Relevance of the Petroleum Industry

Nigeria's annualized real GDP growth forecast averaged 7.5% in 2010 and continues to maintain this momentum into 2015 barring any major unforeseen circumstances. Also, oil demand was expected to rise by an estimated 288,000b/d in 2010 to 395,000b/d in 2015, representing 6-7% average annual growth rate.

Nigeria's oil revenue has been on the exponential climb as the prices of crude oil have continued to surge giving the country a range of 55% to 60% over and above the 2011 budget benchmark price of \$65.

According to the National Bureau of Statistics, revenue from oil exports rose by 46% to \$59 billion in 2010 as prices increased and companies raised output on improved security in the Niger Delta. Nigeria earned \$196 billion from oil and gas exports in the four years up to 2010 with oil revenue accounting for 80% of government income and 95% of foreign exchange income.

State-owned Nigerian National Petroleum Corporation (NNPC) accounts for more than 50% of oil production and over 40% of gas supply, but a large number of international oil company (IOC) partners contribute to a forecast rise in oil and liquids production from an estimated 2.34 million b/d in 2010 to 2.75 million b/d by 2015 subject to OPEC quota policy. Gas production should reach 59 billion cubic metres by 2015, up from an estimated 35 billion cubic metres in 2010.



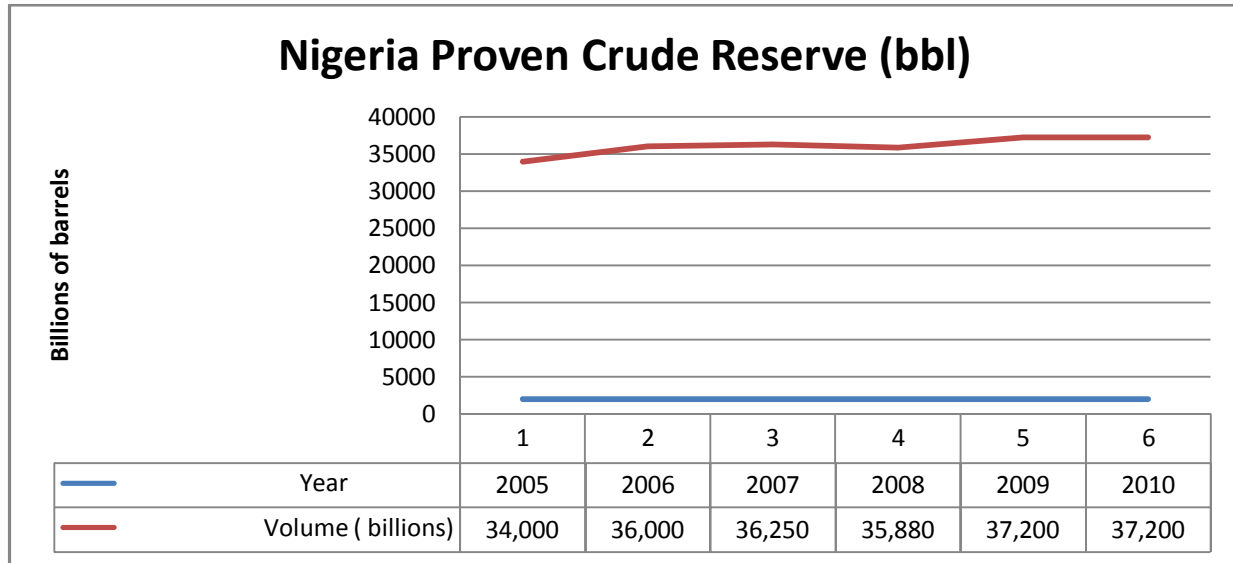
Consumption is expected to rise dramatically to around 26 billion cubic metres by the end of the forecast period, allowing exports of no more than 33 billion cubic metres. This threatens the country’s liquefied natural gas (LNG) export business unless fresh supplies can be located and developed.

Between 2010 and 2020, it is projected that there will be a cumulative growth of 49.6% in Nigerian oil and gas liquids production, with volumes rising steadily to 3.5 million b/d by the end of the 10-year forecast period. Oil consumption is set to increase by 96.6%, with growth slowing to an assumed 7.5% per annum towards the end of the period and the country using 567,000b/d by 2020.

Gas production is expected to rise to 80 billion cubic metres by the end of the period. With demand rising by 246% between 2010 and 2020, export potentials should increase to 35 billion cubic metres, largely in the form of LNG.

consumed an estimated 123.4 billion cubic metres (bcm) in 2010. Production of an estimated 219.5 billion cubic metres (bcm) in 2010 should reach 322.6 billion cubic metres (bcm) in 2015, which implies net exports rising from an estimated 96 billion cubic metres (bcm) to 147 billion cubic metres (bcm) in 2015.

In 2010, Nigeria consumed an estimated 10.54% of the African sub-region’s gas, with its market share forecast at 14.78% by 2015. It contributed 15.95% to estimated 2010 regional gas production and will account for 18.29% of supply by 2015.



Telling Issues in the Petroleum Industry Bill (PIB)

The Petroleum Industry Bill (PIB) was the comprehensive outcome of the Nigeria Oil and Gas Sector Reform Implementation Committee as an attempt to restructure and redirect the industry towards achieving sustainable development of the country in general and the oil-producing region of the Niger Delta in particular.

Despite *federal government’s receipt of about 95% of accruing oil revenue after costs*, an estimated 70% of the 150 million residents in Nigeria live below the poverty line with the attending social and environmental consequences.

Realising the need to integrate the oil-producing communities with the rest of the Nigerian economy through infrastructure investments and businesses, the proposed PIB seeks to enhance the drive to reduce the pervasive unemployment scourge while spreading the oil wealth more equitably through establishing linkages between the petroleum industry and other critical sectors of the Nigeria economy.

tutions to oversee the operations of the industry; partnerships between the Nigerian National Petroleum Corporation (NNPC) and the International Oil Companies (IOCs) into Incorporated Joint Ventures (limited liability companies with ability to make independent investment and cash flow decisions and raise capital).

In addition to the foregoing, the NNPC is to be transformed into a fully-capitalised, accountable and profitable National Oil company while instituting a new fiscal regime that significantly increases government collectable revenue and removing confidentiality in industry operations as well as full deregulation of the downstream sub-sector.

Implications of the PIB for Subsisting Joint Venture and Production Arrangements

The Petroleum Industry Bill seeks to replace the Department of Petroleum Resources (DPR) with the National Petroleum Inspectorate (NPI) to the extent that the latter serves as the petroleum industry's technical regulator, while the National Petroleum Directorate (NPD) is to replace the Ministry of Petroleum Resources and with the former saddling the industry aspects of policy formulation and securing improved benefits of the industry for Nigeria as a whole.

The Petroleum Products Regulatory Authority (PPRA)'s sphere of influence and responsibility will be to serve as the commercial regulator for the downstream sub-sector. For the newly proposed Nigeria Petroleum Assets Management Agency (NAPAMA), cost regulation of the upstream sector and managing the country's investment by benchmarking to ensure that businesses in the industry are conducted in the most efficient manner and global best practices adopted will all be its prerogatives while the Nigerian Midstream Regulatory Agency (NIMIRA) is to regulate midstream and gas operations.

Lastly, the National Petroleum Research Centre is to exist as a world-class research institute with mini-research centres dedicated to each of the product basins in Nigeria.

In the event that the PIB is passed, the Nigerian National Petroleum Corporation transforms from a cost centre government agency into a fully-capitalised and commercially-driven and a fully integrated profit centre National Oil Company underpinned by profitability objectives as its main drive towards enabling it become a competitive participant in the global oil and Gas industry.

In addition to the foregoing, the PIB proposes that Oil Prospecting Licences (OPLs) and Oil Mining Leases (OMLs) will be renamed as Petroleum Prospecting Licences (PPLs) and Petroleum Mining Leases (PMLs) to reflect the emerging realities in the industry.

It is apparent most multinational companies operating in the upstream sub-sector of the Nigerian petroleum industry have raised an alarm over some of the provisions of the Petroleum Industry Bill (PIB).

From inception, the Petroleum Industry Bill was designed to address the NNPC's perennial financing difficulties for its share of joint venture operations with IOCs operating in Nigeria and to plug the pervasive culture of corruption while creating industry incentives for sustainable investment in gas production and processing, both for export and domestic consumption.

Also, the PIB supports domestic gas utilization through effective implementation of the National Gas Master Plan. The establishment of the midstream sub-sector and the creation of a regulatory framework for midstream activities suggest that oil and gas delivery systems by law are subject to regulatory oversight through the establishment of the "open access rules"

Although the PIB acknowledges domestic gas supply obligations which are linked to delivered commitment to existing or new gas processing and transmission systems, the uncertainties entrenched in the Bill have become a source of worries to industry players and these have generated heated debate and controversies on an ongoing basis.

Tax Implications of the PIB

The Nigerian Joint Venture arrangement is generally believed to be among the strictest concession regimes in the world, as such, the provisions of the PIB suggest a more stringent operational milieu for the IOCs.

Technically, the fiscal provisions in the proposed Petroleum Industry Bill (PIB) suggest that the federal government introduced these provisions to raise collectable revenues from taxes, rents, and royalties. However, the foregoing provisions are ultimately designed to attract local and foreign direct investments into the Nigerian oil and gas industry.

However, the International Oil Companies (IOCs) believe that the new regime of fiscal administration would serve as a disincentive to the IOCs' operations and their long-term strategic investment objectives.

As it is, all companies operating in the upstream subsector of the Nigerian petroleum industry will be mandated to remit Company Income Tax to the Federation Account should

o proposes the Nigerian Hydrocarbon Tax in lieu of the
me and price-based royalty payment system.

In addition to the foregoing provisions, the Bill's fiscal regime eliminates tax offsets and upstream investment tax incentives while reducing cost deductible items for the hydrocarbon tax.

Structural Change in Taxation: the PIB Challenge

Under the current tax regime, revenue from joint venture oil sales is taxed at 85%, the gas at 30%, and the production sharing contract oil rate is 50%.

Also, the Bill proposes 50% tax rate for joint venture oil, 50% for the gas, and 30% for production sharing contract oil. Oil companies will also pay a 30% company income tax, minimum of 10% withholding tax on dividends, and a minimum education tax of 2% of total revenue.

Under the present arrangement, proceeds from joint venture oil sales are charged between 16.7% to 20%, while royalty on gas sales is put at 7%. The Production Sharing Contract rate is fixed between 0% and 16.7%.

The structure for royalty payment under the proposed PIB is progressive for oil and gas, and it ranges from 5% to 25% which is also based on production. For existing onshore and shallow water fields, it is capped at 20 percent and 18.5% respectively.

For cost deductions under the existing fiscal regime, all cost wholly, exclusively and necessarily incurred for operators are deductible. But the Bill proposes cost limits of 80% of expenses incurred outside Nigeria while introducing benchmarking, verification and approval. However, interests and finances as well as foreign expenses are not tax deductible.

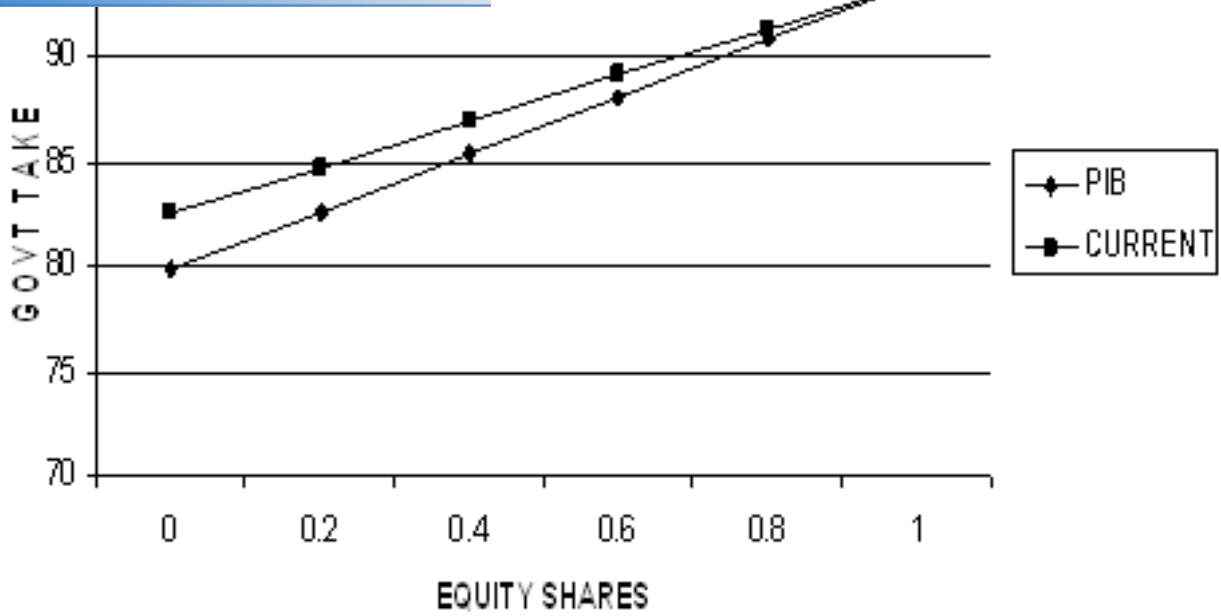


Fig. 1: FG's collectable tax in JVs under Current and Proposed Fiscal Terms (PIB).

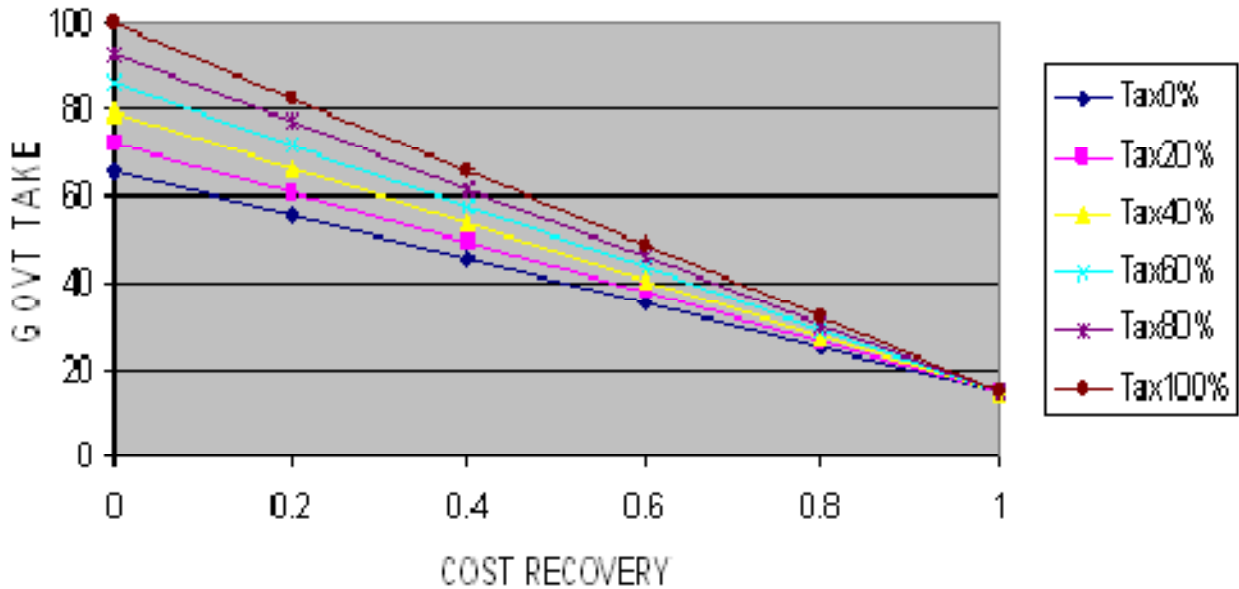


Fig 2: FG's collectable tax under PSCs with royalty based on volume of production (Deep waters offshore).

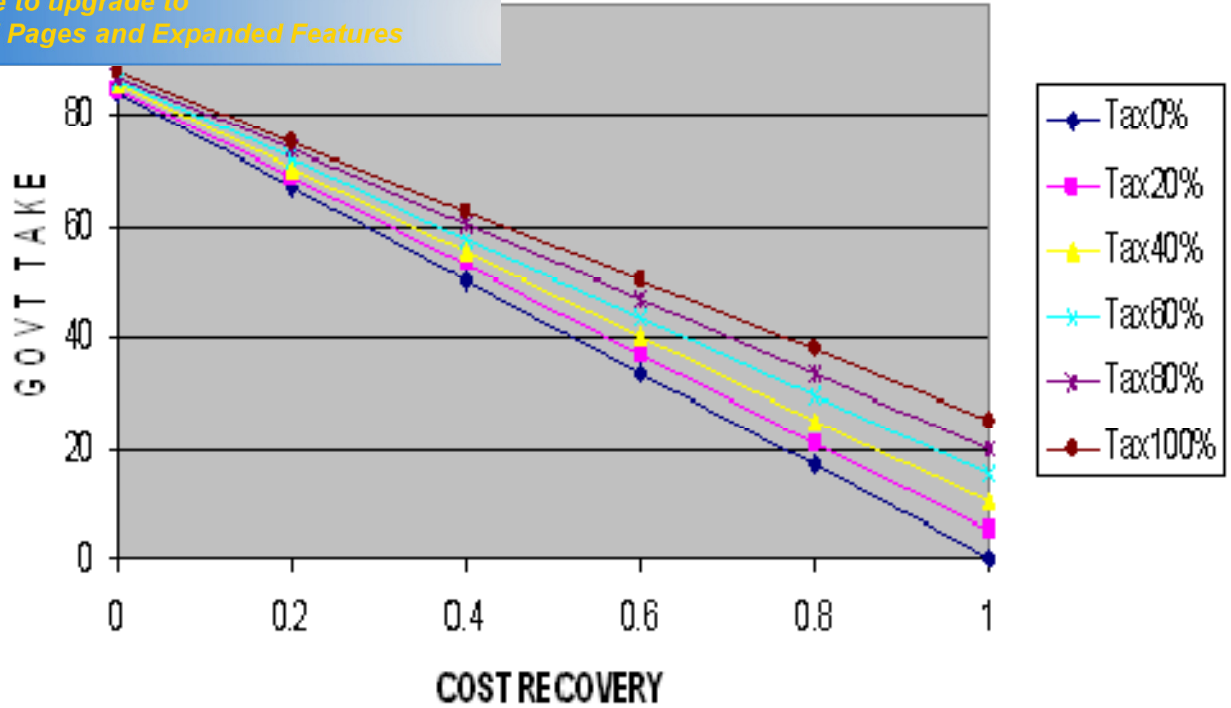


Fig 3: FG's collectable tax under PSCs with royalty based on Oil price only (Deep waters offshore).

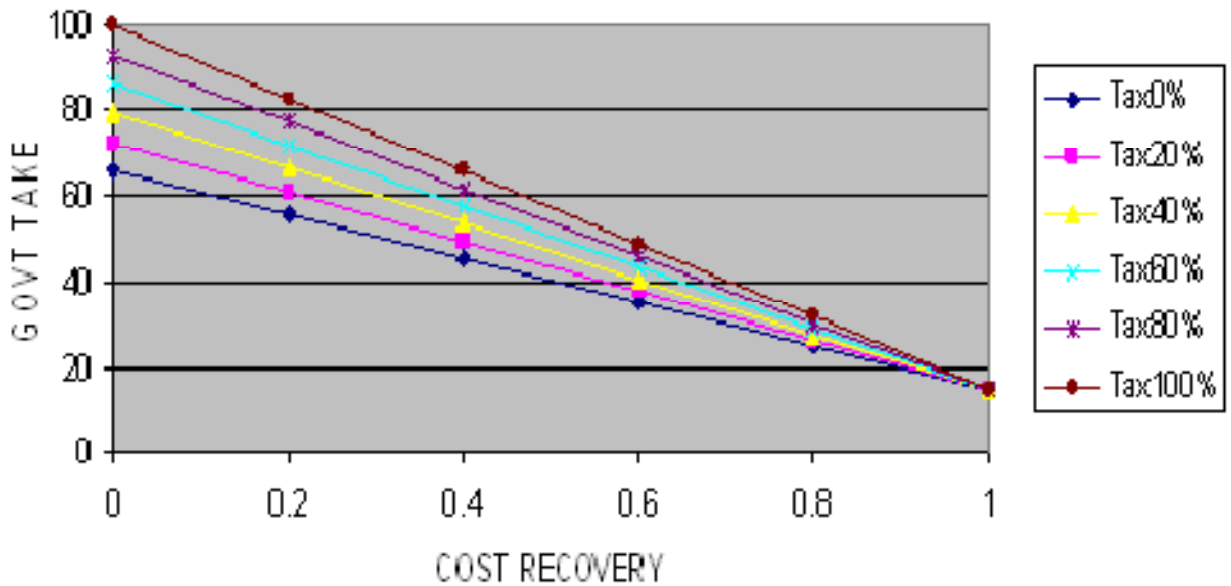


Fig. 4: FG's take under PSCs with royalty based on Both Oil price and volume of production (Deep waters)

Investment Tax Credits, Investment Tax Allowances, and ... as they apply to the current arrangements. It only makes some allowances for new gas, and small field oils.

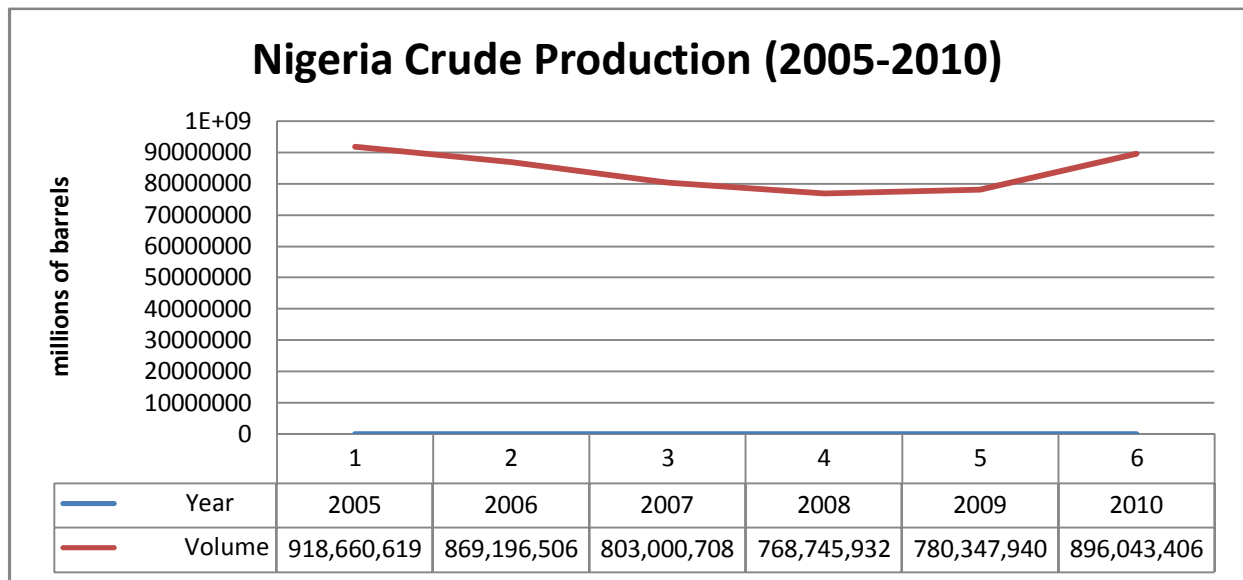
However, IOCs operating in the Nigerian Petroleum industry have argued that the proposed fiscal regime in the Bill will substantially increase the revenue accruable to the government to the neighbourhood of 90%. Their major argument is premised on the fact that the current global economic reality is not reflected in the fiscal regimes, and as such, the proposed terms in the bill will deter investments in new projects.

Trajectory of Investments in the Nigerian Oil and Gas Industry

Over the years, Nigeria has proven to be among the most investment-friendly nations for IOCs, not only because of the geological configuration of its terrain but for the relative security of investments in the industry. Also, the fiscal regime has been near stable while the industry has experienced growth in real terms over time.

Investment in the Nigerian petroleum industry had continued to grow steadily between 2005 and 2010. More than \$67 billion of new investment was recorded during the foregoing period. With the enactment of the Nigeria local content policy initiative, a significant portion of new investment in the industry is being retained in the country.

However, despite an increase in oil output as a result of cessation of hostilities in the Niger Delta, Nigeria's production remains short of the Federal Government's goal of 4 million b/d by 2010.



due to start between 2011 and 2014 should lift output. These developments is at risk from provisions in the PIB which companies say will put much of the profits and control to the government and make new investments in deepwater oil fields unprofitable.

Going Forward With the PIB

Suffice it to say oil exploration in Nigeria has slumped to the lowest level in a decade as many of the oil majors opted to defer investment until the country's proposed petroleum law, the PIB, is passed. It is interesting to know that only one exploration well has been drilled in Nigeria in the past two years, the lowest since 1999.

With the cancellation of plans to establish incorporated companies to replace existing joint ventures as a result of pressure from international oil companies operating in Nigeria, there remains unresolved issues such as the Nigerian government's unwillingness to hand over its control of a strategic industry despite consistent inability to meet its financial obligations to the IJVs and PSCs and the critical issues of multiple taxation regimes.

Although tinkering with the contents of the PIB as it is leaves so much to be desired especially given the supposed benefits to the Nigerian state, the government should create a win-win situation for all the stakeholders towards emerging a comprehensive framework that provides the consistency and coherence that Nigeria needs to realise its full potential in the oil and gas sector.

In the final analysis, until the Petroleum Industry Bill (PIB) is unanimously passed in both houses of the National Assembly and subsequently signed into law, Nigeria's oil and gas industry will remain visionless, without strategy, direction and a model to compete in a globalized petroleum industry.