

## **The Petroleum Downstream Sector and National Development in Nigeria: A Long Walk to Nowhere.**

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**Abstract:** The petroleum downstream sector in Nigeria began in the early years of the twentieth century when the downstream sector of the IOCs started marketing petroleum products in Nigeria. Precisely, Mobil Oil started marketing petroleum products in 1907 in Lagos, until 1965 when the first refinery was established in Nigeria. Since then until today the petroleum downstream sector in Nigeria has not made any headway, despite several regulatory reforms. This is, indeed, a long walk. Against this background, this study, “the petroleum downstream sector and national development in Nigeria: A long walk to nowhere” is an exposition on the role expectation of the provisions of the 2012 Petroleum Industry Bill (PIB) with regards to the downstream sector on providing solution to the problems of the downstream sector and national development. To show the validity of the main issues of the investigation, hypothesis was formulated as follows: The provisions of the 2012 PIB cannot proffer solutions to the problem of the petroleum downstream sector and national development. To generate necessary data on the subject matter, the study adopted the secondary method of data collection and analysis from relevant literature in the field over a period of time. The data generated were subjected to qualitative analysis within the purview of the theory of Neo-Marxists colonial state, which maintains that the dominant class in the neo-colonial African state is not the true agent of development, but agent of Western capitalism. His innermost vocation is to take part in racketeering, that is, stealing of public funds and taking them to the same metropolitan countries for banking. Findings from the study show that the hypothesis is not true. Therefore, the study concludes that the PIB has the capacity to reposition the downstream sector and promote national development if the corrections and clarifications identified by the study are effected. The provisions of the PIB that relate to deregulation of the downstream sector, with minor changes and improvement, will be able to address the national development problems. But the provisions that grant excessive and discretionary powers to both the Minister and President, unless expunged, have the capacity to stifle transparency, promote corruption and weaken governance and on the whole, hamper national development. It is recommended that: political leaders in Nigeria should let go their narrow interests and allow for growth and development, and the bill should be reviewed to clarify unclear and ambiguous provisions and the unwholesome provisions removed.

**Keywords:** downstream sector, National Development, PIB, corruption, Nigeria, petroleum, regulatory agency, governance, transparency, oil, deregulation, NUPENG, NUPENGASSAN, NNPC, NOC, refinery, capacity utilization, “turnaround maintenance”.

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### **I. INTRODUCTION**

#### **1.1 Background to the study**

Oil was found in Nigeria in commercial quantity in Oloibiri, Bayelsa State in 1956, and Nigeria joined the league of oil producing and exporting countries in 1958. However, crude oil may not, on its own, mean much until it is processed into a number of other by-products; it is these products in their various forms that provide energy of diverse kind for domestic, commercial and industrial usage and it is at this level that the versatility of oil can be established. According to Silva-Calderon (2003), crude oil provides “a vast array of consumer, commercial and industrial products.” These are made possible through the process of refining, distribution and marketing. The downstream sector of the petroleum industry involves the refining and processing of crude oil into various products and other activities such as marketing and distribution which contribute to making the products reach the final consumer.

The joy that accompanies any resource ownership is that it will satisfy the immediate need of its owner. It was for this reason that Nigerians went into a state of euphoria and excitement at the news of the discovery of oil, a rare resource that would satisfy the domestic energy needs of the country, and would also have the potential of putting the country on the path of industrialization, economic growth and development. Actually, in a developing country like Nigeria, the general expectation is that the ownership of a large reserve of oil and gas

is a sure means of generating wealth and having great economy, and petroleum products availability itself is pivotal to any economy the world over. It is the ointments that grease the machinery of economic activities from the domestic, to the commercial, and to the industrial.

Petroleum product marketing and activities began in Nigeria in the early part of the twentieth century. For example, Mobil Oil Nigeria started business since 1907 when it began marketing Sunflower brand kerosene on the docks of Lagos (Mobil Facts, 1999). But Nigeria had her first refinery in 1965, a 38,000 bpd capacity, built by Shell Petroleum Development Company of Nigeria. After the civil war, Nigeria, in pursuance of her objective of satisfying the domestic petroleum products needs of Nigerians, expanded the refinery to 60,000 bpd capacity and established more refineries. All combined, had a total capacity of 445,000 bpd.

The petroleum downstream sector, like its upstream counterpart is under the supervision and control of the Nigerian National Petroleum Corporation (NNPC) and its subsidiaries: the Department of Petroleum Resources (DPR), the petroleum products pricing regulatory authority (PPPRA) among others. The National Oil Company (NOC) as is generally called and its subsidiaries are government entities vested with the power to manage and regulate the downstream sector as a whole. They determine petroleum products availability and their prices. This invariably means the success or failure of the petroleum downstream sector rest, principally on how efficient these government agencies function or the petroleum sector governance structure. In the words of Glada Lahn et al (2007), "an NOC can be more of a government agency than an operating company."

The successful management of a country's petroleum downstream sector and resources brings about increased national wealth, builds sustainable development and also creates social stability, and this depends on a number of factors, which include: the model of the NOC the country has. An NOC can be 100 percent government-owned; it can also be an independent government agency with some regulatory powers; it can be a mixture of private and public sector, a kind of partnering in mixed enterprises; or partially commercialized and privatized NOCs. The model of NOC a country has also determines the mode of relationship between the government and the NOC. It could be ministry of petroleum dominated NOCs where the government has overall executive power over policies and regulation, or the regulator, an appendage of the ministry. The position of an NOC in government budget is another crucial factor in the efficiency of NOC. It may be an NOC where the operating and capital expenditure are presented in detail to the government for approval. This portends less autonomy for the NOC management, or, more of civil service involvement in setting priorities and getting approval for projects.

Other important factors that relate to having efficient and performing NOC and providing good governance of the petroleum downstream sector and resources is making accountability of decisions and performances inseparable part of the management processes. According to Lahn Glada et al (2007), "without accountability, corruption and malpractice can flourish and good practice can go unrecognized". In addition, transparency is a key issue in the sector. Again, Lahn Glada et al (2007) stated that "transparency not only removes the cover for possible corruption, but enables good decisions, allows rapid intervention to correct problems in the system, and builds trust."

The NNPC, the Nigerian NOC has the reputation of being dominated by the ministry of petroleum and political interferences. Olayinka, Jeremiah and Okere (2017) cited the feud between the Minister of State for Petroleum (the boss) and the Group Managing Director of NNPC (subordinate) as "the number one problem of NNPC". They clearly referred to NNPC as having "infamous reputation of a money-spinner that is always encumbered by political interferences." According to them, "the level of control by government on NNPC is still strong and that has not given it the much required independence to work optimally." The NNPC is not operating as a business unit or a commercial outfit (Olurounbi, 2017), but an agency of government.

NNPC has been enmeshed with corruption tag. According to Olurounbi (2017), "the NNPC has a long history of scandals involving ... sales of government oil and high profile officials' involvements in monetary thefts, among others." She expatiated further in these words:

For nearly three decades, Nigeria's state oil company, the Nigerian National Petroleum Corporation (NNPC), has been associated with mind-boggling cases of corrupt practices. From Andrew Yakubu's \$9.7 million saga; the \$3.5 billion Egina FPSO project manipulation; the \$1.6 billion NPDC scam; \$20 billion missing oil revenue and failure to turn over \$16 billion in revenue to government's covers in 2014; to backdoor deals that have cost the country billions in revenues, the corporation is one of the leading institutions in the country involved in series of scandals that have left many Nigerians, as well as international analysts bewildered (Olurounbi, 2017)

Several efforts have been made to reform the sector and put it on the right track. One of such is the Petroleum Industry Bill (PIB), which is yet to be passed by the National Assembly. The downstream petroleum sector is an integral part of the recommendations of the oil and gas sector reform implementation committee (OGIC) set up in 2007 to reposition the oil and gas industry as a whole. The Petroleum Industry Bill (PIB) which was the outcome of the recommendations of that committee had much for the downstream sector of the industry. Yet the Bill is suffering series of setbacks – the first version was jettisoned by the sixth Assembly; the 2012 version which appeared promising had an inchoate passage by the House of Representatives of the seventh

Assembly; and the Senate of the eighth Assembly split the bill and passed the first phase it tagged “the petroleum industry governance bill” (PIGB). This phase is yet to be concurred by the second chamber of the National Assembly. However, we are yet to establish whether the provisions of the 2012 version of the bill (which has survived till date) are enough to turn around the downstream petroleum sector and take us to the expected “somewhere”, or whether the government itself is “honest” in its much touted efforts to reform the industry. This is the thrust of the study. Until then, it is difficult to believe that the type of NOC Nigeria has now in place, the NNPC, characterized with all the misgivings, according to the aforementioned “testimonies”, can lead Nigeria anywhere, in terms of wealth creation, social stability and, in general, national development

## **1.2 Statement of the problem:**

Every country in the world has petroleum products needs, which include, the household energy needs, the private business requirements of the citizenry, the commercial and the industrial petroleum products needs of the country. The economy of any nation depends majorly on the amount of petroleum products available. An economy that suffers shortages or acute shortages in the supply of petroleum products can be described as a kwashiorkor-infected economy. It is an aberration for a country like Nigeria with abundant petroleum resource-base – 37.2 billion barrels oil reserves, the tenth largest reserves in the world (OPEC, 2014), and according to the Department of Petroleum Resources (DPR) data, a gas reserves of 182.8 trillion standard cubic feet - to be counted among countries with history of petroleum products scarcity.

It is unfortunate that for close to eight decades of the petroleum industry activities in the country, there has been virtually not much to cheer or show for it. Nigeria has not benefitted much in term of development. Rather, if there is anything to show, it is a ‘tale of woes’ – damage to the environment, pollution consequence upon oil spillage and gas flaring, abject poverty, hunger, unemployment, exploitation, impoverishment, underdevelopment, etc. Despite the enormous oil resource endowment and the conglomeration of the petroleum industry in Nigeria, no meaningful development has been engendered. Initial expectation of a buoyant industrialization which is a regular consequence of an economy dominated by oil has failed. The same goes for infrastructure development such as transportation, education, hospital, energy and the like. The most pathetic situation is the irony of a country that pride herself as an oil producing country becoming famous in not having (enough) refined petroleum products for domestic consumption and thereby resorting to the importation of these products.

The blame for Nigeria’s national development quagmire has always been put at the threshold of corruption; however, even when there are other factors to it than corruption, in specific terms, most of these other factors are in one way or the other connected to corruption. And since corruption is said to be the bane of national development in Nigeria, and bearing in mind that the petroleum industry is the fulcrum of the country’s economy, it is agreeable that corruption is also a factor responsible for the underperformance and dysfunction of the -petroleum industry in general and the downstream sector in particular.

Corruption is a pervasive phenomenon. Manby (1999, p.107) cited examples of corruption among employees belonging to the middle management cadre of oil companies in Nigeria who “routinely take a percentage of the value of contracts, effectively selling such contracts to the highest bidder – rather than the lowest bidder, according to the usual practice of tendering” The same practices are equally in vogue in cases of development projects which involve contracts directly connected to the construction of oil facilities and the “almighty” turn around maintenance of refineries. Corrupt practices in the Nigerian petroleum industry is not restricted only to a section of the industry, it cuts across all the sections – a kind of rat race. Even the NNPC staffs who supervise the activities of oil companies in the field, particularly the loading of oil for exports are often times bribed to look the other way while the oil companies load the ships. That is why NUPENGASSAN (2013, p.3) in their memo to the National Assembly during Public Hearing submitted that “...many processes and activities” of the industry “are shrouded in mystery, that controversies usually arise even amongst government agencies on matters such as the country’s daily production or revenue arising therefrom”. if that could happen whilst loading crude oil for export what then do we expect could happen by way of diversion of petroleum products to other countries while offloading them from the landing ports.

Sanusi (2012) cited the Transparency International 2012 report which showed Nigeria occupying a ranking position of 143 out of 183 countries in the “Corruption Perception Index” for 2011. This ranking shows that Nigeria is in the world’s most corrupt countries bracket. It is on this premise that the ‘Nigerian Extractive Industries Transparency Initiatives’ (NEITI) contested that the Nigerian petroleum industry was generally malfunctioning because of lack of transparency in the whole industry, NUPENG and PENGASSAN, both the officially recognized workers’ union in the Nigeria oil industry, openly contended the opaque manner the industry was operating. Even the petroleum industry bill (PIB), expected to introduce transparency in the administration of the oil industry, with a view to bringing sanity into the operations of the industry seems to be bedeviled with confusion.

While the forward and backward was continuing, the four refineries that was meant to produce 445,000 barrels per day, may be because of chronic lack of maintenance, began to breakdown one after the other. Manby (1999) captured it this way: “in December 1997... crude oil allocation to the refineries was cut down to 150,000 bpd, as a result of poor state of equipment in the plants. In November 1998, a breakdown of the fluid catalytic cracker at the 125,000 bpd Warri refinery left the country without a single operational catalytic cracker, needed to separate different petroleum products from crude, and the old Port Harcourt refinery was out of regular production since 1989”. In their normal working capacity, all the refineries put together were suppose to produce about 13 million litres of gasoline, a day, rather, only less than 5 million litres was produced (Manby, 1999).

In 1997, the turnaround maintenance contract of Kaduna refinery was awarded at an exorbitant cost of U.S.\$240 million to an IOC, Total, a French oil company. This deal was favoured by the minister of finance, Anthony Ani, against US\$170 million, claimed could do the job by the minister of petroleum, Dan Etete. Irrespective of the argument of Dan Etete, the contract was awarded to Total in May 1998, to be delivered in July same year. Mandy (1999) reported that in November 1998, the refinery still was not commissioned to resume production. Since then matters of turnaround maintenance of Nigerian refineries begin and end in the media, while the refineries remain where they are, comatose.

The bottom line of all these is that the Nigerian refineries began to produce at very low capacity utilization levels, or a dwindling down of the overall production processes which results in inadequate supply of petroleum products in Nigeria. Later on, a chaotic and collapse of both the production and supply lines of petroleum products, and finally, Nigerians began to hear two terminologies that were virtually alien to them in their year after year budget broadcasts – “fuel importation” and “fuel subsidy”

The Nigerian petroleum industry is dominated by International oil corporations. Probably it is in this context that Jean Marie Chevalier (1980) as quoted by Odukoya (2006, p. 250) stated that “the history of the oil industry is the history of imperialism”, an expression of the process of accumulation employed by countries with hegemonic powers in their quest to expand capitalism and deepen their domination and control of the satellite or peripheral states in advancing their economic motives of exploitation of natural resources of these territories for the development of their home countries.. The main motives are exploitation, accumulation of surplus and profits repatriation. In agreement with the above postulation, Odukoya (2006, p. 250) postulates that the “international character of the oil companies is part of the problematic of the sustainable development... in Nigeria”.

Overwhelming and unquenchable political interest and weak governance structure are problematic issues in the petroleum Industry. In matters of appointment to the office of the Minister of Petroleum Resources, the Group Managing Director of the Nigerian National Petroleum Corporation and other Chief Executive positions in the industry, political consideration overshadows expediency and effectiveness. In other words, sensitive appointments are done to favour the cronies of those in power. The effect of all these to the poor performance of the industry cannot be overemphasized.

Sanusi (2012, p.13) postulates that “the menace of weak governance constitutes a serious challenge to the various efforts and reforms meant to achieve economic growth for sustainable development. Thus, the prevalence of weak institutions, poor governance... constrains the realization of economic policy objectives of the government”. In the same vein, the Amnesty International (2012, p.3) cited a published report of the United Nations Environmental Programme (UNEP) on Ogoniland which states that “the Nigeria Oil Regulatory System is weak, and lacks resources and capacity”. This statement appears more relevant to the petroleum downstream sector than anywhere else. An effectively run petroleum downstream sector with a good governance structure will definitely “increase national wealth and sustainable development”. Lahn, et al (2007, p9) stated that good governance refers to “the system for making and implementing decisions concerning the exploitation of a nations oil and gas resources. It includes the structural and hierarchical organization of the sector, its decision-making and communication processes, the policies and objectives governing its activities and the regulation of those activities”.

This study, “*The Petroleum Downstream Sector and National Development in Nigeria: a Long Walk to Nowhere*”, is believed will provide answers to some of these begging questions as we seek to find out whether the 2012 petroleum industry bill (PIB) which is still lingering, under scrutiny in the National Assembly, and begging for enactment could contain some provisions that could show us the way of complete turnaround in the petroleum downstream sector and lead us to where efficiency, good governance, and perhaps commercialization could be found in the Nigerian National Oil Company, to bring wellness to our economy, and foster sustainable development in Nigeria.

**1.3 Research question:** The following research question shall guide this study as we probe for answers.

Can the provisions of the 2012 PIB proffer solutions to the problems of the petroleum downstream sector and promote national development?

**1.4 Objective of the study:** The objective of this study is to examine whether or not the provisions of the 2012 PIB can proffer solutions to the problems of petroleum downstream sector, and promote national development.

**1.5 Hypothesis:** To ease the investigation of the research question and the achievement of the stated objective, the following hypothesis will be tested theoretically, and the hypothesis is stated in null form.

(i) The provisions of the 2012 PIB cannot proffer solutions to the problems of the petroleum downstream sector and national development.

**1.6 Significance of the study:** It is stated in this study that since the country's economy is an oil economy, what affects the oil industry virtually affects national development. They include corruption, politics of dominance and control by political elites, lack of good governance in the industry, etc. The provisions of the PIB will be evaluated against these issues to prove or disprove the hypotheses.

The study becomes significant in that it will attempt to prove or disprove whether the provisions of the 2012 PIB can proffer solutions to the problem of the downstream sector of the Nigerian petroleum industry and invariably promote national development. More importantly, the study is significant both from the theoretical and practical perspectives.

(i) From the theoretical perspective, the study will be helpful to scholars who would want to further researches in this area of study.

(ii) From the practical perspective, the study will help in establishing the correlations between the petroleum industry bill and the challenges of national development in Nigeria; and highlights the relationship between the provisions of the petroleum industry bill, mitigation of the various interests and challenges in the petroleum industry as well as enhancement of national development in Nigeria. This will help policy makers in related areas to make policies that would in turn help national development.

**1.7 Clarification of concepts:** In this section, effort shall be made to give operational definitions or meanings, as they apply to this work, to some of the selected key words used in the study. This includes such a word as national development.

**1.6.1 National development:** A country's national development refers to that country's ability and capacity to manage her resources, both human and natural, her economy and finances in such a manner, that bring about positive changes and enhance the quality of lives of the populace and their well-being in terms of low rate of infant and maternal mortality, shift "in social status, high employment opportunity and life expectancy, reduction in poverty rate as well as availability of housing, water, electricity, good nutrition, education and infrastructure" such as roads, health facilities, educational institutions and other necessities of life, as reflected in the United Nations Human Development indicators and contrary to erstwhile Western definition of development which focused mainly on increase in Gross Domestic Products (GDP) of a country. Nevertheless, much as the content of GDP cannot be ignored, when discussing national development emphasis is now placed on people and their well-being as the object of attention than "mere growth in the volume of goods and commodities" (Obasanjo and Mabogunje, 1991)

## II. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

### 2.1 Literature review

Generally, petroleum occupies a central place in the economy of nations, the world over; hence, numerous articles are being published on a regular basis on different aspects of the subject matter. In this work, attention shall be given to: the management of the resources with reference to the downstream sector, corruption and other factors that could hinder development even in the midst of resource abundance.

Martin Wolf writes about a "resource curse". In his words, "Governments that obtain their revenues from exploitation of mineral wealth frequently do not give a damn about the commercial prosperity of their people" (Wolf, 2004, p.17). He cited Nigeria and Angola as "prominent examples of the 39 states identified by the World Bank as having failed to grow despite oil or mineral abundance" (Wolf, 2004).

As an interface, the theory of "resource curse" is an exposition of the bereft nature of African political elites (in this case, Nigeria) who have shown no capacity to lead development; and also an attack on the ingenuity of Nigerian elites for not thinking or acting developmentally. It establishes the nexus between the attitude of Nigerian elites and underdevelopment in the midst of abundance resource. Sekoni (2015, P.14) wrote that "military dictators chose the style of lottery winners to spend national revenue with little attention to economic development of the country for citizen's welfare".

We cannot run away from the bare fact that corruption among Nigerian elites and leaders over the years has been the bane of sustainable development in Nigeria. They connive with oil operators (IOCs) to perpetuate "expatriation of our surplus" (Rodney, 1972), and capital accumulation through corruption. Donwa, Mgbame and Julius (2015, p.228) postulate that "Corruption has significant negative effects on economic growth and

development”. In their citation, “cases of corruption are here and there in the (petroleum) industry beginning from oil and gas exploration to refining and marketing of the petroleum products”.

Odukoya (2006, p.254) blames it all on the attitude of Nigerian elite class. He states that “the concern of the ruling class for the developmental needs of the people has long nose-dived”. As he puts it, the only thing that makes economic sense as long as the survival and continuous hegemony of the ruling class is concerned is for them “to forge alliance with the oil cabal, despite the obvious knowledge that on the long run the development of the country would be criminally compromised. And with this, the alliance and coincidence of interest between foreign capital and the Nigerian ruling class has compromised the issue of best practices in the operations of the oil companies” and “rather than check the oil companies, the various factions of the Nigerian ruling class are engaged in the struggle over the rents for the oil operations” (Odukoya, 2006, p.254).8/

Cases of corruption are everywhere involving oil revenue and officials of government.. In its December 2011 report, Global Financial Integrity “estimates that US\$18.2 billion is siphoned out of Nigeria each year. Instead of funding the development of other areas such as infrastructure, health and education, billions of dollars are siphoned out of the country for personal use or are sitting in the bank accounts of government officials across the Atlantic” (GFI, 2013). Nwaroh (2013), in establishing the huge discrepancy between the amount of fuel subsidized by the government and the actual amount consumed in the fuel subsidy crisis, stated that “a total of 15 fuel importers collected more than US\$300 million in fuel subsidy money without importing any fuel”. And that “fuel importers shipped some of the fuel meant for local consumption to other countries and sold them at a higher price”. To crown it all, “Farouk Lawan, the head of the parliamentary probe into the fuel subsidy scheme, was accused of collecting US\$620,000 out of the alleged \$3 million bribe to remove the name of Zenon Oil from the list of companies that received subsidy money without importing fuel. Audio recorded tapes of the conversation between Lawan and the head of Zenon Oil describe the details of the bribe” (Nwaroh, 2013, p.2).

All the literature reviewed above might in one way or the other have something in common with the study, but none is the same with “*the petroleum downstream sector and national development in Nigeria: a long walk to nowhere.*” Therefore this study is expected to fill a gap.

## **2.2 Theoretical framework**

In this study, the Marxists analysis of the Neocolonial States approach shall be used. The Marxists analysis of the neocolonial states of Africa brings out two strands of competing themes: One of these themes which is rooted in the ‘capital logic view’ stands for the class structure of the neocolonial states, fashioned after international capitalism. Accordingly, “the dominant class in African countries is neither a true bourgeoisie, nor is it a true ruling class (the latter is, in fact, the bourgeoisie of the European and the North American core)” (Staniland, 1985, pp.166 – 167). The dominant class in the African states is described by the Marxists as “Comprador” group, or an auxiliary bourgeoisie. In Marx’s original formulation, the African dominant class was described as a kind of “sub-committee of the metropolitan committee for managing the affairs of the bourgeoisie” (Freybold, 1977, pp. 79 – 81). This can be described as the subordination of African States to capitalism. A structural Marxist, Freyhold (1977), in reference to Tanzania says that the colonial and post-colonial states are both the agents of parts of the bourgeoisie, but perform different functions and tasks. While the post-colonial state performs the “task of disorganizing the direct producers who have begun to assert their class interest, but the actual dynamics of economic and social development are determined by the metropolitan bourgeoisie irrespective of the form in which it intervenes” (Freybold, 1977, pp. 79 – 81).

Marxists writers’ main areas of concentration when examining the neocolonial states of Africa are the character of the dominant classes because the Marxists see them as the true agents of capitalist penetration and stabilization. Marxist theorists argue that the political and social structures of the post-colonial states are determined by international capitalism. This implies that the political elites or rulers in the neocolonial states are not truly the ruling class, but agents of the capitalist class who are in Europe and North America. The foreign capital has to install domestic classes with identical interests to enforce their political dominance, and as direct agents of capitalism. Thus, the domestic politics of the African state is essentially the products of external forces.

The second strand of the Marxists analysis of the neocolonial state emphasizes the “systemic autonomy” of the African states. Scholars, who share this view, state that capturing political power is the main preoccupation of the post-colonial elite and not economic power. This means the basis for class formation in Africa is different. Rather than have the “control for the means of production” as the basis for class formation, “power is the basis for class formation and conflict, and the “dominant class is portrayed as a ‘political class, a bureaucratic, or a managerial, or organizational bourgeoisie”. What this class formation does is turning upside/down the classical Marxists idea of the relationship between economics and politics. To them, power determines wealth, instead of wealth determines power.

Fanon (1966), in his treatise describes the dominant class as “national bourgeoisie” or a “phantom bourgeoisie”. His major preoccupation is to take over power. The national bourgeoisie, according to him, has

no economic power and is not engaging in production or invention, which would have given him the impetus to work for economic development, or industrialization, but his innermost vocation is to take part in the racket, that is stealing of public funds and taking them to the same metropolitan countries for banking. He has a psychology of a businessman and not that of a captain of industry, always hustling to amass wealth, and not to make wealth. They continue in the production of raw materials for exports to the metropolitan countries to service their industries, thus perpetuating economic dependency of African states.

The national bourgeoisie does not have in his mind or his agenda the transformation of the nation, only the mission of becoming the transmission line between the nation and capitalism. He does this rampantly, however, camouflaged. In this manner he wears the masque of neocolonialism. He has no sense of guilt for being the Western bourgeoisie agent, provided he satisfies his interest of becoming “the general president of that company of profiteers impatient for their returns which constitute the national bourgeoisie” (Fanon, 1966, p.133). Since the African bourgeoisie could not have that which is very necessary to it, money, it becomes “a bourgeoisie of the civil service, a sort of little greedy caste, avid and voracious, only too glad to accept the dividends that the former colonial power hands out to it” (Offiong, 1980, p.158). He sees no other opportunity opened to him in this capacity other than the opportunity for him to embezzle enough money to enhance its domination and by so doing stifle national development. Fanon (1966, p.144) says that “this sort of bourgeoisie is incapable of giving birth to an authentic bourgeois society with all the economic and industrial consequences which it entails”, instead, “is plunging into the mire of corruption”.

The Marxists analysis of the neocolonial African state provides an explanation for the role played by African bourgeoisie in the underdevelopment of the post-colonial state. This analysis is relevant to this study in that it brings to light how Nigerian political elites contribute to the pilfering and breakdown of the downstream sector of the petroleum industry on the one hand and national development challenges, on the other hand, and their role in the near failure of the passage of the petroleum industry bill. The Nigerian bourgeoisie are not genuine in their leadership. The Marxists describe them as “comprador” directly tied to the apron-string of the bourgeoisie in the metropolitan, and cannot develop on its own without recourse to the latter. They manage the economy only for their own personal interests and that of the foreign capital. They cannot engender development, but scramble to convert public wealth to themselves. The Nigerian bourgeoisie is also the public servant whose appetite for embezzlement and all manners of corruption is chronically insatiable. Instead of Nigeria becoming self-sufficient in petroleum products refining, and better still, becoming exporter of the products, she rather settles comfortably in importing them. All these and more are definitely among the reasons why even the Nigerian downstream sector cannot make any headway, and the reason why development reform policies, such as the petroleum industry bill, continue to linger in “limbo”.

### **III. RESEARCH METHODOLOGY**

In this chapter we shall be focusing on the methods of conducting the research, that is, the research design, method of collecting data and the method of data analysis..

#### **3.1 Research design**

In this study, we shall only use the trend research design. A trend research design is well suited to a study of dynamic processes, in other words if the problem being studied is likely to change or the attitude of the people about the phenomenon is likely to change over time – the focus is change over time.

#### **3.2 Methods of data collection**

The data collection method used in this study is the qualitative method or secondary source of data collection. This includes both official and unofficial documents, such as government publications and records, journals, articles, textbooks, Newspapers, magazines, internet and others.

#### **3.3 Methods of data analysis**

Equally, the qualitative method of analysis is used in this study. Qualitative data collection and analysis are complementary to each other, because it produces a higher synthesis than the one analysed. In this study we shall use review and appraisal methods of analysis in analyzing the data derived mainly from the 2012 PIB and any other relevant document in answering the research question stated in section 1.3

#### **IV. THE DOWNSTREAM PETROLEUM SECTOR IN NIGERIA AND THE PIB**

##### **4.1 Introduction:**

The refining and processing of crude oil into various products and other activities such as marketing and distribution which contribute to making the products reach the final consumer is referred to as the “downstream sector of the petroleum industry”. (However, the PIB has introduced the midstream to separate the actual refining and processing of crude and gas from marketing and distribution). “The downstream sector is of strategic importance to the nation’s economy, as petroleum products constitute a key source of energy used for various purposes” (Obasi, 2003). In this chapter, we shall discuss the marketing and distribution sub-sector and the refining sub-sector as well. For a clearer perspective of what this study is all about, we shall have an overview of the 2012 Petroleum Industry Bill and the downstream sector of the petroleum industry

Although marketing of petroleum products in Nigeria began in the early years of the twentieth century, by the downstream sector of the international oil companies (IOCs), the downstream sector of the petroleum industry in Nigeria firmly took its roots when Nigeria established her first refinery in 1965, with a “capacity of 38,000 barrels per day”, in proportion to the national consumption requirements at that time. “After the Nigerian civil war, the refinery was expanded to 60,000 barrels per day” (Atumah, 2012, p.23). However, the demand for petroleum products in Nigeria has since increased beyond that level. Nigeria now has four refineries – one each in Kaduna and Warri, and two in Port Harcourt. The four refineries have the capacity to produce 445,000 barrels of crude oil per day; three petrochemical plants, one in Port Harcourt and two in Warri. “In full capacity utilization the four refineries should have a combined output of 13 million litres of gasoline a day, and domestic demand was estimated at the same time to be around 18 million litres a day” (Manby, 1999, p.34).

##### **4.1.1 The marketing and distribution sub-sector:**

Refined petroleum products include PMS (petrol), AGO (diesel), and HHK (kerosene). The companies involved in the petroleum marketing in Nigeria include “Total, Mobil, Chevron, Oando Plc, Conoil Plc, African Petroleum Plc and Eterna Plc “(Nwaroh, 2013), referred to as major oil marketers. They form the Major Oil Marketers Association of Nigeria (MOMAN) and control about 60 percent of petroleum products distribution nationwide. However, there are the indigenous marketers who form the Independent Private Marketers Association of Nigeria (IPMAN)”. They control about 40 percent of products distribution (Edoreh, 1997). There are more than 26,700 petroleum products retail outlets across the country; 2,453 of these are owned by the 7 major oil marketers. Mega stations belonging to NNPC are 37 outlets located in the 36 states capital cities in Nigeria and Abuja, while about 24,210 petroleum products retail outlet across Nigeria belongs to the “indigenous independent marketers (Kabir, 2016). There are also about 130 fuel depots in Nigeria which belong to IPMAN, MOMAN and NNPC in the ratio of 83:24:22 respectively (Kabir, 2016). For an effective distribution of the products, there are some facilities required, they include “pipelines, coastal vessels, road trucks, rail wagon”, etc. The Petroleum Products Marketing Company, government regulatory agency responsible for petroleum products marketing, has a pipeline system that links the refineries to zonal storages and sales depots. According to Ajayi (2013), the pipelines are divided into three phases. Phase 1 and 2 have five systems which are referred to as 2A, 2B, 2C, 2D, and 2E, phase 3 has three systems referred to as 2cx, 2dx, and 2ex.

##### **4.1.2 The refining sub-sector:**

Since the nationalization of the refineries and related facilities, the downstream sector of the petroleum industry became 100 percent government owned, fully run and managed by the NNPC as a monopoly. The Petroleum Product Pricing Regulatory Agency (PPPRA), an agency of the federal government is directly charged with the responsibility of determining the prices of petroleum products. And as usual with government businesses, the refineries soon ran out of regular production and were only “working at less than 30 percent of their installed capacity” (Ajayi, Salami & Babem, 2014, p.121). Initially, it began with lack of maintenance and corruption. The contracts for the turnaround maintenance of the refineries became political and a source of embezzlement, government after government. Consequently all the refineries snapped into comatose, having low capacity utilization.

The blame for the low capacity utilization of the four refineries owned by government was put on government involvement in the downstream sector. This they claim is the reason behind the sorry state of the refineries, the inefficiency in the distribution and marketing of products and are the negative effects of monopolistic structure of the downstream sector. This is why many Nigerians are calling for the deregulation of the sector. In the words of Braide (N.D.), as cited by Ariyoosu (2008, p.113), “the low capacity utilization of Nigeria’s state-owned refineries and petrochemicals plants in Kaduna, Port Harcourt, and Warri, the sorry state of disrepair, neglect, and repeated vandalization of the state-run infrastructure nation-wide, the collateral damage of institutionalized corruption” are traceable to the fact that government is involved in the sector. It is also the principal reason behind “the frightening emergence of a local ‘nouveau riche’ oil mafia that controls, and

coordinates crude oil, and refined petroleum products, pipelines sabotage and thefts nation-wide”, as well as “the insatiable corrupt military Task Force operatives that assist diversions of both crude oil and petroleum products” (Ariyoosu, 2008, p.114). The “large-scale cross-border smuggling of petroleum products, the protracted and seemingly intractable severe fuel crises that result there from “are all predictable outcomes of Government involvement in the downstream sector of the Nigerian petroleum industry” (Ariyoosu, 2008, p. 114).

**Table 1 10 – Year Domestic Refining Capacity Utilization in Nigeria (%)**

Year/ Refinery	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
KRPC	33.08	8.34	=	19.56	22	20.46	22.17	29.12	29.33	12.90
PHRC	42.18	50.26	24.87	17.84	15	9.17	12.24	11.95	9.18	12.24
WRPC	54.85	3.85	=	38.52	41	43.36	20.99	27.88	35.99	19.28

Source: NNPC 2014 Annual Statistical Bulletin, p.40

**Table 2 10 – Year Domestic Crude Oil Refining in Nigeria (Barrels)**

Source: NNPC 2014 Annual Statistical Bulletin, p.39

YEAR	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Crude oil Received	72,360,780	42,471,739	18,191,136	45,533,304	19,392,571	33,633,907	40,405,605	33,595,260	36,193,237	25,839,373
Crude oil Processed	70,637,019	43,445,397	19,059,670	39,264,519	17,745,656	34,871,693	39,408,108	33,628,602	35,233,125	23,360,372

Table 1 shows the average percentage of domestic refining capacity utilization between 2005 and 2014. According to the table, KRPC and WRPC record their highest capacity utilization of 33.08 percent and 54.85 percent respectively in 2005, while PHRC records its highest capacity utilization of 50.26 percent in 2006. The lowest average capacity utilization among the 3 refineries was KRPC 8.34 percent in 2006; PHRC 9.17 percent in 2010; and WRPC 3.85 percent in 2006. In 2007, PHRC was the only refinery to produce at 24.87 percent capacity utilization, KRPC and WRPC had zero capacity utilization each. The summary of the whole analysis is that, the average capacity utilization of all the refineries is too low for any impact in the supply of petroleum product in the economy. The highest average capacity utilization in a year is 2005 with 43.37 percent and the lowest is 2007 with 8.29 percent capacity utilization.

The domestic refineries are supplied with daily allocation of crude oil by the NNPC for which they refined into different products which include among others Liquefied Petroleum Gas (LPG), petrol (PMS), kerosene (HHK), diesel (AGO), etc. As revealed in Table 2 above, the refineries, in 2014, had a total supply of 25,839,373 barrels of (dry) crude, condensate and slops, out of this, 23,360,372 barrels were refined. This accounted for a very dismal combined average refining capacity utilization of 14.4 percent.

It is important to note that, for the ten years (2005 – 2014), the highest volume of crude received and processed was in 2005 where 72,360,780 and 70,637,019, all barrels, as shown in Table 2 were received and processed, which indicates that between 2005 and 2014 the performance of the refineries were on the decline. Although there were very few intermittent jerks upward, they were very marginal and still in a declining fashion. Again, the crude oil supply to the domestic refineries as is also shown in Table 2, for example, using the highest and the least which were 72,360,780 barrels in 2005 and 25,839,373 barrels in 2014 was a far cry from the 445,000 barrels per day capacity of the refineries.

This is the reason why many believe the problem is not with low capacity utilization of the refineries, rather, with the proportion of crude oil allocation to domestic consumption. To them crude oil allotment to domestic consumption is negligible compared to what is exported, that is why the capacity utilization is low. According to Oladele (1991, p.128) “there has been inadequate crude oil allocation to the refineries for domestic consumption. This situation also leads to under utilization of the four refineries with the attendant shortage of refined products for domestic consumption”. They also argue that, if a larger volume of crude had been allocated to domestic consumption that would have informed the sensitivity of government to the economic welfare of the masses, because, according to them, “the impact of petroleum as a natural resources given to them in abundance will be felt more by the masses of the people if the products were available for consumption locally than exportation”, in the pattern of Brazil where “production is largely for domestic consumption” (Nordas, Vatne and Heum, 2003, p.13), instead of exportation, which ends up in the pockets of just a few.

Consequent upon the very low capacity utilization of the Nigerian refineries which result in Nigeria not meeting her domestic consumption demands, the government resorts to the importation of petroleum products, and in turn subsidizes the cost of these products to make them affordable and reduce the harsh economic effect

on the ordinary citizens. MOMAN stated that the difference between the higher cost of imported PMS as ascertained by PPPRA and the then lower regulatory pump price of N65 per litre was the subsidy repaid to importers after being subjected to audit by government appointed auditors” (MOMAN, 2012, p.3).

As the cost of fuel subsidy began to mount heavily on government budgets, the administration of President Goodluck Ebele Jonathan in January 2012, attempted to remove the subsidy on the ground that the removal of the subsidy would guarantee an improvement in the economic development capacity of the country. This was, however, greeted with national strike, which forced him to reinstate some part of the subsidy. Many put the cost of fuel subsidy in Nigeria within the neighbourhood of US\$8 billion in 2012 (Nworah, 2013), and has become a burden and “spoiler” in the downstream sector. The administration of President Mohammedu Buhari that succeeded Jonathan could not escape the burden. The Punch Newspaper of November 5, 2015 has it as a Front-page headline “FG approves N413 billion fuel subsidy to oil Marketers” (Punch, 2015, p.1).

Many scholars, however, think the refining sector is a non-contributor to the economic development of Nigeria. In the thinking of the Petroleum Marketing Sector of Marina Securities (MARS, 2009), “the revenue generated from crude oil is being eroded by the activities in the downstream sector through the importation of petroleum products, oil subsidies and a petroleum equalization fund”. They explained further that “the economic cost lost to the crude oil subsidy and petroleum equalization fund is \$4.418 billion representing about 17.6 percent of Nigeria's annual revenue from crude oil, with their negative impact on national development” (MARS, 2009, p.8).

#### **4.2 An overview of the 2012 PIB and the downstream sector:**

Specifically, as it relates to the downstream sector, the 2012 Petroleum Industry Bill (PIB) was designed, among other things, to address government involvement in the downstream sector and the need for the deregulation of the downstream subsector. Many scholars believe that government involvement in the downstream sub-sector is a severe hindrance to the attainment of operational efficiency in the performance of the sub-sector. In the same vein, the PIB seeks to address the issue of corruption and the need for transparency as well as establishing a regulatory framework in line with global best practices.

##### **4.2.1 Objectives of the Bill as it relates to the downstream sector (our study) directly include the following:-**

6. “to deregulate and liberalize the downstream petroleum sector”
7. “to create efficient and effective regulatory agencies”
8. “to promote transparency and openness in the administration of the petroleum resources of Nigeria...”.

##### **4.2.2 The institutional and regulatory framework under the PIB:**

Under the PIB, the following institutional and regulatory framework mainly concerns the downstream sector of the industry. They are:-

- **The downstream petroleum regulatory agency:** This agency has “to administer and enforce policies, laws and regulations relating to all aspects of downstream petroleum operations and to issue and administer licenses in the downstream sector”.
- **The national oil company:** “To take over certain assets currently held by NNPC on behalf of the Government not including interests in unincorporated joint ventures and assets held by the national gas company”.

One structural transformation in the 2012 PIB is that the NNPC will metamorphose entirely from an agency of government into a public liability company, a fully-subscribed or capitalized share company, commercially-based outlook and fully fitted as a profit making National Oil Company anchored on profit-making motive, and thereby driving towards becoming competitive at a global level.

## **V. PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS**

The main focus of this chapter is to provide an answer to the research question stated in section 1.3 using the document review, appraisal or analytical approach in analyzing the data derived mainly from the PIB 2012, other relevant documents as well as conclusions from past studies and theoretical background of good petroleum regulatory system design.

### **5.1 Analysis and discussions - research question: Can the provisions of the 2012 PIB proffer solutions to the problems of the petroleum downstream sector and promote national development?**

Arising from the research question, it can be inferred from the foregoing discussions in this study, that the factors that contribute to the poor performance or lack of direction of the petroleum downstream sector and national development in Nigeria as outlined in our discussion of the statement of the problems above are still

prominent and are not likely to give way unless sorted out, expectedly, by the PIB. In definite terms, the continuous lack of national development in Nigeria is caused by the unquenchable appetite for corruption, the overriding influence of personal interests against national interest, and the lack of good governance in the sector. The effect of all these diverse and antagonistic interests against national development has been negative. Even the PIB celebrated as having the magic wand for national development with expectantly strong institutional and regulatory framework to drive development was soon watered down by conflicting or contending interests. However, findings in this study reveal that lack of transparency; mismanagement, and corruption particularly in the downstream sector have contributed to the poor state of national development in Nigeria. Again, at the bottom of it all is the selfish attitude of the political elites to have it all for themselves. For example, a president who comes from a particular section/region of the country would either appoint himself the Minister of petroleum, and another person from any other place, a Minister of State, so that the petroleum sector would fall directly under him, or appoints his Minister of Petroleum from his region, so that the booty would still come to him and no one else. If a president appoints himself the Minister of petroleum, is it not for him to have full control of the industry? Would he not have full control, as the president, if he appoints from a different region? He would still have, but selfishness would not let him do that because all he wants is to have the industry in his pocket. His appointees, the chief executives, directors and management staff, will be his loyalists, confidants and cronies. Therefore the petroleum industry becomes a family affair. There is bound to be mismanagement and corruption.

However, it is the desire of this study to examine the provisions of the 2012 PIB, particularly the outlined objectives in Section 1 of the Bill that relate to the downstream sector (our study) directly, with a view to determining whether (1) the provisions of the bill are adequately targeted at either the realization or non-realization of the listed objectives, and by extension, national development; and (2) whether or not the provisions of the bill are by any means determined, or not, by personal or class interests of those who prepare it. The analysis shall help to establish how appropriate the provisions are in addressing the objectives or to what extent personal interests must have diluted them.

The objectives of the 2012 PIB to be analyzed as outlined in part 1 of the Bill include, deregulation of the downstream sector, regulatory system and transparency and openness.-

#### 5.1.1 **Deregulation of the downstream sector**

Section 1(f) (Objective 6) of PIB, 2012 is: "To Deregulate and Liberalize the Downstream Petroleum Sector". Precept 7 and 9 of the Nigerian Natural Resource Charter (NNRC) as cited by Ezeigbo (2014) prescribes as follows: (7) "that resource revenues should be used primarily to promote sustained, inclusive economic development through the provision of enabling conditions and maintenance of high levels of investment in the country", while 9 suggests that "government should use resource wealth as an opportunity to increase the efficiency and equity of public spending and enable the private sector to respond to structural changes in the economy". To this end, the PIB, 2012 provides "for the deregulation and the liberalization of the downstream petroleum sector" (Section 221 of PIB 2012).

For several years, Nigerians have been having the harrowing experience of crippling "national economic activities and astronomical rise in the cost of doing business several times over due to insufficient supply of petroleum products". It has been the view of many that the solution to all these is the deregulation and privatization of the downstream sector of the oil and gas industry. It is only then, according to this school of thought, that the yearnings and aspirations of Nigerians could be satisfied. "The deregulation and liberalization of the downstream petroleum sector" will bring private investors, whether foreign or domestic, who will take away the business of running refineries from government, bring in competitiveness and build additional refineries to ensure, first and foremost or in the short run, domestic self-sufficiency and thus, in the long run, will eventually lead to the exportation of refined petroleum products. Consequently, national development will result. Deregulation and liberalization of the downstream petroleum sector in Nigeria has tremendous effect on national development in Nigeria. Okubor (2014, p. 89) posits that "sustainable development of Nigeria ... will depend primarily on the nature and robustness of the private sector response to government policies, and that manufacturing for export is a vital aspect for sustained economic growth and development." In their study, Arong and Ikechukwu (2013, p.126) concluded that "the deregulation and privatization of the oil and gas industry will usher in sustainable national development and will be a blessing rather than a curse for the citizenry".

Findings from different analyses reveal that objective, number 6, was partly achievable under the provisions of the PIB. Nevertheless, in order to fully achieve deregulation of the downstream sector, there is need for some additional provisions. Admittedly, the bill has some fairly good provisions regarding deregulation, but further analysis shows that the Bill has no provisions for effective transition and there are no clear provisions for post-PIB implementation regime of deregulation. The PIB has not provided a clear guide as to where the responsibility to implement reforms both pre and post PIB actually lies, as well as the arrangements

for the transition of the new regime. Analysts are concerned about the sincerity or readiness of the 2012 PIB deregulation provisions. It is yet to be established whether or not there are some political underpinnings to it. The argument is that the PIB 2012 should make provisions for (1) “a process of reform, both pre and post – PIB to be carried out by the Bureau of Public Enterprises in line with the current Public Enterprises (Privatization and Commercialization) Act”; and (2) inclusion of clear provisions that will “guide the process of deregulation as well as transition provisions on outstanding issues such as where liabilities will be domiciled following the transfer of assets and employees from NNPC to the National Oil Company, as well as the process of commercializing the NOC”.

**5.1.2 Regulatory agencies:** Section 1(g) or objective 7 of the PIB, 2012 states it thus: “To create efficient and effective regulatory agencies”. The Oil and Gas Policy recommendations which included a number of wide ranging structural changes in the sector, was that the “Minister would be responsible for broad policy initiation, formulation and development while the regulators would be responsible for technical and commercial regulation of the sector”. As provided by the 2012 PIB, the “Downstream Petroleum Regulatory Agency shall be responsible for regulating the downstream petroleum sector. It is created to inherit the current regulatory functions of the NNPC. The agency was expected to be empowered so that they could be able to reduce the perennial problem of “conflicts of interest” in the petroleum industry and make the NOCs transform into commercially focused organizations. And strong regulatory agencies with a bent on commercialization, devoid of political interference was actually the chant song of the 2012 PIB which would have made the agencies more profitable and efficient, and thus contribute to national development, a way of making a difference from what obtains in the current NNPC.

However, the various analyses conducted revealed that the objective of creating efficient and effective regulatory agencies was not adequately addressed in the 2012 PIB. According to Glada Lahn et al (2007, p.10), “a regulatory agency is said to be strong and effective where the regulator possesses the capacity and authority to perform its regulatory functions independently, without interference, and where other actors are willing to defer to its authority”. In such organizational structure, policy issues, i.e. the ministry, regulation, i.e. government-appointed and statutory body, such as the “Downstream Petroleum Regulatory Agency”, and operations, i.e. the National Oil Company (NOC) are separated into different compartments or entities. Disappointingly, the reverse is the case in the 2012 PIB. And as Sayne et al (2012, p.23) observed, “the Bill did not even make a clear definition of the mandate of the agencies, for example the “National Oil Company (NNOC)” was not given guidance on what it means to be “commercial” or how their responsibilities would be limited”. The PIB 2012 made no provisions for reducing unwarranted political interference in the agencies it created. There is no doubt it needs no over-flogging that strong and high performing NOCs or agencies should be those with skilled and independent boards and staffs with the powers and free hands “to make both technical and commercial decisions. But the bill did nothing to stop political interference; rather it proposes a board heavily dependent on the presidency” (Sayne et al, 2012, p.23).

As provided in the PIB 2012, the Minister of Petroleum Resources is given overarching powers over everything, “These Ministerial powers cover a multitude of issues ranging from excessive discretionary powers over the licencing process for downstream petroleum activities” (PIB, 2012, S.6(1)(g), (h) and 172), despite the provisions of the Bill that “majority of licences and leases are expected to be issued through competitive bidding process” (PIB, 2012, S. 190). The ministerial powers “control pricing of petroleum products, declare national emergency, order discretionary suspension of petroleum operations and the right of pre-emption of all petroleum and petroleum products obtained, marketed or otherwise dealt with under any licence or lease granted under this Act” (Section 7, p.16), cover the powers to coordinate and supervise all the agencies of the oil and gas industry prescribed by the Bill and presides over them, and make regulations (Section 8).

The issue of giving excessive powers to the Minister borders on integrity and corruption and also has a political connotation. “The main challenge in Nigeria’s petroleum industry has been a lack of transparency, non-implementation of existing laws, mismanagement and corruption at the state enterprises and regulatory agencies. And this had always been a major setback in the country’s drive towards national development”. In the words of NUPENGASSAN (2013, p. 7): “...the powers of the Minister under the current PIB are too expansive and the concentration of such powers in one individual will create not only unnecessary bureaucratic bottlenecks but can also lead to abuse. As the popular saying goes, power corrupts and absolute power corrupts absolutely”.

According to Ogunbanjo (2012, p.6), “The phrases, ‘the Minister may’, ‘as may be decided or imposed by the Minister’ the Minister shall have the right’ are phrases commonly sighted in the Petroleum Act 1969, the principal legislation currently governing the Nigerian petroleum industry as well as subsequent industry legislations”. Unfortunately, the 2012 PIB which was suppose to move away from such “backward ever” phrases and reflect the mood of the time by putting in place structures or building on those tenets that could check the bizarre corruption and misappropriation of funds which have been holding the petroleum industry captive for decades and correct the impression that corruption is free for all in the Nigerian oil and gas, rather it

is taking us aback. In the words of Ogunbanjo (2012, p.7), “under the PIB 2012 more powers and functions are assigned to the Minister than under the provisions of either the PIB 2008 or the Senate PIB 2009”. It has not only “restored the powers of the minister, which were expunged in the PIB 2009 by the Senate of the sixth National Assembly, it has considerably enlarged them. The concentration of immense powers in the hands of a political appointee may affect transparency and accountability, and compromise the due process that the Bill seeks to enthrone” (Ogunbanjo, 2012, p.7).

Different analyses conducted show the PIB as “lacking in specific provisions that would ensure transparency and non-discrimination in the award process for every licence, lease, permit or authorization”. This implies that the PIB, 2012 is not adequate in this respect to ensure a strong check against corruption so as to positively impact national development. Except of course, the “role of the Minister is limited to policy issues and directives, and an independent regulatory body with general powers to award licenses and leases as is the practice in some other countries like Kenya, United States of America and the Russian Federation is created”; in that same manner, “the discretionary powers of both the Minister and the President to grant licences and leases are expunged; clear rules guiding the exercise of the regulators’ power to issue licenses with the aim of achieving non-discrimination and transparency are included”, the 2012 PIB would be incapable of checking corruption in the petroleum industry.

**5.1.3 Transparency and openness:** Section 1(h) or objective 8 of the PIB, 2012 is to “promote transparency and openness in the administration of the petroleum resources of Nigeria”. Precept 2 of the Nigerian Natural Resource Charter (NNRC), as cited by Ezeigbo (2014, p.3), suggests that “a successful natural resource management requires government accountability to an informed public. This requires the government putting in place transparent processes for taxing, collecting and managing revenues from the industry, among other things”. This implies that transparency combined with commercial viability in a competitive environment should form the objective and the basis of operation for all nationally owned resource companies so as to yield best returns for the country in terms of enhancing national development. “Transparency does not stop at removing the cover for possible corruption; it also enables good decisions, makes quick intervention in correcting problems in the system, and helps in building trust” (Glada Lahn, et al, 2007, p.14).

Nupengassan (2012, p.3), in their position paper on PIB 2012 to the National Assembly, clearly stated that “one of the major areas of grave concern about Nigerian petroleum industry has been the opaque nature of the industry. Many processes and activities are shrouded in mystery that controversies usually arise even amongst government agencies on matters such as the country’s daily production or revenue arising there from”. It is really an unfortunate and regrettable thing to hear that even agencies of government or official, paid with public fund to manage national resource as important as oil could not give accurate account of the quantity of oil produced. If Nigerian officials could do this, what do we expect the IOCs to do? Perhaps it is the IOCs that bribe the officials to look the other way while they produce as much quantity as they can and give as little figure as they like, which also affect the revenue the government receives.

Findings reveal that section 1(h) (objective 8) of the PIB 2012 has the capacity to partly address the objective as contained therein. That is to say, there are strong provisions in the PIB that can guarantee transparency and non-confidentiality in the petroleum sector. However, examination of various analyses on this subject, (Ezeigbo, 2014), (Ikeyi & Arifayan, 2012), (Iledare, et al, 2012) and (Sayne, A., et al, 2012) has indicated that, though the PIB 2012 has the potency to partly address the transparency objective as contained in section 1(h), this is possible exclusive of politics..

Moreover, section 33(1) of the Bill which says the new regulatory agencies “may accept gifts of money or other property upon such terms and conditions as may be specified by the person or organization making the gift provided such gifts are not inconsistent with the objectives and functions of the agencies”, is creating room for a possibility to “compromise the integrity and objectivity of the agencies and weakens the transparency objectives of the Bill”, because once a gift changes hands between the giver and the receiver, there is definitely no gauge to determine the consistency or otherwise of such gift with the objectives and functions of the agencies.

Lastly, the provisions of not including some entities created by the Bill in the provisions requiring to make public or disclose all contract activities increase the likelihood that the issue of openness or not indulging in opaque practices within the joint venture and gas contracts will not be achieved, and no requirement for information on downstream activities to be published; no auditing requirement too for “National Oil Company (NOC)” and “National Gas Company (NGC)”. The only requirement the NPAMC has is to make public its audited account summary. By implication, the PIB is partial in the manner it treats transparency.. While the regulator is required to publish upstream petroleum operations in its website (Section 174(5)), “the downstream regulator by contrast is not required to publish information on downstream activities” (Sections 45(h) and 46(d)). And in Sections 124, 149 and 160, the PIB exempts the three companies from legislation that

implements transparency in the public sector, such as, the “Fiscal Responsibility Act” and the “Public Procurement Act”.

**5.1.4 Summary of the analyses:** The whole essence of good governance of the national petroleum sector, as in the case of the petroleum industry Bill in Nigeria where petroleum is the primary source of revenue to government, is critically about sustainable national development. In other words, everything in the PIB 2012 has to do with achieving the national development needs of Nigeria. Therefore, every section of the Bill is either directly or indirectly linked to national development. But in this study, the main focus of analysis is the sections and subsections that have direct connection with the downstream sector and national development; in this case they are Subsection 1(6), (7) and (8) of the objectives of the 2012 PIB.

From the above presentations and analyses, it can be inferred that the intention of the PIB, implicitly and explicitly, was to engender national development. In other words, the PIB in its pure form has what it takes to promote development. The three variables presented and analyzed have high potential to bring about national development if properly addressed. They are deregulation of downstream sector, regulatory agencies, and transparency and openness.

Following our analysis of the variables which are objectives (6), (7), and (8) of the PIB, the study reveals that there are omissions, oversights, loopholes, inadequacies, etc. that can as well frustrate the achievement of the objectives of the PIB except something is done. For example, analysis indicates that the first variable, deregulation of the downstream, is partly capable of addressing the problem it was meant for because there is no provision in the PIB for a smooth transition (pre and post PIB).

In the case of regulatory agencies, there is a gap: For the purpose of good governance, effectiveness and efficiency of the industry, the regulatory agencies were supposed to have responsibility over technical and commercial regulation of the sector, without political interference, but the case is different in the 2012 PIB, the Bill makes no provision for unwarranted interference, rather it proposes agency boards heavily dependent on the presidency: (1) The Minister presides over all the boards, “coordinate and supervises all activities of all the agencies in the industry”. The weak governance identified in the statement of the problem as one of the problems of the industry for which the PIB was meant to overcome still could not be addressed, and the objective of the PIB 2012, Section 1(g) which is creating effective and efficient regulatory agencies, from analysis, appears far from being addressed; (2) The PIB grants excessive discretionary powers to the Minister in all regulatory and administrative matters in the industry. All analyses point to one conclusion that overarching power is prone to abuses, and without accountability, corruption and mismanagement reign, and good practice suffers or disappears.

For transparency and openness, findings indicate that there are strong provisions in the PIB that can ensure transparency and non-confidentiality in the industry, but the insistence of the framers of the PIB to institute personal or class interest as a law against national interest has only succeeded in making the Bill a mockery of itself. Transparency and openness was brought in the PIB to remove the cover for corruption so as to rid the petroleum industry of corruption, knowing that corruption is the reason why no establishment functions in Nigeria, and corruption is the bane of national development in Nigeria. Section 33(1) of the PIB permits regulatory agencies to accept gift of money and other property as may be specified by the giver “provided such gift are not inconsistent with the objectives and functions of the agencies”. The question is how can the consistency or otherwise of the gift with the objective and functions of the agency be determined? Simply put, the provision is a caveat that corruption has been institutionalized in the industry, or that corruption is an integral part of the industry; some agencies (NOCs) created from the NNPC, by the PIB are not bound by the “non-confidentiality clause”. This makes the PIB uneven in treating transparency.

In the final analysis, the study reveals that the PIB on its own has the capacity to make national development in Nigeria possible if the National Assembly will painstakingly look at the Bill, cross the “Ts” and dot the “Is”, expunge the areas that need expunging and insert where insertion is required, with this, the Bill shall be brought to the level where the interests of the generality of Nigerians will count, that is, national development.

## **VI. CONCLUSION AND RECOMMENDATIONS**

### **6.1 Conclusion**

The purpose of this study was to evaluate how the Petroleum Industry Bill (PIB) can proffer solutions to the problems of the downstream sector of the petroleum industry in Nigeria. A number of factors were identified as the main challenges of the petroleum downstream sector and national development in Nigeria, which include corruption, weak governance, and political interest of the political elites. A research question was posed: Can the provisions of the 2012 PIB proffer solutions to the problems of the petroleum downstream sector and promote national development? Trend research design, document review, appraisal or analytical approach in analyzing the data derived mainly from the PIB 2012, and other relevant documents as well as conclusions from past studies were used in examining the research question.

It has been revealed that the selected variables identified from the main objectives of the 2012 PIB, used in the analysis of research question, which included (Section 5.1.1) deregulation of the downstream sector (Section 5.1.2), regulatory agencies (Section 5.1.3), transparency and openness, as originally intended in the 2012 PIB would have the capacity to achieve high performance in addressing the national development needs of Nigeria. All that was needed was making some necessary improvements by way of correcting inadequacies, loopholes, oversights and other deviations in the Bill. For example, variables 1, i.e. Section 5.1.1, deregulation of the downstream sector and the provisions of the PIB are capable of addressing the national development needs of Nigeria, if only the provisions of the PIB were properly articulated to specify the pre and post transition of the agencies that succeed the NNPC as well as making clear provisions that will as well guide the process of deregulation, “including transition provisions on outstanding issues such as where liabilities will be domiciled following the transfer of assets and employees from the NNPC to the NOC”, including the process of commercializing the NOC.

However, specifically the provisions of the PIB as regard section 5.1.2, regulatory agencies and 5.1.3, transparency and openness are not capable of addressing the challenges of national development in Nigeria, except those sections of the PIB that have to do with the “overarching powers of the minister, the discretionary powers of both the minister and the president, such as sections 6(1)(g), (h), 7, 8, 172 and 191 are expunged from the PIB”; sections 45(h) and 46(d) which exempt the downstream regulator from publishing the downstream petroleum operations in its website, like its upstream counterpart should be corrected; equally, sections 124, 149 and 160 all of the PIB that exempt the three successor companies to NNPC “from legislation that enforces public sector transparency, example, the Fiscal Responsibility Act and the Public Procurement Act should be reversed; and lastly, section 33(1) which allows the new regulatory agencies to accept gift of money or other property from person(s) and organization(s)”, under any guise should be rescinded.

## 6.2 Recommendations

**National Interest:** The whole gamut and muddling up of the provisions of the PIB, particularly, as it concerns regulatory agencies and transparency is all about efforts to satisfy the interests of those in power. It is paramount that the political leadership in this country should have national interest at heart. It is imperative to recommend that in the course of discharging their constitutional functions national interest should be placed over and above personal or selfish interest, political elites should jettison the practice of attaching greater importance to what benefits them individually or personal gains, even at the risk of national development, and embrace that which benefits the nation as a whole for the common good of all Nigerians. Even when they think they should work to favour their tribes or where they come from, they should remember, according to T. J. G Locher (No Date) as quoted by Immanuel Wallerstein (2011, p.19), “the whole is more than the assembled parts”. If Nigeria develops in wholeness as a nation, all the tribes or constituencies in Nigeria shall as well develop. Therefore, our politicians should play down on tribal politics or politics of self. Sometimes the thinking is to turn the wealth of the nation into personal pocket and impoverish the masses in order to have domination and control, which tantamount to being a king in a land of desolation. If our politicians could think national rather than self, national development will definitely ensue and the whole country (including all the tribes and constituencies that make it) will be the better for it.

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