AN APPRAISAL OF GAS TRANSMISSION AND TRANSPORTATION, UNDER THE PETROLEUM INDUSTRY ACT, 2021

By

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Abstract

The Petroleum industry Act, 2021 is a giant stride by the federal government to over haul the marketing and distribution network of as infrastructure. It provision will impact significantly on the security of supply and affordability of domestic and industrial product supply of petroleum gas if fully implemented. This article seeks to bring to the fore the need for government to galvanize both the legal Framework and institutional framework in order to realise the objectives of the PIA. The methodology utilized by the seminar paper is doctrinal research. An array of relevant statute, case laws, bye laws, treaties, and literatures of scholars in related field were consulted, reviewed and analyzed. The reason for adopting doctrinal methodology is the choice and nature of the paper topic or subject matter. The writer observed that there is inadequate as transition network and distribution facilities. Te paper also found tat is accounts for sort fall of security of supply of domestic as product. Te paper further found that the high cost or un-affordability of security of supply is as a result of scarcity of supply. The paper recommends that ambiguous provisions and imprecise language as contained in the PIA should be made explicit; there should be privatization liberalization and commercialization of the market for gas supply and security of supply. Te writer is of te opinion tat if te provisions of the PIA as in respect as distribution and transmission are fully implemented, Nigeria will be an Eldorado of as market and security of supply.

Keywords: *Downstream gas operations, Midstream and downstream petroleum operations*

1.0 Introduction

This seminar paper argues, in the case of gas, that the inadequacy of the gas transmission or transportation and distribution infrastructure to reach the rural areas of Nigeria and poor pricing are largely responsible for the shortage of gas for domestic consumption.[1] The International Oil Companies (IOC's) could contribute to security of supply by complying with the Domestic Gas Supply Obligations (DGSO) contained in GMP and contribute to the development for the required gas distribution network both at the upstream and downstream sectors. The IOCs could also develop appropriate technology and human capacity development in line with the Nigeria's Local Content Act 2010.[2] NNPC Ltd. could leverage this capacity by repositioning itself for effective performance.[3] The IOCs could also demonstrate a greater willingness to end gas flaring by developing gas utilisation infrastructure thereby reducing the waste energy.[4]

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[1] Samuel C. Dike, Energy Security: *The Case of Nigeria And Lessons From Brazil, Norway and UK (Pearls Publishers)*

[2] Nigeria Local Content Act, 2010

[3] G.U Nwokeji, '*The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and gas Industry: History, Strategies and Current Direction' (2007) The james Baker 111 Institute for Public policy of Rice University 1, 29, 46 all this issues were identified.*

[4] Samuel C. Dike, 'Energy Security: The Case of Nigeria and Lessons From

However, with the establishment of the Petroleum Industrial Act (PIA), 2021 transmission or transportation and the distribution of gas has been given a radical boost through its provisions by a departure from the cohesive legal system approach[5], by whittling down the power of the minister and decentralization and liberalization of activities and responsibilities from the minister and the Nigerian National Petroleum Corporation under the PA, 1969 regime. The powers of the Minister to make regulations with respect to the upstream, midstream or downstream sector has now been ceded to the Nigerian Upstream Regulatory Commission (the Commission) and the Nigerian Midstream and Downstream Regulatory Authority (the Authority) respectively.

The position is now slightly different as it relates to the midstream and downstream, where the Authority i s now vested with powers to issue, suspend or revoke, impose conditions for transfer, cancel, extend, andr enew licences, permits and authorisations for midstream and downstream petroleum operations.

The function of the Authority among others is to publish the applications for the grant of licence or renewal in respect to the mid-stream and down-stream operation of which comments or representations may be made.[6]There is an obligation to comply with the Land Use Act as it relates to compensation for acquisition of land in respect of which a licence or permit has been issued by the Authority for Midstream and Downstream petroleum operations.[7]

The activities that require a licence in the midstream and downstream gas operations include establishing, constructing or operating a facility for the processing and storage, of natural gas, engaging in wholesale gas supply, etc.[8] The PIA regime boasted a lot of licences under the Midstream and Downstream gas operations include:[9] Gas processing licence[10], Bulk gas storage licence[11], Gas transportation pipeline licence, Gas transportation network operator licence and more as we shall consider in the body of the work. The provision of this various licences significantly boosts privatization and commercialization of the industry by engaging more participation in the gas marketing and distribution network. More so with the emergence of the Nigerian National Liquefied company (NLNG), more job and employment opportunity are created for the young school leavers as source of lively hood.

The prospects of the Nigeria's PIA are, among others, the introduction of a new regulatory and governance structure, the creation of new types of licences, the commercialization of NNPC Ltd., and the introduction of a new fiscal frame work, Allocation of 3% to the host communities; The Act unbundled the industry by designing a well-organised governance structure with dynamic and distinct roles for the industry and so forth.

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5 Petroleum Industrial Act 2021, section 125 – 173.
6 Petroleum Industrial Act 2021, Section 32 (i) – (j)
7 ibid
8 ibid
9 Petroleum Industrial Act, Section 32 (a) – (b)
10 Ibid.
11 Petroleum Industrial Act(PIA) 2021, section 32 (b) –(c)

Admittedly, the Petroleum IndustryAct may not have addressed all the concerns by various stake holders, ranging from the general concern that the mere passage of the Act will not guarantee the much needed investments as well as issues pertaining to the declining relevance of fossil fuels as an energy source. Regardless, the enactment of the PIA should mark a turning point for Nigeria petroleum industry and will address some of the challenges bedevilling it.

2.0 Conceptual Framework

1.1. **Downstream gas operations**: means all activities entered into for the distribution and supply of natural gas to retail customers, city gate reception terminals for natural gas, and stations for the marketing, retail and distribution of natural gas.

1.2. Downstream petroleum operations: means downstream gas operations and downstream petroleum products operations.

1.3. Midstream and downstream petroleum operations: means midstream petroleum liquid operations and midstream and downstream gas operations.

1.4. Midstream and Downstream Gas Operations: means activities downstream of the measurement point of petroleum mining leases, whether or not related to the petroleum mining lease concerning the construction and operation of natural gas transport or transmission pipelines etc.

1.5. Large-scale gas utilization industries: means large-scale industries that use gas as a feedstock such as gas to liquid plants, petrochemical industries and fertilizer plants; and mini-LNG plants and such other industries as defined in the regulations issued by the Minister of Petroleum, Finance, or any other Authority under the Act.

1.6. *Licensee*: means the holder of a license issued by the Commission (Nigeria Upstream Petroleum Regulatory Commission) or Authority (Nigeria Midstream and Downstream Petroleum Regulatory Authority) in respect of applicable upstream, midstream or downstream petroleum operations.

1.7. Large-scale gas utilization industries: means large-scale industries that use gas as a feedstock such as gas to liquid plants, petrochemical industries and fertilizer plants; and mini-LNG plants and such other industries as defined in the regulations issued by the Minister of Petroleum, Finance, or any other Authority under the Act.

1.8. Licensee: means the holder of a license issued by the Commission (Nigeria Upstream Petroleum Regulatory Commission) or Authority (Nigeria Midstream and Downstream Petroleum Regulatory Authority) in respect of applicable upstream, midstream or downstream petroleum operations

1.9. *Transmission and Transportation of Gas (TTG***):** By transmission and transportation of Gas, the paper argues on the adequate distribution network, infrastructural provision and haulage facilities for the effective and efficient distribution of gas for domestic consumption.

The government have not been able to develop infrastructure such as distribution pipeline and haulage facilities to cover remote parts of Nigeria or put the right policy in place to discourage the acts of sabotage on the pipeline. This has encourage smuggling of products outside Nigeria, while creating artificial scarcity locally with higher prices beyond the reach of Nigerians

1.10. *Domestic Gas Supply Obligations (DGSO) Nigeria*, The Domestic Gas Delivery Obligation (DGDO) is a policy framework that mandates gas producers to allocate a percentage of their total gas production for sale to the domestic market
The PIA and the Domestic Gas Delivery Obligation Regulations 2022 have tightened the supply obligation by requiring that such gas must be delivered by the producer to a location indicated in a gas purchase order issued by the domestic gas aggregator (the domestic gas delivery obligation (DGDO).

1.11. *Gas Master Plan (GMP):* Government measure introduced to address to address challenges in the gas sector. Firstly, some incentive/tax holidays for investors in the gas sector[12] It was contained in the Associate Gas Framework. This is addition to gas project that was developed between the NNPC and IOCs. They are the OSO Condensate Project, Excravos Gas Project, The Nigerian Liquefied Natural Gas Project, The West African Gas Pipeline Project,[13]which is a 630km pipeline conveying gas from the Niger Delta conveying gas to some neighbouring West African countries thereby improving gas Utilization by creating a sub-regional market.[14]

3.0 Legislative Initiatives Under the PIA 2021 for Transmission and Transportation of Gas

By legislative initiative the paper meant the direct and indirect provisions in the PIA which guarantee security of supply of domestic gas through an effective and efficient, transportation and distribution network of gas (petroleum resources) within Nigeria, together with a sanction for breach and incentive for compliance.[15]

Legislative initiative can be employed in addressing gas transmission or transportation problem. This is a direct measure. For example the provisions of sections 125 to 173 of the PIA which provides a lot of measures to facilitate domestic supply of gas through legal regulation of the transmission, transportation, management, marketing and distribution network to both the 'rural energy poor consumer' and 'Urban energy rich consumers, of gas. These measures include licensing, Incentives, Sanctions, liberalization/privatization, Transparency, Market competition and so on. Below the paper will some of the legislative measure under the PIA that has indeed initiated some remarkable progress in the Oil and Gas sector with more particularly the Gas infrastructure in focus.

Section 135 of the PIA provides that a gas transportation pipeline license will be required in order to own, construct, operate and maintain a gas transportation pipeline.

3.1 Section 104(1) and 107 of the Petroleum Industry Act

(PIA), demands strict adherence to a gas flaring plan, along with gas utilization plans, to be submitted wit hin 12 months of the coming into effect of the law. Penalty for gas flaring to be in line with the Flare Gas

[12] Omorogbe, '*Law and investment.'*

[13] West African Gas Pipeline Authority West African Gas Pipeline Project'(2011)<http://wagpa.org/>aaccessed 1st December, 2023

[14] NNPC, *Nigerian Gas Master Plan 2008*.

[15] B Barton, LK Barrera – Hernandes, A R Lucas and A Ronne, ' Regulation of energy and natural resources' (OUP 2009) 12, on the role of law in altering existing behaviour.

(Prevention of Waste and Pollution) Regulations. Failure of upstream companies to comply with the DGS O, would result in inability to make supplies to gas export operations, or suspension of operations where the lessee only supplies gas to export operations.The Department of Gas, by these provisions is there by ousted of its functions and responsibilities

3.2 Licensing under the PIA: Transmission/Transportation of Gas

3.3 Separation of Entities:

The unbundling of role and complementary functions between the minister of Petroleum Resources, the commission and the Authority is quite significant and has introduce remarkable progress in terms of administration efficiency and reduction of bureaucratic bottle neck, couple with corruption associated with the previous legal regime.The PIA now requires companies intending to engage in upstream, midstream and downstream operations to register and use a separate company for each stream.

3.3 Other Legislative Initiative That Impact the Gas Infrastructure:

1. **The Education Tax Act**[16] - provides for the imposition of annual taxes of 2% of assessable profits on oil and gas companies for the development of Nigeria's educational sector;
2. **The Niger Delta Development Commission (Establishment)** Act [17] It mandates the Payment to the Commission by oil and gas companies of 3% of their annual budgets for the development of the Niger Delta areas where oil and gas are exploited.
3. **The Nigerian Oil and Gas Industry Local Content Development Act** 2010[18]: it provides a framework for promoting the participation of Nigerians in the oil and gas industry and laying down the minimum thresholds for local contents utilized in the sector;
4. **The Nigerian Extractive Industries Transparency Initiative Act 2007**[19]: it provides the framework for transparency and accountability by imposing reporting and disclosure obligations on all oil and gas companies upon requirement by NEITI of revenue due to or paid to the federal government;
5. **National Oil Spill Detection and Response Agency (Establishment) Act**[20]: it establishes the National Oil Spill Detection and Response Agency (NOSDRA), which coordinates and implements the National Oil spill Contingency Plan (NOSCP) for Nigeria.
6. **The Oil Pipelines Act**[21]. The Act regulates through grant of licenses and permits the laying and use of pipelines to transport of mineral oils, natural gas and any of their derivatives or components, and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas and any of their derivatives or components.

[16] The Education Tax Act 2004
[17] The Niger Delta Development Commission (Establishment) Act 2004
[18] The Nigerian Oil and Gas Industry Content Development Act 2010
[19] The Nigerian Extractive Industries Transparency Initiative Act 2007
[20] National Oil Spill Detection and Response Agency (Establishment) Act 2006
[21] Nigerian Oil Spill and Emergency Response Agency (Establishment) Act 2006
21 The Oil Pipelines Act 2004

These legislative initiatives and more serve to create enabling atmosphere for gas transportation distribution and management which has guarantees energy supply and security of supply.

4.0 Key Regulatory Institutions

While the Minister of Petroleum Resources (*the Minister, head of the Ministry of Petroleum Resources*) retains its supervisory role over the oil and gas sector, his regulatory powers and functions is now devolved in large measure, to two principal regulatory bodies:[22]

a. Nigerian Upstream Regulatory Commission (the Commission)
b. Nigerian Midstream and Downstream Regulatory Authority (the Authority)

4.1 Minister -Policy Formulation

Role: Formulation, monitoring and administering of government policy in the petroleum industry, as well as general supervision.

4.2 Commission -Upstream[23]

This is the regulator for all upstream petroleum operations including technical, operational and commercial activities. It is vested with assets, funds, rights and liabilities of the Petroleum inspectorate or the DPR.

4.3 Authority -Midstream & Downstream[24]

It is the regulator for all midstream and downstream operations including operational, technical and commercial activities. The Authority is vested with assets, funds, rights and liabilities of the DPR, PPPRA and, the PEF. It Assumes the DPR's technical, operational and commercial regulatory func tions in the midstream and downstream petroleum industry as well as licensing of players in that sector.

The Function of the Authority among others is to publish the applications for the grant of licence or renewal in respect to the mid-stream and down-stream operation of which comments or representations may be made.[25]There is an obligation to comply with the Land Use Act as it relates to compensation for acquisition of land in respect of which a licence or permit has been issued by the Authority for Midstream and Downstream petroleum operations.[26] The activities that require a licence in the midstream and downstream gas operations include establishing, constructing or operating a facility for the processing and storage, of natural gas, engaging in wholesale gas supply, etc.[27] Licences to be obtained under the Midstream and Downstream gas operations include:[28]

[22] PIA 2021, section 3
[23] Ibid, section 4, & 7 – 10.
[24] Ibid section 29.
[25] Petroleum Industrial Act 2021, Section 32 (i) – (j)
[26] ibid
[27] ibid
[28] Petroleum Industrial Act, Section 32 (a) – (b)

a. Gas processing licence – grants the licensee the right to install and operate gas conditioning plants, gas processing plants, gas to liquids plants, liquefied natural gas (LNG) plants and ethane extraction plants.[29]
b. Bulk gas storage licence – grants the licensee the right to undertake the bulk storage of natural gas either for its own account or on behalf of customers.[30]
c. Gas transportation pipeline licence – gives the holder the exclusive right to own, construct, operate and maintain a gas transportation pipeline within a route defined in the licence for its own account with third party access or as common carrier.[31] The holder cannot supply gas to customers on its own account where it is granted on a common carrier basis.[32]The licence is also required for unprocessed gas that needs to be transported.[33]
d. Gas transportation network operator licence – authorises the holder to convey natural gas through the gas transportation network, balance the inputs and off takes from the gas transportation network, charge for the use of the gas transportation network, etc.[34]
e. Wholesale gas supply licence – authorises the holder to purchase natural gas directly from any lessee or third party and sell and deliver wholesale gas to wholesale customers and gas distributors at any location in Nigeria.[35]
f. Retail gas supply licence – authorises the holder to sell or retail compressed or liquefied marketable natural gas to customers and establish, construct and operate facilities to deliver compressed natural gas and small-scale facilities for LNG.[36] It also authorises the holder to purchase marketable natural gas directly from a lessee, wholesale gas supplier or third party, and sell and deliver compressed or LNG to customers at any location in Nigeria on a free market basis.[37]
g. Gas distribution licence – grants the holder the right to establish, construct, and operate a gas distribution system and to distribute and sell its natural gas to consumers in a local distribution zone,[38] including retail customers.[39]

Domestic gas aggregation licence – the licence is issued for a period of 2 years and renewal in each instance is also for 2 years.[40] A domestic gas aggregator supports the implementation of the domestic gas delivery obligation in addition to other functions that it is expected to carry out.[41] The domestic gas aggregator is required to be a company limited by guarantee established under the Companies and Allied Matters Act.[42]

[29] ibid
[30] Petroleum Industrial Act(PIA) 2021, section 32 (b) –(c)
[31] https:/goldsmithllp.com/new-licensing-regimes-under-the-petroleum-industry-act-2021-gs-series-ii-part-b
[32] https:/goldsmithllp.com/new-licensing-regimes-under-the-petroleum-industry-act-2021-gs-series-ii-part-b
[33] https:/goldsmithllp.com/new-licensing-regimes-under-the-petroleum-industry-act-2021-gs-series-ii-part-b
[34] https:/goldsmithllp.com/new-licensing-regimes-under-the-petroleum-industry-act-2021-gs-series-ii-part-b
[35] Ibid
[36] Ibid
[37] Ibid
[38] Ibid
[39] Ibid
[40] Ibid
[41] Petroleum Industrial Act 2021, Section 32(a) (b)
[42] https:/goldsmithllp.com/new-licensing-regimes-under-the-petroleum-industry-act-2021-gs-series-ii-part-b

The act introduces and specifies the regulations, procedures, and institutions which will ensure good governance, transparency, and accountability in the petroleum industry. However, there can never be perfect legislation. Certain provisions of the Nigeria's PIA have been deemed contentious; while others have been deemed potentially problematic that require legislative amendment to promote international best practices in the industry. [43]

5.0 Infrastructural Prospect Under the Act:[44]

5.1 Access to Infrastructure and Facilities[45]

Once an entity intends to establish, construct or operate a facility for the processing or storage of natural gas; establish, construct or operate a gas transportation pipeline; or engage in bulk transportation of natural gas by rail, barge or other means of transportation, such entity must obtain a license. The Act also grants licensees, subject to other laws, the right of way to lay, operate and maintain pipelines, communication lines or other lines across the areas a licensee may require for carrying on midstream or downstream gas operation purposes.

The Act mandates that the operation of a gas transportation network shall be in conformity with the Gas Network Code ("the Code") 2020 already issued by the government. The Code is a set of rules guiding the use of a gas transportation system; a contractual framework between the Network Operator and the Shippers that provides open and competitive access to gas transportation infrastructure. The incorporation of the Code into the PIA serves to provide a transparent and standardized framework for gas distribution and transportation, further boosting investor confidence.

The PIA permits third parties to receive access to an open-access gas transportation pipeline, or gas transportation network to have marketable natural gas transported to points of consumption by terms of the Network Code. This grant is to be on a non-discriminatory basis between users with similar characteristics under the Act.

5.2 Gas Pricing Mechanism[46]

The PIA introduces a gas pricing mechanism to be administered by the Nigeria Midstream and Downstream Petroleum Regulatory Authority (Authority), moving away from the pricing structure that deterred investors. In September 2020, stakeholders complained that Nigeria's gas pricing mechanism is largely regulated, and this failed to promote a framework that attracts quality private capital.[47] They further stated that the government would be required to engage in a delicate balancing act that balances the need to guarantee investors a reasonable return on investment alongside the need to deepen domestic gas

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[43] David Oladeji, Ehijie Borha, *' An examination of the Petroleum Industry Act 2021: prospects, challenges, and the way forward'*

[44] Petroleum Industrial Act 2021, section 125 - 173

[45] Ibid, section 125.

[46] Ibid, section 169 & 170.

[47] Alliance Law Firm, Bridging the Gas Infrastructure, https://www.lexology.com/library/detail.aspx?g=f59440 06-9323-400f-b6c6- 6ae0494c045d aAccessed 2nd December 2023

utilization. It is without peradventure that the lack of a favourable gas operations framework will deter investors. A dearth of investors impacts the possibility for the capital necessary to enhance gas infrastructure to be obtained.

Section 167(1) of the PIA mandates the Authority by the Act and for each year, to determine the domestic base price pursuant to the Third Schedule to this Act, to determine the prices for the power sector, commercial sector and gas-based industries. This power is to be exercised continuously by the Authority if, in its opinion, pricing control for natural gas is necessary. The Authority shall not determine natural gas prices where the entire domestic gas demand requirement, which is the total amount of marketable gas required for all wholesale customers of strategic sectors is covered by contracts under Section 110(2) or 173(2) of the PIA. Section 110(2) refers to contracts between lessees and wholesale customers of strategic sectors or wholesale gas suppliers supplying the strategic sectors for the delivery of marketable natural gas on a free market basis. Section 173(2) of the PIA concerns the total amount of marketable natural gas for all wholesale customers of strategic sectors.

The Authority shall also regulate the prices charged by licensees in respect of the activities, in a manner consistent with its functions under this Act and with the pricing principles set out in section 170 of this Act when it determines that –

a) a particular licensed activity is a monopoly service;
b) Competition has not yet developed in the market to such an extent as to protect the interests of customers; or
c) a particular licensee is a dominant provider.

The guiding pricing principles set out in Section 170 mentioned above are as follows:[48]
(a) marketable natural gas prices shall be disaggregated into the component elements of the supply chain including the costs of wholesale gas, tariffs for gas processing, tariffs for transportation pipelines for natural gas, distribution and supply;

(b)the prices charged for each licensed activity shall reflect the costs incurred in the efficient provision of that activity;

(c) prices charged shall permit a reasonable return for licensees on their investments; and prices shall not discriminate between customers with similar characteristics, such as similar size or a similar consumption profile.

The Authority is mandated to consult with licensees, industry participants and stakeholders before undertaking a pricing review or establishing a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services.

[48] (n – 42), Section 170

The Authority shall also not determine natural gas prices where the domestic market for natural gas is largely characterized by free-market-based contracting for natural gas between willing buyers and willing sellers based on the criteria established by the authority and in line with the PIA.

The implication of this is that there is some wiggle room for entities to structure investment-friendly prices for the supply and distribution of gas domestically, closely aligned with international best practices. A dynamic pricing mechanism that considers factors such as local demand, global gas prices, and infrastructure investment needs can help ensure that gas prices are competitive therefore allowing for infrastructure development ascribed to profitability of such ventures.

5.3 Gas Infrastructure Fund[49]

Section 52(1) of the PIA established the Midstream and Downstream Gas Infrastructure Fund ("the Fund") subject to appropriation from the National Assembly. The Fund has a Governing Council that shall supervise and make decisions for the Fund. The sources of finance for the Fund are: a) 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria, b) funds and grants from multilateral agencies and bilateral institutions dedicated to infrastructure development in the midstream and downstream gas sector, c) proceeds of gas flaring penalties d) free donations or any other sum accruing to the Fund and e) interest, if any, payable in respect of money in the Fund.

The purpose of the Fund by Section 52(10) of the PIA is to make equity investment of government-owned participating or shareholder interests, in infrastructure related to midstream and downstream operations. This investment is aimed at increasing the consumption of natural gas in Nigeria in projects partly financed by private sector investment and the encouragement of private investment in the natural gas sector. Proper utilization of monies in the Fund for investment in critical infrastructure as prescribed by the Act, will lead to increased development of critical gas infrastructure, including pipelines, processing plants, and storage facilities, and the reduction of gas flaring. This will also facilitate the transportation and distribution of gas to previously underserved areas

5.4 Prohibition of flaring or venting of natural gas[50]

Flaring of natural gas is prohibited and defaulters are liable to a fine by Section 104(1) of the PIA, except in the case of an emergency, exemption or as an acceptable safety practice. The penalty to be paid shall be prescribed by the Flare Gas (Prevention of Waste and Pollution) Regulations. A licensee producing natural gas by Section 108 of the PIA, shall within 12 months of the effective date of the Act, submit a natural gas flare elimination and monetization plan to the Nigeria Upstream Petroleum Regulatory Commission.
These provisions and related provisions will incentivize oil and gas companies to invest in gas utilization projects, such as gas-to-power initiatives and industrial use.

[49] Ibid, Section 52

[50] Ibid, Sections 104 – 108

5.5 Tax Incentive

The PIA provides that all companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilization industries as defined in the Act, shall be entitled to benefit from the incentives provided under section 39 of the Companies Income Tax Act. It equally provides for investors in the gas pipeline to be granted an additional tax-free period of five years at the expiration of the tax-free period granted in section 39 of the Companies Income Tax Act. The Company Income Tax Act (CITA) is the principal law that regulates the taxation of companies in Nigeria. The Company Income Tax Act (CITA) provides as follows:[51]

*(*1) A company engaged in gas utilisation (downstream operations) shall be granted the following incentives, that is-

(a) an initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years

(b) As an alternative to the initial tax-free period granted under paragraph (a) of this subsection, an additional investment allowance of 35 per cent which shall not reduce the value of the asset, so however that a company claims the incentive provided under this paragraph shall not also claim the incentive provided under paragraph (c) (ii) of this subsection;

(c) Accelerated capital allowances after the tax-free period, as follows, that is-

(i) An annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery;

(ii) An additional investment allowance of 15 per cent which shall not reduce the value of the asset;

(d) Tax-free dividends during the tax-free period, where-

1. The investment for the business was in foreign currency; or
2. The introduction of imported plant and machinery during the period was not less than 30 per cent of the equity share capital of the company

(e) Interest payable on any loan obtained with the prior approval of the Minister for a gas project shall be tax deductible.

The initial tax-free period of three years of a company under the CITA which is renewable by two more years upon satisfactory performance, starts on the day the company commences production as certified by the Ministry of Petroleum Resources. The PIA by granting an additional tax-free period of five years for investors in gas pipelines, which sums up a ten (10) year tax holiday for gas pipeline investment, enhances the prospects of increased private investment within the sector. Increased investment in gas pipelines is critical to bridging the gas infrastructure gap as it is the primary mechanism for the distribution and delivery of natural gas across Nigeria. The ripple effect of properly enforced tax incentive regimes is a translation to job creation and the stimulation of economic development in regions with gas reserves, and the nation at large.

[51] The Company Income Tax Act (2019), Section 39.

6.0 Challenges Under PIA 2021

Administrative challenges, inadequate funding, lack of infrastructure and limited collaboration among stakeholders have constrained the implementation of Nigeria's Petroleum Industry Act, PIA, barely a year after it was signed into law.[52]

6.1 The Gas Infrastructure Gap

Nigeria boasts significant natural gas reserves, making it a key player in the global gas market. However, despite this potential, the country has struggled with inadequate infrastructure to efficiently harness and distribute its gas resources. Nigeria is reported to have the highest gas reserves in Africa, but only about 25 per cent of those reserves are produced. According to the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), Nigeria's gas reserves grew to 209.5 trillion cubic (tcf) in 2022 which ranks as the ninth largest in the world, but harnesses only about 8 billion standard cubic feet per day (bscf). The Federal Government in August 2022 disclosed that about $20 billion investment yearly is required to bridge the gas infrastructure gap in Nigeria in the next 10 years.

This infrastructure gap has hampered economic growth, power generation, and the country's ability to meet its domestic and export commitments. Inadequate gas infrastructure affects the capacity to process and transport gas sufficient for domestic consumption. Gas Pipeline Vandalism on a small or large scale also adds to this per Double Taxation Oil companies are required to pay a HCT under section 260 of the Nigeria's PIA. The same companies must also pay the CIT. Under section 302 of the Act. These taxes may be seen as double taxation by the companies and investors may also be discouraged from investing in Nigeria's petroleum industry by such taxation requirement.

Ambiguous Wording and Imprecise Language The difficulty interpretation and legal ambiguities associated with the law is one of the biggest challenges of the act. For instance, it is not apparent if the duties of the host community development trust are separate from or in addition to current community levies such as the Niger Delta development levy. Similar to this, the act is silent regarding the definitions of "frontier basin" and "host community," referring to the NUPRC for a definition of the former and settlors or licence holders for the definition of the latter. Frontier Basin Exploration does not have a proper definition under the Nigeria's PIA. These definitions inconsistent with gas infrastructure gap problem.

7.0 Conclusion

There is need for government and other stakeholders to address issues affecting full implementation of the PIA, the government, its agencies and other parties to collaborate in order to fully implement the provisions of the nation's PIA. However, without proper and maximum implementation of the above provisions of the Act by the relevant regulatory authorities, the provisions of the Act will become superficial and the deficit in the gas infrastructure will persist. At the Domestic Gas and Gas Infrastructure Summit 2023, most

[52] Vanguard, 'PIA: Administrative challenges, inadequate funding, others hinder implementation — Investigation,' https://www.vanguardngr.com/2023/07/pia-administrative-challenges-inadequate-funding- others-hinder-implementation-investigation/ , Accessed 2nd December 2023

industry players noted that the purported tax incentives/tax holidays provided under the PIA are yet to be implemented. The Gas Infrastructural Fund is largely constrained as per the availability of funds in it to the extent that only one company has benefitted from it. Thus, relevant actors must rise to the occasion and ensure the timely implementation of the provisions of the PIA.

8.0 Recommendation

The seminar paper recommended that liberalization, commercialization, privatization and proper infrastructural development couple with good legislative governance is a sure key to resolving lop sided distribution/transmission of gas product. This will enhance security of supply and energy security through strategic market networking of pipeline distribution of gas to all the various climes of the nation. The government should adequately fund the gas sector for proper infrastructural development. Relevant actors must rise to ensure the timely implementation of the provisions of the Act. All ambiguous clauses in the Act should be given proper interpretation by the relevant bodies.