

Analysis of the Petroleum Industry Act and its impact on the Nigerian Oil and Gas Sector

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Abstract

The research analyzed the Petroleum industry Act and how the new law has impacted various actors in the Nigerian Oil and Gas Sector. This research was conducted using a doctrinal legal research approach which was backed by a contextual legal framework that include citations to online sources, literature reviews, case studies analysis, and an assessment of key judicial enactments. In conducting this library-based study, primary and secondary legal sources as well as pertinent existing literature on Petroleum Industry Act 2021 were explored. Various conceptual, empirical and theoretical frameworks such as Resource Curse, Domanial and Sustainable Development theories were used to support the research work. At the end the study, was able to find out that the Act established a framework for effective legal, regulatory and fiscal governance of the Upstream, Midstream, Downstream and the Host Communities, even though there were gaps which the Act left to be filled. Finally the study recommended that Gas flaring should be stopped; host community trust fund resources should be properly managed; Payment of 3% for upstream exploration revenue to host community should be reviewed upwards while 30% for frontier exploration should be reduced.

Keywords: Petroleum Industry Act, Upstream, Midstream, Down Stream, Host Community, Oil companies

1. Introduction

On Monday, August 16, 2021, former president Muhammadu Buhari officially signed the Petroleum Industry Bill into law after more than 20 years of debates, negotiations, and changes. The Act established a platform for effective governance, regulatory, legal, and fiscal mechanisms to ensure the smooth operation of the industry in addition to the growth of communities where the Petroleum is explored (Ede 2021). In the past, the Petroleum Act did not address most of the challenges facing the Oil and Gas sector. The enactment of the Petroleum Industry Act (PIA) took a long time with all the intrigues, lobbying, attacks, disagreements and quarrels before it was finally passed into law. The passage generated a lot of excitement among various stakeholders.

The Nigerian oil and gas business, according to Babayomi (2023) is split into the downstream, midstream and upstream sectors with a number of actors and regulators participating throughout the entire value chain. Over 80% of the nation's crude oil production is produced by large International Oil Corporations (IOCs) in the upstream sector; include: Chevron, Shell, Mobil, Addax, Agip and Total. Operations in this sector also involve many Joint Venture (JV) agreements and Shared Production Contracts with Nigerian National Petroleum Corporation (NNPC). International oil companies control more than 90% of oil reserves and operational assets in the oil and gas sector. However, marginal field players have increased production by 15% yearly over the previous ten years, whilst production by IOCs has decreased by 4% annually on average (Babayomi, 2023).

Mekwunye (2022) reports that report from Nigerian Bureau of Statistics showed that though Nigeria being Africa's top producer and having the highest reserves of petroleum, received only one percent of all capital injections in the country in 2020, indicating a reduction in business attraction. The report also found that only \$53.5 million (0.55%) of Nigeria's overall \$9.680 billion in foreign direct investment went into the oil and gas sector in 2020.

By comparing the provisions of Petroleum Industry Act of 2021 with the revisions to the Petroleum Act of Qatar from 1974 to 2012, Dirioz and Erbil (2023) were able to identify similarities in the two nations' petroleum laws. They said that, like Nigeria, Qatar is a significant player in the world energy market and the industry leader in liquefied natural gas fields. Since the oil and gas sector still dominates their national economies, OPEC members Qatar and Nigeria have been working to diversify their economies. More than 70% of Qatar's overall revenue is derived from its petroleum resources, which account for 60% of their GDP and over 85% of its export earnings (Borha & Olujobi, 2023).

Over the years, petroleum has been the primary driver of Nigeria's economy, contributing 33% of the GDP, 76% of government revenue, and 95% of foreign exchange gains. Due to this, the government has continued to exert increased control over the nation's petroleum operations, with the Petroleum Industry Act being the most recent example (Akpan, 2021). Following the experience of many developing nations, the discovery of large crude-oil deposits in Nigeria has not resulted to standard of living improvement. Due to inefficiency, corruption, monopoly powers, bureaucracy and vague subsidy policy, the sector has been declining contrary to expectations (Umenweke & Chukwuma, 2023)

There have been armed agitations and civil unrest in Niger Delta area as a result of resource control and pollution that messed up the natural environment of Niger Delta area where most of Nigeria's oil reserves is situated. This is in contrast to countries in United Arab Emirates that utilized their Oil and Gas resources efficiently and effectively to develop their countries. Due to uncertainty in the sector, most potential investors have stayed actions in the industry until such a time issues plaguing the industry are sorted out

The downstream sector has also witnessed many challenges like unstable product pricing irregular Petrol and gas supply and the prolonged issue of subsidy on fuel which is costing the government a whopping N150 billion on a monthly basis. Insecurity is also a big issue. Research shows that from 2019 to 2020, Nigeria witnessed more than one thousand cases of pipeline destruction and other insecurity challenges. These incidents have badly affected the productivity of major oil and Gas companies leading to high cost of operations, lower investment and decline in government revenues (McBain, 2022)

Currently the distribution and provision of refined petroleum products is being dominated and controlled by the Government and its agencies. The regulatory system is unfriendly and it has made the operating environment unbearable for some players to survive and even unattractive to potential investors. With the introduction of the PIA, the regulatory and competitive outlook of the industry is likely to improve positively. Hence the needs to carry out this research to critically evaluate the recently promulgated Petroleum Industry Act and to show how significant it has affected the Nigerian Oil and Gas Industry. The importance of Petroleum resources to the economy of Nigeria cannot be over emphasized. Over 80% of the country's revenue comes from oil and Gas hence the need to explore the derivation, exploration, refining, marketing and all the stakeholders along the Petroleum value chain.

Therefore the research questions for this study are; what is the impact of the Nigerian Upstream Regulatory Commission on the Nigerian Oil and Gas sector? Does the Nigerian Midstream and Downstream Regulatory Commission impact the Nigerian Oil and Gas sector? Does the establishment of Host community Trust Fund impacts the Nigerian Oil and Gas sector? How has the Fiscal systems impacted the Nigerian Oil and Gas sector? The objective of this research is to critically analyse the Petroleum industry Act 2021 and the impact to the Nigerian oil and Gas sector. This study is limited to reviews of legal citations, internet

sources, and analysis of the academic literature, case studies, and evaluation of significant legislative and judicial provisions.

2. Literature Review

2.1 An overview of PIA

According to the Resolution Law contribution (2021), the Petroleum Industry Act components could be summarized as follows:

Nigerian Upstream Regulatory Commission's Establishment

This body is in charge of enforcing the terms and conditions of permits, leases, licenses or permissions given; establishing and enforcing standards relating to upstream operations; assessing national reserves; and creating guidelines for effective management of reservoir. Additionally, this establishment is expected to build, manage, and publish an upstream petroleum database, retain public registers of the recipients of leases, licenses, permits, and authorizations they issued, and guide Petroleum Minister on issues pertaining to upstream petroleum operations.

Nigerian Midstream and Downstream Regulatory Authority's Establishment

This Establishment oversees the business and technical aspects of midstream and downstream petroleum activities. In addition to other tasks, they will make sure that infrastructure is developed effectively and efficiently, follow rules, put government plans into practice, and create a framework for tariffs and pricing.

Nigerian National Petroleum Company Limited Incorporation

According to the new Act, Nigerian National Petroleum Corporation (NNPC) should be incorporated with the Corporate Affairs Commission as NNPC Limited under six (six) months from the Act's passage with Petroleum and Finance Ministries serving as stakeholders. Within 18 months of the Act's inception, NNPC's assets and liabilities must be given to NNPC Ltd. or its subsidiaries, failing which NNPC will be dissolved.

Joint Venture Companies Incorporation

Petroleum Industry Act permits the establishment of joint venture limited liability corporations voluntarily by NNPC Limited with other parties in the upstream petroleum joint operating agreements.

New Licenses and Lease for Upstream Operations

Licenses and leases were made available under the Act: Oil exploration permit, petroleum prospecting license and Petroleum mining lease. Petroleum exploration

will be on non-exclusive basis while well drilling, test production, disposal of condensates, oil and gas on separate list.

This new Act additionally limits length of a petroleum prospecting license to six years for onshore and shallow water area and ten years for deep offshore and frontier region. A petroleum mining lease can last twenty years, but it can only be increased to additional twenty years.

Host Communities Development Provision

The Act dedicates Chapter 3 of the Act to the development of host communities in order to allay their complaints. The Act also allows for the establishment of a trust for the development of host communities to oversee the handling of the annual contribution made by those who have a lease or license known as a settlor. A settlor must contribute to the fund 3% of its real annual operating expenses from previous fiscal year's activities in the Upstream.

Hydrocarbon Tax (HT) and Company Income Tax (CIT) Provision

Firms engaged in downstream, midstream and upstream activities are required to pay companies' income tax (CIT) while those in upstream petroleum operations are assessed a hydrocarbon tax (HT). It should be emphasized that operations in natural gas or deep offshore gas will be exempted from hydrocarbon tax. The HT rate on onshore and shallow water is 15% while that of petroleum mining leases (PML) is 30%. The costs used to determine HT must be connected to the manufacturing processes while under CIT; the non-direct expenses will be deducted.

Upstream, Midstream and Downstream Operations Separation Requirement

According to the Act, a business that wishes to participate in multiple petroleum operation lines must create a distinct company for each one in order to comply with tax obligations. The Act also gives businesses in the upstream sector the freedom to create an Integrated Strategic Project (ISP) to produce and refine oil or gas for wholesale delivery.

Provisions for other fiscal terms

Companies engaged in downstream and midstream gas activities are eligible for three-year tax-free period and a capital allowance afterwards. Natural gas liquids, liquid petroleum and natural gas moved from the upstream to midstream or downstream are all subject to taxation under CITA. Acquisition costs of petroleum rights will attract annual allowance rate of 20% with a retention value of 1% in the last year until the asset is disposed of.

2.2 Theoretical Framework

2.2.1 Resource Curse Theory

Richard Auty used the theory first in 1993 to show how nations rich in mineral resources were not able to utilize their asset to boost their economies, while countries that are less endowed are doing better economically. The theory which is also called paradox of plenty or the poverty paradox is a situation where nations with much resources such as; fossil fuel and minerals are experiencing low growth and development than countries with few natural resources. In the case of Nigeria, the resource curse stems from much concentration on the Petroleum industry to the detriment of diversification to other economic sectors like in agriculture that will ensure food security and provide needed employment to teeming youths seeking for jobs.

This theory is relevant to our research in that Nigeria has abundance of mineral resources apart from oil that are enough to make her a rich nation like other developing countries of Asia and United Arab Emirates. However, these resources have turned into a curse rather than a blessing due to massive corruption, inefficiency and inequity in its management and distribution (Ojukwu-Ogba & Osode, 2017). Hence, the need for the Petroleum Industry Act to streamline the oil and gas sector.

2.2.2 Theory of Sustainable Development

This theory came into being as a result of Stockholm Human Environment Conference of 1972 with a view that nations are supposed to utilize the resources of their downstream petroleum in a lasting manner for the satisfaction of the current needs of a population without endangering the capabilities and needs of future society. The theory enables us to understand the need for efficiency in management, innovations, finance and legal framework which conforms with international best practice for the survival of humanity and the world at large. The Sustainable Development theories stressed the need for Government to hands off the downstream sector and open it up more for competition to benefit present and future generations without harming the ecosystems. It is therefore necessary to embark on total deregulation of the sector in order to stop payments of subsidy and ensure enough distribution of petroleum products throughout Nigeria

2.2.3 Theory of Domanial ownership

The theory indicates that ownership of natural resources is vested in the sovereign. According to this theory, the state has absolute supremacy and total control over all

mineral assets of which Petroleum is an integral part. The ownership theory is regarded as the most important theory on resource control and ownership. The theory is applicable to other countries of the world and Nigeria that are blessed with mineral deposits. The control and ownership of all mineral deposits in the country are vested in the hands of the Federal Government of Nigeria. Such rights are usually enacted in laws, statutes or Decrees of most countries (Agada, 2021). The Act gave state the power to either directly explore mineral resources or grant permission on any terms to third parties that seems right to the stakeholders. Currently, Nigeria partners or issues exploration and production licenses to many International Oil Companies.

2.3 Oil and Gas industry relations

2.3.1 The Petroleum Industry Act and the Oil and Gas Industry

According to Ede (2021) before promulgation of Petroleum Industry Act (PIA), the industry was governed and regulated by the old Petroleum Act of 1969 (as amended). The Petroleum Act was not flexible and as such could not adapt to current technologies, good administrative governance and accountability in the industry. The act also lacked clear provisions for local content inclusion and training for prospective Nigerians who might want to invest in petroleum development and exploration (Blackwood & Stone, 2021). The stated gap necessitated the establishment of the Local Content Development Act in 2011 to fill the lacuna noticed in the Petroleum Act. However, it will be recalled that the new Petroleum Industry Act (PIA) was delayed by many amendments and setbacks dating back to 2000 before it was enacted into law.

2.3.2 Nigerian Upstream Regulatory Commission and the Oil and Gas Industry

Section 4 of the PIA³⁰ established the Commission, which, in accordance with the Resolution Law contribution (2021), is given the authority and control over the operational, and marketing activities of the upstream petroleum industry. By enforcing all relevant national laws and international standards, the Commission controls all activities in the upstream sector. The Commission must also ensure that all leases, licenses, permits, and authorizations granted to businesses in the industry are complied with. These technological endeavors include, among others, collaboration, drilling, design, building, and management of upstream facilities. (Ede, 2021). The Commission is taking the place of Department of Petroleum Resources (DPR) and Petroleum Inspectorate Division according to Section 10 of the PIA. The PIA grants the Commission the power to supervise commercial

activities by approving field development plans, controlling costs and carrying out Ministerial orders (Akpan, 2023)

2.3.3 Nigerian Midstream and Downstream Regulatory Authority and the Nigerian Oil and Gas Industry

Midstream and Downstream Gas Infrastructure Fund is a corporate body with its own Governing Council presided over by the Minister of Petroleum was established by Section 52 of the PIA (2021). It will be noted that 1% tax on wholesale price supplied in Nigeria is a primary source of revenue for Gas Infrastructure Fund of the Midstream. The Authority is to be managed by a Governing Board, which is in charge of setting its policies and administration, according to the Act. The Board is led by a non-executive Commissioner who will be chosen by the President and confirmed by the Senate. The Commissioner will serve a five-year term that is extendable for another five years (Idiong, 2012). Another point worth mentioning is the 1% tax on petroleum goods in Nigeria's wholesale market. The Act's declared goal is to replace controlled pricing with those set by market forces (Olujobi, 2021).

2.3.4 Host Community and the Oil and Gas Industry

Idiong (2021) pointed out that one of the factors that slowed down the passing of Petroleum Industry Bill (PIB) is the host community. Seeking for the best way to handle the concerns of Oil companies and the host communities was not easy. The government contends that enough has been put in the upgrading of Niger Delta region, despite the host communities' demands for greater action to address the issue of the environmental impact of oil operations. Bielu (2022) described the 3% contribution provision for host community and only 30% for frontier exploration as not fair. He was also not comfortable with the introduction of Development levy for Niger Delta and 3% for host communities. He advised that the levies should be harmonized or removal of one. Olujobi (2022) noted that, in contrast, Chapter 3 of the Act was devoted to development of host communities in order to allay their complaints. He believed that the Petroleum Act calls for the establishment of a development Trust for host community to oversee the handling of the annual contribution made by the so-called settlers of leases or licenses. A settlor is obligated to pay 3% of its real yearly expenses to the fund.

The objective of the host community development is to be of benefit to the host and improve their lives socially and economically from petroleum operations. The Act intends to promote long-term prosperity between host communities and the oil companies by enhancing peaceful and harmonious coexistence between them

(Amabipi 2016). The Act also states that the host community will lose its right to any contribution in the event civil unrest damages petroleum facilities or disrupt production activities within the host community (Olujobi & Yebisi, 2023). Some believe that this feature will encourage host communities to take ownership of and accountable for petroleum assets in their respective communities.

3.0 Methodology

This study used doctrinal legal research method, which involves reviews of legal citations, internet sources, analysis of the academic literature, case studies, and evaluation of significant legislative and judicial provisions. Primary and secondary legal sources as well as significant existing literature were investigated, while performing this library-based investigation. The Federal Republic of Nigeria's Constitution of 1999, the 2021 PIA and the repealed Petroleum Act were examined as main legal sources. Periodicals, books, and online materials were used as secondary sources in this study. Primary sources, like case laws and key international anticorruption conventions provided insightful information that was used to suggest changes to Nigeria's anti-corruption legislation that will increase industry openness and accountability.

4.0 Discussions

Institutions and Governance

In order to promote accountability and good governance, the creation of a marketing oriented petroleum company, and the promotion of an advantageous business environment for petroleum activities in Nigeria, the PIA established the regulatory and legal framework of significant institutions in the industry. Nigerian Upstream Regulatory Commission is in charge of the technical and commercial regulation of upstream petroleum operations while Nigerian Midstream and Downstream Petroleum Regulatory Authority is in charge of the technical and commercial regulation of midstream and downstream operations in Nigeria according to the Act.

According to the law, a business which intends to engage in multiple petroleum operations lines must register each as a separate entity. Additionally, it gives enterprises in the upstream sector who wish to engage in wholesale delivery of refined oil and gas produce while adhering to the requirements of 302(4) section of the Act the option of establishing an Integrated Strategic Project (ISP). NNPC Limited will take the place of NNPC, as a limited liability company after six months of passing the PIA. The new formed company is required to do business

independently of the government and to provide audited financial and annual accounts report. All shares of the new company will be owned by Finance and Petroleum ministries, who also select the management team. This structure may eventually lead to the public of Nigeria being invited to buy shares of the firm.

All the assets, interests and liabilities that were not transferred to the new company will be with the old NNPC until they are non-existent or handed over to the Government, at a point NNPC will not be in existence. Any disposal of the company's shares will require the approval of government and National Economic Council. The new limited liability company will also get 30% of the profits from oil and gas sales in addition to 10% of the rent from mining and petroleum prospecting licenses and leases as a contribution to the Fund for frontier petroleum exploration. The primary objective of this Commission is to manage, promote, explore, and utilize Nigeria's petroleum resources for the wellbeing all Nigerians.

Trust for Host Communities

Petroleum Industry Act made provisions for trust funds and other sources of funding that are relevant to host communities. An organization with a mining lease, oil prospecting license or operating on behalf of joint venture partners are required to contribute 3% to 5% for companies operating in upstream and 2% of operating costs of others from previous year to the host community trust. This is additional to the 3% they are already paying to the NDDC. Hydrocarbon and Company income tax payment to the Fund will be subjected to tax while trust funds are not. It is not required that any of the executive members must be natives of any of the host communities, but they must be people of integrity and professional standing. The capital projects will receive 75% of the cash allotted, 20% kept as reserves, and 5% will be used for operating costs. However if there are incidences of vandalism or sabotage that will prevents production, the community will lose the cost of repairs. Licensure revocation is justified in the event that host community duties under the PIA are not met.

Fiscal Provisions

This framework promotes investment in the Nigerian petroleum sector, offers certainty, and boosts government revenue while guaranteeing investors a just return. The Upstream Commission will be responsible for collection of rents, royalties, and share of production interests while the Authority will handle the collections midstream gas flare penalties. Failure to file tax returns on time will incur N10m the first day and N2m for subsequent days of tax default. Despite

Companies Income Tax of 30%, the previous Petroleum Profits Tax is changed with a hydrocarbon tax which ranges 15% to 30%. This reduces the tax rate for firms in the upstream sector whose topmost tax rate will be 60% instead of the Petroleum Profit Tax maximum of 85%.

4.1 Criticisms and Challenges of PIA

Despite various changes and improvements made by the Act, there are still areas that are controversial and problematic which require amendment to meet international standards (Borha & Olujobi 2023). The following are considered:

1. Host Community and Frontier Provisions

According to McBain (2022) one of the biggest criticisms directed at the PIA is the paltry 3% payment to the host municipalities as opposed to the 10% that the towns desired. This is in relation to Niger Delta protests about the allocating 30% of NNPC Limited's profit to the Frontier Funds for Oil Exploration and just 3% provision for the Host Communities. Akpan (2021) further stated that activists and host communities have complained that the allocation of 3% to the host community does not give them enough support. In addition, he argued that the levy introduced by Niger Delta Development Commission in addition to the 3% Levy have led to agitations.

2. Fiscal Issues

Resolution Law firm (2021) also looked at the financial adjustments made by the PIA. They correctly noted that the Hydrocarbon and Corporate Income tax have taken the place of the petroleum profits tax. Hydrocarbon tax applies only to crude oil, condensate, and natural gas liquids and not applicable to businesses engaged in upstream operations. Hydrocarbon tax rates were given but the one for Corporate Income tax were omitted.

3. Lack of Transparency

In a similar vein, Mekwunye (2022) asserted that Nigeria's petroleum industry lacks transparency and accountability to such an extent that the Government is incapable of giving a good account of the quantities of petroleum products produced or sold.

4. Ownership of natural resources

Babayomi (2023) opined that Section 1 of the PIA, which addresses the Federal Government of Nigeria's ownership of petroleum, ought to have included the host communities and the three tiers of Government. To reduce the constant unrest for

resource control and other related crimes, the host communities and the other Government arms need to be involved in determining the ownership rights of these petroleum resources (Agada, 2021). The goal is to lessen the Government's absolute authority over petroleum resources, as is currently the case in both Canada and the United States.

5. North and South division

The PIA 2021 unintentionally divided or formed the National Assembly into Northern lines in order to resolve the resource control issues. Politicians and notable figures from states in the Niger Delta rejected the bill and politicians from the South felt that it favors northern interest at the expense of the south (Gaven, 2022). Legislators from the south claim that the law was altered to favor the north. Lawmakers from the South think the northern lawmakers are defrauding them. The host communities were not satisfied with their request of 10% which the legislature turned down. They are still urging members of the Legislators to quickly rescind their decision. In truth, the Niger Delta is still a hostile place because of the PIA. The PIA's detractors claim that the percentage contribution from Host Community Trust Fund is not enough and 30% from NNPC profit for Frontier contribution is unreasonable payment of two taxes (Akpan, 2021). Under section 260 of the PIA, oil firms are obligated to pay an HCT. The CIT is also due from the same businesses according to the Act's Section 302. These taxes may be perceived by the businesses as double taxation, and the demand for such taxation may deter investors from funding Nigeria's petroleum sector (Bomes Consulting, 2022).

6. Ambiguous wording and imprecise language

One of the major problems with the act is the ambiguity and difficulty in interpreting the statute. For example, it is not clear the difference in responsibilities of the host community trust and that of other development and community levies. Similarly, the act made no mention of the terms "frontier basin" or "host community." It referred to Nigerian Upstream Regulatory Commission for the former and settlers for host community. Under the PIA, the activities in Frontier oil development are not properly defined. These terms have an impact on revenue; they are not neutral in this regard. When stakeholders have differing definitions of things, this ambiguity might lead to debate and possibly legal action (Rioz & Erbil, 2023)

7. Tensions over oil revenue sharing

The revenue of the federation, the states, and municipal governments are all significantly impacted by the PIA (Babayomi, 2023). First, because of the decrease

in taxes and royalties, the three arms of government may experience a big decline in income. Any federation with a source of money is required to put its earnings in a the Federation Account where the three branches of government will divide it (Olujobi & Yebisi, 2023). They further stated that the Federation Account provides over 80% of the money that the various arms of governments receive. They concluded that setting aside 30% of its profits for frontier activities may result in large reduction in payment to the Federation Account.

8. Host Community Issues

According to Tadeo (2016) the host communities are important in the petroleum sector of Nigeria. For capital-intensive companies, the relationship may hold the key to generating lucrative income. The host communities and petroleum corporations, on the other hand, have not always gotten along. The antagonism and warfare have frequently disrupted oil operations. The wars may also have contributed to the huge stealing of petroleum products and continuous closure of large oil fields (Olujobi 2021). The difficulty the government has in meeting OPEC's production quota of 1.8 million barrels per day highlights how serious the problem is (Olujobi, Olarinde & Yebisi, 2023). The host towns, however, are still upset that the PIA mandated that oil companies contribute just 3% of their yearly operations expenditure from the past fiscal year to the HCDTF, despite their request for at least 10%. Indigenous oil companies own most of the onshore oil wells as such the host communities are doubtful if this payment will be actualized at all (McBain, 2022)

9. Corruption

Amabipi (2016) observed that from the early phases of oil discovery through the latter phases of marketing and distribution, corruption is a persistent issue in the petroleum business. When a country's economic development are largely dependent on a corrupt petroleum industry, then the cumulative impact on the nation's economy and the industries will be enormous (Obioma, 2012).

4.2. Prospects of the PIA 2021

1. Restructuring

Before the act's passage, there were about ten statutes governing the petroleum business that were repealed. This streamlined the operations of major oil companies in terms of exploration and marketing of petroleum products. Funds were created for frontier operations and incentives for foreign investors were created. Measures

were direct to sort out the environmental issues impacting the host communities due to negative effects of exploration by international oil firms (Clark 2021)

2. Good Governance

NNPC Limited was created as a legitimate, profit oriented business. In light of its new status the organization can list in the capital market to raising money for its operations after satisfying all the requirement by issuing shares to the general public (McBain, 2022). By creating a well-organized management structure and strategy for the industry, the act unbundled the industry.

He opined that the measure further reformats the petroleum industry's fiscal and tax structure and in order to stimulate investment from both domestic and international investors, it reduces the tax and rates for operators in the industry.

3. Gas production set to grow

There is progress in the petroleum downstream sector that might help exports. According to Gaven (2022), the Dangote oil refinery in Lagos will increase Nigeria's refining capacity by 147%, resulting to more than 1.1 million barrels per day. Additionally, it broadens export potentials to involve more sophisticated goods. Nigeria only exports crude oil at the moment, but it may sell goods to its neighbors. On the long term, natural gas is where Nigerian optimism is concentrated, not crude oil. Because of increasing offshore production and improved gas collection, Nigeria's yearly gas production is likely to grow from 50 to 70 billion cubic meters in the future years (Akpan, 2023). As a result, according to him it is possible that by the 2030s Nigeria may produce nearly as much as Algeria. It is evident that the natural gas potential of the nation is significantly more concerning to majors than the problematic crude oil fields in the Delta. Even when IOCs are downscaling elsewhere on the continent, it may still make sense for the biggest and most seasoned IOCs to stick with Nigeria given that the country's gas potential is huge (Tagliapetra, 2022)

4. New contracts with oil majors

From a critical standpoint, the signing of PIA denotes a new upbeat attitude among oil companies with concentration on Nigeria. The signing of new production sharing contracts for deep-water exploration has historically been resisted by IOCs. But in the beginning of August 2021, fresh PSCs were agreed to for the OMLs 127 and 132 of Chevron, OML 125 of Eni, OML 130 and 138 of Total Energies, and OML 133 of ExxonMobil (Gaven 2022). These five deep-water blocks have the

potential to produce up to 10 billion barrels of oil over the course of 20 years. According to Ede, (2022) in an effort to bring significant amounts of new production to the market in the next ten years, NNPC discussed new conditions for six offshore licenses used by oil corporations in August 2021. The major oil companies and NNPC's success in ironing out the issues with earlier contracts that had been impacting business revenues is evidenced by the fact that they were able to sign them and the International Oil companies were satisfied with the result (Idiong, 2021). ExxonMobil claimed that this demonstrated their determination to have a major off shore presence in Nigeria through Esso Exploration and Production Nigeria.

5. Energy Transition and the Future of energy

Discussions on energy transition continue to increase due to climate change issues and the renewed focus on Environmental conditions. Scientific evidence of risk in climate change has triggered a drive to decarbonize every sector of the global economy (Borha & Olujobi 2023). They stated that in navigating the journey to decarbonization which is now called “Net Zero”, countries around the globe have committed to slashing greenhouse gas emissions. According to Tagliapietra, (2022) a prior vow to reduce carbon emissions by at least 55% by 2030 were made by the European Union and top consumers of Nigeria's crude oil. Additionally, the UK made a commitment to reduce carbon emissions by 78% by 2035. Additionally, Canada committed to reducing carbon emissions by 40–45% by 2030. Nigeria is ranked 25th in Africa and 151 overall in the Yale Environmental Performance Index (EPI) 2020 for environmental performance. Nigeria is now one of the countries that must step up overall national sustainability efforts. With a high priority on pressing concerns including water and air quality, biodiversity, and climate change, the low EPI scores show that more attention is needed to the full range of sustainability requirements (Olujobi, 2022). The positive aspect of the PIA about energy transition is that it emphasized gas as the nation's alternative fuel (Olujobi, Yebisi & Patrick 2023). It offers enhanced incentives and regulation for gas investment to cover midstream gas businesses and tax breaks of up to ten years. Additionally, the Act requires NNPC Limited to compete with private sector investors for renewable resource development projects. But Nigeria should do more to set up the necessary infrastructure, legal framework, and investment for the energy transformation (Umenweke & Chukwuma, 2023).

4.3 Gaps in the Petroleum Industry Act

1. Gas flaring and Energy Transition:

Regarding the energy transition, the PIA says nothing and the government of Nigeria intends to expand production. Despite the enormous potential provided by the PIA 2021, the study found a shortcoming that does not conform to worldwide desired practices which can limit the efficacy in the law (Tagliapietra, 2022). These gaps include the following:

a. Control of Petroleum Industry by the Federal

Accordance to Section 53 of the legislation, NNPC Ltd. is created to undertake marketing of petroleum products and services. The wording of section 53(3) suggests that the only shareholder in this firm will be the federal government (Mekwunye, 2022). Due to the fact that the act requires shares owned by the federal government should be kept on its behalf by the ministry of finance, states have no input into how the corporation is run or how its dividends are distributed. (Borha & Olujobi, 2023).

b. Violation of the Constitution

The PIA seems to violet the constitutional requirement that Federal Government should place its funds in Federation account and shared to various arms of government (Olujobi 2021). However, as things stand, this has only strengthened NNPC Ltd.'s behavior of not being accountable. With this new position, the NNPC Limited will gain from its new structure in-order to enhance its efficiency. (Resolution Law Firm 2021)

c. Host Community Development Trust:

Akpan (2021) observed that the PIA did not discuss the contribution of firms operating in midstream to the Host community Trust. The authority may, however, enact laws outlining the contribution. The Operator shall finance the HCDDT at a rate equal to 3% of the total operating expenses of the Operator's Upstream Operations for the preceding year (Umenweke & Chukwuma, 2023). The amount of revenue that midstream businesses must invest in the HCDDT is not specified in the PIA, nevertheless. The Nigerian Midstream and Downstream Petroleum Regulatory Authority is scheduled to produce regulations that specify the amount to be donated (McBain, 2022)

d. Impact on Fiscal Terms

According to Idiong (2021) the most important aspect of the PIA is how it would affect the current fiscal framework. The new Hydrocarbon Act now replaces the

Petroleum Profit Act and royalties are reduced under the PIA. The new structure will allow government to benefit from increase in prices which will make future changes to the fiscal system less likely (Blackwood Stone, 2021)

e. Decline in Investment

As a result of the PIA's ability to increase Nigeria's competitiveness in comparison to other petroleum-producing nations, one anticipated outcome is a reverse in the country's declining petroleum investment (Babayomi, 2023). The decline in attracting investors in the industry might be partly attributed to the discovery petroleum in other countries of the world. Out of \$70 billion investment in Africa's petroleum sector from 2015 to 2019, only 4% came to Nigeria despite having one of the largest oil reserves around the world (Mekwunye, 2022)

f. Shifting of Responsibility

The PIA stated that destruction to oil and gas installations caused by acts of criminality will be restored using the entitlements of the host community so as to transfer responsibility for securing the installations to the host communities (McBain2022). This method develops ways to allow communities to police themselves rather than only depending on government action. The Petroleum Industry Act (PIA) imposes a 1% surcharge on petroleum goods wholesale cost and warned that punishment will be meted on oil companies who do not comply (Borha and Olujobi, 2023)

5.0 Conclusions and Recommendations

From the research carried out, it was discovered that the Petroleum Industry Act has a significant impact on the Nigerian Oil and Gas Industry even though there were gaps that needs to be improved upon. Those entrusted with the enforcement of current laws and policies should be able to fulfill international obligations if Nigeria's climate change requirement were included in local laws like the PIA. Consequently, due to the above findings and in order to achieve the intended outcomes of the Act, this research recommends that Petroleum companies must be required to put in place adequate gas recapturing and re-injection facilities, just like they do in industrialized nations. Additionally, flaring of gas must be categorically stopped. Since the majority of the infrastructure that is now in existence supports gas flaring, the amendment should establish a deadline when all gas flaring activities will end. Host Community Development Trust (HCDT) resources must be properly managed in order to meet the desired goals of the PIA. Therefore, the PIA should have explicit clauses addressing the allocation of crude oil reception for

host communities and the control of the Trust's active ingredients. The payment of 3% for upstream petroleum activities for the prior year to the HCDTF is astonishingly inadequate to take care of the various environmental degradation and deterioration. Given the operations' irreversible environmental impact, payment of at least 10% would have been ideal. Additionally, the PIA requires that 30% of petroleum revenue should be used for frontier regions, which are isolated regions of several of Lake Chad and Northern Nigeria where crude oil is predicted to be found even though it is not assured. This clause seems not to be clear and needs to be changed or removed. This research also looked at the crucial issue of host community being held accountable for sabotage on installation facilities because such acts may be done by uninvited guests working together with corporate operational staff. It is therefore necessary to update the PIA to add these clauses. A method for resolving conflicts between corporations and host communities also has to be established by the PIA. This will guarantee the interest of the operators and the host community effectively.

References

- Achinike, C.B. (2022). Nigeria: Anti-Corruption Overview in the Oil and Gas Industry. *Brickmans Law*. Brickmans-law.com
- Agada, J.(2021) A Critical Appraisal of the Theories of Ownership and Control of Petroleum and Other Natural Resources in Nigeria. *MUNFOLLI J.* (1).
- Akpan, J.D. (2021). Petroleum industry act in Nigeria: An analysis of the impact of the novel host communities development trusts provision, *Global Journal of Politics and Law Research*, 9(7), 30-46.
- Alameen, Y.M..M. (2016). The Norwegian Oil Experience of Economic Diversification: A Comparative Study with Gulf Oil' European. *Journal of Business Management*, 8(15), 94.
- Amabipi, A.K. (2016). Understanding Host Community Distrust and Violence Against Oil Companies in Nigeria (PhD Dissertation School of Public Policy and Administration Walden University).
- Babayomi, O.A. (2023). A Review of the Key Provisions of the Petroleum Industry Bill and the Implications on Deregulation. *Afe Babalola University Journal of Sustainable Development Law and Policy*, 3(1): 191.

- Bielu, K.J.(2022) Legal Framework for Petroleum Administration and Taxation in Nigeria: A Legal Appraisal of Conflicting Legislations. *African Customary and Religious Law Review(ACARELAR.)* 3: 70–80.
- Blackwood & Stone, L.P. (2021). Significance of the Petroleum Industry Act. Retrieved from www.Blackwood.com
- Blythe, T. C.(2021) Understanding Nigeria’s Petroleum Industry Act’. *National Law Review* (XI). 235: 1.
- Bomes Resources Consulting, (2021) Analysis of the Petroleum Industry Act 2021.Retrieved from www.bomesresourcesconsulting.com
- Borha, D.O.E. & Olujobi, O. J. (2023) An examination of the Petroleum Industry Act 2021: prospects, challenges, and the way forward. *Peer review.* 12:551 <https://doi.org/10.12688/f1000research.132539.1>
- Clark, E.V. (2016)The Politics of Oil in Nigeria: Transparency and Accountability for Sustainable Development in the Niger Delta. *American International Journal of Contemporary Research.* 6(4), 76.
- Dirioz, A.O and Erbil, E. (2023) The Prospects of Natural Gas Organization in Light of Qatar’s OPEC Exit: Some Critical Reflections, *The Extractive Industries and Society*, 8(2).
- Ede, T. V. (2021). The fall and rise of the Nigerian Petroleum Governance Bill. Electronic copy *Global Journal of Politics and Law Research*, 9(7), 30-46 .
- Gaven, .J. (2022) Has Nigerian Petroleum Industry Act reshaped the Industry? *African Business Blog*, (22nd September, 2022). AB African. Business>Energy
- Idiong, M.(2021) A critical appraisal of the petroleum industry act 2021: challenges and opportunities. *African Journal*, (6), 178,
- McBain.W. (2022) Petroleum Industry Act let us down, say Niger Delta Communities *African Business Blog. AB African. Business>Energy*
- Mekwunye, A.N. (2022) Appraisal of the Petroleum Sector Natural Resource Governance in Nigeria. *International Journal of Social Science and Humanities Research*, 5(8),16–36.
- Obioma B.K (2012) Mediterranean Corruption Reduction in the Petroleum Sector in Nigeria: Challenges and Prospects’. *Mediterranean Journal of Social Sciences*, 3(15), 98.

- Ojukwu-Ogba N, Osode P(2017) Reversing the ‘Resource Curse’ Phenomenon in Nigeria: An Assessment of the Nigeria Extractive Industries Transparency Initiative Act After a Decade’ African. *The Journal of Legal Studies*. 10, 141–162.
- Olujobi, O. (2021) Nigeria’s Upstream Petroleum Industry Anti -Corruption Legal Framework: The Necessity for Overhauling and Enrichment’. *Journal of Money Laundering Control*. 24(4): 806–833.
- Olujobi, O.J Yebisi T.E(2023) Combating the Crimes of Money Laundering and Terrorism Financing in Nigeria: A Legal Approach for Combating the Menace. *Journal of Money Laundering Control, Control*. 26(2) 268–289.
- Olujobi, O.J, Yebisi, E.T, Patrick, P. (2023) The Legal Framework for Combating Gas Flaring in Nigeria’s Oil and Gas Industry: Can It Promote Sustainable Energy Security? *Journal of Sustainability*, 14(13).7626.
- Resolution Law Firm, (2021), Nigeria: Overview of the new Industry Act, Retrieved from [Mondag.com/Nigeria/oil-gas—electricity/1113104/overview-of-yhe-new-petroleum-industry-act-2021](https://mondag.com/Nigeria/oil-gas—electricity/1113104/overview-of-yhe-new-petroleum-industry-act-2021)
- Tadeo P.E(2016) A Comparative Study of Oil Resource Management in Norway and Nigeria: Lessons for Kenya, *A Thesis, Institute of Diplomacy and International Studies* University of Nairobi.
- Tagliapietra, I.(2022)The Impact of the Global Energy Transition on MENA Oil and Gas Producers. *Energy Strategy Reviews*. 26 (10).
- Umenweke, M.N, & Chukwuma, W.A.(2023) An Examination of the Petroleum Industry Act 2021 and the Quest for a New Nigeria’. *Law and Social Justice Review*. 9(2).