EVALUATING THE IMPACT OF PETROLEUM INDUSTRY ACT (PIA) ON PRODUCTION SHARING CONTRACT (PSC) IN NIGERIA PETROLEUM INDUSTRY

By

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Abstract

This paper examined the impact of the Petroleum industry Act (PIA) on production sharing contract PSC) in Nigeria Petroleum Industry. The basic principle underlying the PSC is that the oil company causes the whole cost of exploration stipulated by the contract and is rewarded if a commercial discovery is made. It is followed with a share in production revenue determined by agreement. After several years of experimenting the PSC regimes, Nigeria's Petroleum was found to be enmeshed with several challenges which include corruption, inefficiency, lack of transparency and accountability. To solve these problems, Nigeria enacted a new regulatory Act, the petroleum industry act (PIA) effective 16th August 2021. The paper reveals that the ambition of the government is to attain 40 billion barrels of reserves and production levels of crude oil per day. The PIA also prescribes 30% of NNPC profits to fund exploration for frontier basins. The PIA made provision for renewed PSC. The provision paved the way for resolution of lingering disputes which created investment uncertainty and stifled new investments in the nation's deep offshore assets. In summary, the renewed PSC provided by PIA would provide several benefits such as improved long term relationships with contractors, elimination of contractual ambiguities especially in relation to gas terms, and enable contract renewals. The paper recommended that NNPC Limited should increase Crude Oil supplies to local refineries and Dangote Refinery to increase refined products to enhance energy security in Nigeria. The paper further recommended the reduction of taxes, royalty and signature bonus to encourage investment in Nigeria's petroleum industry.

Keywords: *Evaluation, Impact, Petroleum Industry Act (PIA), Production Sharing Contract (PSC), Petroleum Industry.*

1.0 Introduction

Production sharing contract is an arrangement that enables the state and the international oil companies or contractors to share output in predetermined situation, usually after oil has been extracted.[1] The production sharing contract is deeply rooted in the Napoleonic Era and French legal concept of ownership of minerals wherein mineral wealth is not to be owned by individuals but by the state for the benefit of all citizens.[2]

Omeorgbe posits that PSC are legal arrangement in which crude oil produced is shared by the parties in predetermined propositions.[3] According to Atsegbua, the Nigerian Production Sharing Contract first started

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[1] S. C. Dike, Energy Security, the case of Nigerian and Lessons from Brazil Norway and the U.K. (Port Harcourt, Pearl Publishers 2015) 70.

[2] D. Johnson, the International Petroleum Fiscal System and Production Sharing Contracts. (Tulsa, Oklahoma: Pennwell Books 1994)22.

[3] Y. Omorogbe, Oil and Gas Law in Nigeria simplified (Malthouse Press, Lagos, Benin, Ibadan, Jos Oxford 2001) 41

between the Nigerian National Petroleum Corporation (NNPC) and Ashland Oil Nigeria Company (AON)/ AON is the Nigerian subsidiary of an American Company.[4]

According to Etikerentse, the first PSC in Nigeria was the one between NNPC and Ashland Oil (Nigeria) Company- the Nigerian subsidiary of an American Company. The contract was signed by the parties in June, 1973 covering the exploitation of NNPC's concessions Oil Prospecting Licenses Numbers 118 and 98 situated respectively in Imo State and off shore the Cross River State. The life of the contract was stated to be twenty years from 1979 with a renewal term of five years. This was the only FSC in operation in Nigeria for over a decade until the end of the 80s when, pursuant to the Federal Government Petroleum Policy, the FSC became the preferred vehicle of Government participation in the upstream petroleum industry. The new acreages in the Deep Offshore and Frontier areas of the Benue trough, which was allocated since 1990 have thus been on the basis of PSC arrangement.[5]

> Thus, the PSC as a contractual form represents an accommodation of a spate of conflicting interests, a modus vivendi in the unending battle between a host country and foreign oil companies.[6]

The PSC has four types of Fiscal arrangements: one is royalty oil, due to the host country to pay royalty. Another is the cost oil, which is due to the contractor to recoup his capital investment, profit oil-which is shared between the contractor and the host country. The fourth is the tax oil-which relates to the interest on the profit oil. The contractor is liable to pay income tax from its profit oil normally in kind and the state has the right to insist on this.[7]

The PIA was signed into law by President General Muhammadu Buhari on 16th August, 2021. This epoch signing of the petroleum industry Bill (PIB) into law is quite commendable because it occurred after several years of missteps, intrigues, legislative summersaults, and restarts. The PIA is a regulatory instrument, rule or order of the government to regulate the petroleum industry in Nigeria. Nigeria now have an Act providing for legal,[8]governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the host communities; and for related matters.[9]

2.0 Regulatory Mandate of the PIA

The new Act calls for setting up of a Nigerian Upstream Regulatory Commission (NURC)[10] to enforce, administer and implement laws, regulations and policies covering upstream petroleum operations, while at the same time prescribing a creation of a midstream and Downstream Petroleum Regulatory Authority

[4] L. Atsegbua, Oil and Gas Law in Nigeria Theory and Practice (4th Edn. four Pillars Publishers (Lagos 2021) 149.
[5] G. Etikerentse Nigerian Petroleum Law (2nd Edn. Lagos Dredew Publishers, 2014) 88
[6] D. Johnston, n2)
[7] Taverne, Cooperative Agreements in THE Tractive Petroleum Industry)Kluwer Law International 1966) 158.
[8] The Petroleum Industry Act (PIA) LFN 2021. Sections 4-28.
[9] M. N. Umenweke, and W.A. Chukwuma, An Examination of the Petroleum Industry Act 2021 and the Quest for A New Nigeria Law and Social Justio Review (LASJURE)2 (2) 2021.
[10] PIA Part IV Sections 29-52

(NMDPRA)[11] for the regulation of midstream regulatory authority empowered to monitor and ensure compliance with environmental regulation.[12] Thus the PIA overhauls the regulation and governance of the oil and gas industry law, provides for two regulatory agencies-NUPRC and the NMDPRA, that will be responsible for the technical and commercial regulation of petroleum operations in their respective sectors, and have the power to acquire, hold, and dispose of property as well as sue and be sued in their own name.The PIA also turns the Nigerian National Petroleum Company (NNPC), into the NNPC Ltd, a quasi-commercial entity, the ownership of which shares shall be vested with government, and the ministry of finance and petroleum shall hold shares on behalf of the government, the PIA provides that the President[13] of Nigeria will appoint the president of NNPC Ltd as well as heads and members of the regulatory agencies. Separately, the minister of petroleum, then, will head the industry with a wide range of powers to formulate, monitor, and administer government policy under the PIA.

The act also provides that 30 percent of the profits of the NNPC Limited will fund a new entity, to finance exploration in other basins in the country (Frontier Exploration Fund). Ten percent on petroleum prospecting licenses (PPLs) and 10 percent of rents on petroleum mining leases are also assigned to frontier exploration. The act is unclear[14] on whether there will continue to be exploration in existing basins.

2.1 Licensing Regime

The PIA has introduced a national grid[15] system to be used for acreage management. This is to be used to define license and lease areas, relinquishments; bid procedures; identification of well locations; petroleum conservation measures and other regulatory and acreage management procedures. To this effect, upstream operations will now be operated under three new classes of licenses to be granted by the commissions namely;

i. Petroleum Exploration Licence (PEL) which gives the licensee expiratory rights on a non-exclusive basis and a single renewable 3-year terms.[16]
ii. Petroleum Prospective Licence (PPL)[17] which gives the licensees the exclusive rights to drill exploration and appraisal wells, do corresponding test production and non-exclusive right to carry out petroleum exploration for a maximum of 6 years for onshore and shallow water acreages and 10 years for deep offshore and frontier acreages.
iii. Petroleum Mining Lease (PML)[18]: This is granted to qualified applicants to win and dispose of crude oil, condensate and natural gas for a maximum of 20 years.
The administration of the licenses (including approvals and revocations) will be handled by the commission and no longer solely under the purview of the Minister as the case under the

[11] PIA Part II Sections 68-110
[12] PIA Part I Sections 260-266
[13] Section 59 (2) of PIA 202
[14] K. Nwuke Nigozia's Petroleum Industry Act: Addressing old problems, creating new ones. (Africa in Focus Energy Industry, Global Economy & Development, sub-Saharan Africa, West Africa, November, 24, 2021).
[15] ENR Advisory, PIA, 2021 What Next for Upstream Players.
[16] Section 71 PEL of PIA 2021
[17] Section 72 PPL of PIA 2021
[18] Section 70© (i-iii) PML of the PIA 2021

Petroleum Act[19]. The PEL will be granted on a discretionary basis will PPL and PML will only be granted after a transparent and competitive bidding process. Where the consent and approvals required under the Act are not provided within the stipulated time, deemed approvals will apply.[20]

2.3 Conversions

Current Oil Prospecting Licence (OPL) or Oil Mining Lease (OML)[21] holders have the option to convert their subsisting interests to a PPL or PML[22] through conversion contract and subsequently enjoy the fiscal incentives under the new review: A holder of an existing oil prospecting licence or oil mining lease may enter into voluntary conversion contract under this Act.[23]

Conversion to the new regime will terminate all unconcluded court and arbitration cases; guarantees and stabilization clauses provided by NNPC including capital allowance on investments, enjoyed for gas production.[24] Upon conversion, the OML holders will be required to relinquish up to 60% of their existing acreage.[25]

The conversions shall become concluded or effective at the earlier of expiry dates of the current licenses or 18[26] months in February 2023. Where OPL or OML holders choose not to convert to the PIA regime, the current regime will continue to apply to them until the expiration of the licences. Upon expiration, the new regime will apply to the renewed licences. Where a licensee of an oil prospecting licence, including any oil prospecting licence that is subject to a production sharing contract, voluntarily opts to convert its licence to a petroleum prospecting licence under section 92 of the Act[27] it shall select as provided in subsection (1) the areas and zones indicated in the subsection upon the conversion date and commission shall convert the applicable oil prospecting licence of the areas and zones- (a)designated by a holder under section 93 (1) (a) (b) and (c) of this Act[28] as areas to be continued under the petroleum prospecting licence (PPL) under this Act with fiscal terms as applicable under section 267 (b) and other terms under chapter 4 of this Act for new acreage.

All existing and producing marginal fields are to be granted a separate PML. All marginal fields (declared prior to 1 January 2021 that are not yet producing in development are to be converted to PPLs and will benefit from the terms for new acreages under the Act.[29]

3.0 New Fiscal Regime

[19] Section 2(i) (c) PML of Petroleum ACT OF [27TH November, 1969]
[20] <www/[wc/cp,/ng.accessed9thMay 2024> The Petoleum Industry Act, Redefining the Nigerian Oil and Gas Landscape.
[21] Sec 2 (1) (b) (c) PETROLEUM Act 1969
[22] Section 92 (1) PIA 2021
[23] Ibid.
[24] www.pwc.com/ng accessed 14th March, 2024.
[25] Sec. 93(6) PIA 2021
[26] Sec 92 (1) (4) (a) PIA 2021
[27] Section 92 (1) PIA 2021
[28] Section 93 (1) (a) (b) and (c) PIA 2021
[29] Sec. 94 (2) PIA 2021

The PIA has introduced new fiscal provisions which would only apply to acreages granted under the PIA and existing acrecesses that have either been renewed or converted.

3.1 Royalties

New royalty will be based on production and price. For royalties based on production, the applicable rates on chargeable volume in the relevant areas will be as follows for production of crude oil and natural gas respectively:

a. Onshore areas: 15% (b) shallow water (up to 200m water depth)-12.5% and (d) frontier basins – 7.5%[30]. In addition to royalties based on production, the royalty per price for crude-oil and condensates are as follows: (a) Belous US $50 per barrel- 0% (b) At US $50 per barrel-5% (c) Above US $150 per barrel-10% (d) Between US $50 and US $100[31] per barrel or US $100 and US $150 per barrel, the royalty by price is to be determined based on linear inter polation. The new royalties based on price will not apply to frontier acreages. Royalties unpaid after 30 days[32] from the due date will be considered a debt to the commission and subject to interest at prevailing CBN rate.

3.2 Taxes

Under PIA, petroleum Profit Tax (PPT) has been replaced with companies income Tax (CIT) and Hydrocarbon Tax (HT).[33] The Hydrocarbon tax (HT) being a mean tax applies to natural gas liquids, condensates and crude oil. They are charged on profits from crude oil for petroleum mining leases on such operations in each accounting period at the following rates for new acreages and consecrate acreages respectively, onshore and shallow.

(a) converted/renewed offshore[34] - 30% of the profit form crude oil for petroleum mining leases selected under sections 93(6) (b) and (7) (b) of this Act.
(b) Onshore and shallow water and PPLs – 15% selected under section 93 (6) (a) and (7) (a) of this Act[35]. In addition to HT, CIT will be applicable to all companies involved in more than one stream, must register and use a separate company for each stream. NHT is nondeductible for determining CIT. withholding tax on dividends at 10% and Tertiary Education Tax (TET) of 2% of assessable profits will still be applicable. Bank charges have also been included as expenses which are not tax deductible. This however contradictory to general principle for expenses deductibility under the wholly, reasonable, exclusive and necessary (WREN) test.[36] Allowance (ITA) and Investment Tax Credit (ITC) with a production allowance per crude oil production which consists of:
    i. For now acreages – the lower of 20% of the fiscal oil force and USD 8 per barrel volume.

[30] Sec.268(3) PIA 2021 Paragraph 10(1) and (212) of the seventh schedule.
[31] Sec. 268(3) PIA 2021 and Paragraph II (10 OF THE Seventh Schedule
[32] Section 100(2) PIA 2021
[33] Sec 260 (5) PIA 2021
[34] Section 267 PIA 2021
[35] Section 93(6) (a) (7) (a) PIA 2021
[36] www.pwc.com/ng accessed 29th August, 2024

ii. For converted acreages – the lower of 20% of the fiscal oil price and USD 2.50 per barrel for production of up to 500 million barrels and USD 4 for post 500 Million barrels produced.[37]

3.3 Producing Marginal Fields

Section 94of the Petroleum Industry Act[38] (PIA) defines a marginal field as ‘’a field or discovery which has been declared a Marginal Field prior to 1st January 2021 or which has been lying fallow without activity for seven years after its discovery prior to the effective date’’

Producing marginal fields are marginal fields which are already producing prior to 1st January 2021. For such fields, the PIA allows the operators to continue operating under the original royalty rates and farm out agreements. However, a conversion to petroleum mining lease (PML) is required within 18 months from the effective date of the PIA. A PML is granted for a term of 20 years. For a renewal of either the whole of the lease or any part thereof, the holder of a PML can apply to the Commission, not less than 12 months before the expiration of the lease. The Producing Marginal Fields have encountered some changes due to the enactment of the PIA. They include:

(i) Taxes and Royalties- Chargeable tax is assessable at 15% of the crude oil profits for PMLs, and 15% of the crude oil profits for PPLs. Also, the 15% HT rate will apply for any PMLs derived from the PPLs after the effective date of the Act.

Marginal Fields on onshore fields and shallow waters, with production less or equal to 10,000bopd in a month, are subject to royalty at 5% for the 1st 5,000bopd. Royalty will apply at 7.5% for the next 5,000bopd. Royalty rate applicable to volumes above 10,000bopd is chargeable as follows: Onshore[39] areas- 15%; Shallow water[40] (up to 200m water depth) 12.5%; Deep offshore[41] (greater than 200m water depth) 7.5% and Frontier basins[42] 7.5%.

In Nigeria's oil and gas sector, the exploration and production of hydrocarbon resources have long been pivotal to the nation's economy. However, as larger oil fields reach maturity and global energy dynamics evolve, there is an increasing focus on developing marginal fields to sustain production levels and maximize resource utilization. The Petroleum Industry Act (PIA) of 2021 introduces significant reforms aimed at revitalizing the Nigerian oil and gas industry, including provisions specifically addressing the production of marginal fields.

Under the PIA 2021, the Nigerian government seeks to encourage investment in marginal fields by providing a conducive regulatory framework and incentives for exploration and production activities. Marginal fields, often characterized by smaller reserves or challenging geological conditions, present

[37] www.pwc.com/ng accessed 29th August, 2024
[38]Section 94 PIA 2021
[39]Section 10 of para2 (a) of 7th Schedule
[40]Section 10 of para 2 (b) of 7th Schedule
[41]Section 10 of para 2© of 7th Schedule
[42]Section10 of para 2(d) of& 7th Schedule

unique opportunities and challenges for operators and investors. While they may not individually match the scale of major oil fields, the collective development of marginal fields contributes to overall production growth, enhances energy security, and fosters economic development, particularly in host communities.
One of the key provisions of the PIA 2021 is the establishment of the Marginal Field Development Fund (MFDF), which aims to provide financial support and technical assistance to indigenous companies participating in marginal field projects. The MFDF serves as a mechanism to mitigate the financial risks associated with marginal field development, thereby attracting investment and promoting indigenous participation in the upstream oil and gas sector. By facilitating access to funding and expertise, the MFDF empowers local companies to undertake exploration and production activities in marginal fields, driving indigenous capacity development and job creation.

Moreover, the PIA 2021 introduces flexible fiscal terms and regulatory incentives tailored to marginal field development, including streamlined licensing procedures, reduced royalties, and tax incentives for incremental production. These measures aim to improve the commercial viability of marginal field projects and incentivize investment in exploration and development activities. Additionally, the PIA 2021 emphasizes environmental stewardship and community engagement, requiring operators to adhere to stringent environmental standards and implement sustainable development initiatives in host communities.

In practice, the production of marginal fields under the PIA 2021 involves a multidisciplinary approach, encompassing geoscience, engineering, finance, and regulatory compliance. Operators must conduct comprehensive geological and reservoir studies to assess the resource potential and formulate optimal development strategies. Advanced technologies such as horizontal drilling, hydraulic fracturing, and enhanced oil recovery techniques may be employed to maximize recovery rates and optimize production from marginal fields. Additionally, effective project management and risk mitigation strategies are essential to navigate the complexities of marginal field development and ensure timely and cost-effective execution. Furthermore, the success of marginal field projects hinges on strong partnerships between operators, service providers, government agencies, and local stakeholders. Collaborative efforts are crucial to overcoming technical challenges, securing financing, and fostering sustainable development outcomes. By leveraging local expertise and resources, promoting technology transfer, and fostering mutually beneficial relationships with host communities, operators can enhance the socio-economic impact of marginal field development and contribute to the long-term prosperity of the Nigerian oil and gas industry.

In conclusion, the production of marginal fields under the PIA 2021 represents a pivotal opportunity to unlock Nigeria's untapped hydrocarbon potential, stimulate economic growth, and promote indigenous participation in the upstream oil and gas sector. Through targeted regulatory reforms, fiscal incentives, and collaborative partnerships, the PIA 2021 seeks to create a conducive environment for investment in marginal field projects, driving innovation, job creation, and sustainable development across Nigeria's oil and gas landscape.

3.4 Non-Producing Marginal Fields

These are discovery fields declared as marginal fields prior to 1st January 2021[43], but which are not producing. Such fields are required to be converted to a Petroleum Prospecting License (PPL). PPL for onshore and shallow water acreages will be valid for a maximum period of 6 years, consisting of initial exploration period of 3 years and an optional extension period of 3years.

For a marginal field that has not been transferred to the government within 3 years from the effective date of the PIA; the holder of the oil mining lease would have to provide a field development plan or in the alternative farm-out the discovery (with the consent of the Commission). 'Farm-out' means an agreement between the holder of a petroleum mining lease or petroleum prospecting licence and a third party, which permits the third party to explore, prospect, win, work, and carry away any petroleum encountered in a licence or lease area during the validity of the licence or lease. Where none of the conditions mentioned above are fulfilled, such fields will be relinquished. For the fields that have been transferred to the government, the Commission has the right to offer a PPL for the relinquished field under a fresh bid round. The PIA no longer provides for new discovery fields to be declared as marginal fields. In the long run, this places the upstream players on a more even ground from a fiscal and regulatory standpoint.

4.0 The Evaluation of the impact of PIA 2021 on PSC.

The PSC is essentially a form of commercial transaction for the development of petroleum resources of the state which as a sovereign zones of crude oil seeks to exercise its sovereign rights in the development of the resources by the foreign oil company.

The basic principle underlying the PSC is that the oil company causes the whole cost of exploration within the geographical area stipulated by the contract and is rewarded accordingly if a commercial discovery is made and development follows. Such rewards come in the following manner: first with an entitlement to extract oil from the discovered source to the amount needed for recovery of its costs of exploration; following there upon with a share in production revenues, which share is determined by agreement. In other words, the PSC contractor has full rights only to "cost oil" (i.e. oil to recoup production) after the company has defrayed tax and royalty obligations through tax oil on the incense holder's behalf. After several years of missteps, intrigues, legislative summersaults, and restarts[44], the nation's President General Muhammadu Buhari finally signed the petroleum Industry Bill (PIB) into the Petroleum Industry Acts (PIA)[45].

Nigeria thus have an Act providing for legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the host Communities, and for related matters[46]. To that this very important Act has been long in coming is to oversimplify the obvious[47]. From the time the legislation was conceived, some

[43]Section 94 (2) PIA 2021

[44] P. Olaoye, Nigeria: Behold the Brand new Nigerian Industry Act, 2021; The Daily trust Newspaper, 20th August, 2021, book-page.

[45] F. Adesina, buhari Okays PIB into law today; The Guardian Newspaper, 16th August, 2021, Front stage.

[46] Petroleum Industry Act (PIA) LFN 2021 Sections 4 – 28.

[47] M. N. Umenweke, and W. A. Chukwuma, An examination of the Petroleum Industry Act 2021 and the Quest for A New Nigeria Law and Soctal Justio Review (LASJURE) 2 (2) 2021.

20 years ago, through various transmutations, it traversed, and particularly following its passage into law and sequel to the presidential assents upon the development, there has been rave renews and conservations by stakeholders around the content, perhaps the most focal of the contentions attracting reviews is the 3% fund to the settler's annual operating expenditure to be dedicated to the host community trust funds[48] and also 30% fund for the frontier basin exploration development, which some commentators have described as a cover for defrauding the nation[49].

4.1 The Mandate of the PIA

The ambitions of the Government are to attain 40 billion barrels of reserves and productions levels of four million barrels per day[50]. The PIA aims to drive that agency. The PIA re-affirms the oversight and supervisory role of the Minister in approving or revoking an oil licence. The New Act calls prescribes 30% of NNPC profits to fund exploration activities in frontier basins[51]. Thus the new Act calls for setting up of a Nigerian Upstream Regulatory Commission (NURC)[52] to enforce, administer and implement laws, regulations and policies covering upstream petroleum operations while at the same time prescribing a creation of a Nigerian Petroleum Industry Act[53] (PIA) LFN 2021 Sections 4 – 28.

Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)[54] for regulation of midstream regulatory Commissions is empowered to monitor and ensure compliance with environmental regulation[55]. Thus, operators must submit environmental plans for both prevention and remediation on environmental pollution. The new Act further prohibits[56] gas-flaring, except under specialized condition which include; (i) Emergency (ii) Exemption expressly granted by the Commission and also (iii) Acceptable safety requirements under established regulations. While the industry will have operate on a face market basis in terms of demand and supply operators will have to give some considerations to ensuring adequacy of supply to the domestic market and local refineries. The new act frowns at monopolistic behaviour while invoking the rules on free competitive market forces and demand as contemplated try to ignite for four market competition production, to reduce downstream, and maximize resource recovery.

Promoting sustainable development:

i) The Act aligns with global trends towards sustainable development, environmental

4.3 Power to Enter into Contracts

Under the PIA the minister has the power to grant of licence or lease unless otherwise prohibited by the Act, a licensee or lessee may enter into a contract with a third party for the exploration, prospecting,

[48] PIA Cap III Section 234 – 357.
[49] PIA part IV Sections 258 and 258 and 25.
[50] PIA 2021 Sections 4 – 28.
[51] O. Marlafia, unveiling Ambitions of Government on Petroleum Reform Agenda (2021) (8) Business Tax Law Journal, 63 – 67
[52] PIA Part IV Sections 29 – 52
[53] PIA Chapter III Sections 234 – 357, Frontier Basin, include Benue Trangle, Chad Basin and Sokoto Basin
[54] PIA part II Sections 68 – 110
[55] PIA part I Sections 260 – 266
[56] PIA Part VIII Sections 216 - 233

production or development of crude oil or natural gas or both[57]. The power to enter into contracts section (1) shall confer in any licensee or lessee the right to assignment interest in any licence or lease, except in accordance with the provisions of this Act.[58] The commission shall develop a model lease, which may contain an obligation to comply with fiscal obligations and other provisions related to fees, rents, royalties for such contract attached to or incorporated in the model licence or model lease.[59] The model licence and model lease referred to under subsection (1)[60] shall comply with the provisions of this Act and may contain the following additional contractual provision[61]:

a. A production sharing contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs from a share of production as established in the contract from the applicable area;
b. A profit sharing contract which is a production sharing contract whereby the profit oil is provided in cash to government.
c. A risk service contract for the for the exploration, development and production of petroleum on terms under which the financial risk bearing party shall recover costs by a payment in cash or in kind from petroleum produced from the applicable area;
d. A concession agreement for exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with NNPC Limited; and
e. Any contracted being a variation of the contracts pursuant to paragraphs (a), (b), (c) or (d) or a contract which, at the time, is an internationally recognized form of contract for the exploration and production of petroleum.[62]

A licence described under subsection (1)[63] shall not be granted by the Minister unless the appropriate model contract is attached to the licence or lease as a guide on the relevant fiscal obligations.[64] A contract as provided for under section 85(2) (d) of this Act shall include a carried interest provision, whereby.

(a) The Government through the NNPC Limited has right to participate up to 60% in the contract or identified as a bid parameter,
(b) The right to participate shall be at any time upon the granting of the licence or lease,
(c) The contract shall stipulate that Government shall refund fully its proportionate share of the unrecovered proven costs from the date of its participation and such refunded cost shall not include bonuses and penalties, interest, premium or markups on cost,
(d) The contract shall not recover any up-front payment by the Government;

[57] PIA Section 85(1)
[58] PIA Section 84(2)
[59] PIA 2021 Section 85 (1)
[60] Ibid
[61] PIA 2021 Section 85 (2)
[62] PIA 2021 Section 85 (2) (a) (b) (c) (d) (e)
[63] PIA 2021 (n[16])
[64] PIA 2021 Section 85(3)

(e) The nature, the validity and quantum of the unrecovered costs to be refunded shall be determined or verified by an agreed export determined or verified by an agreed export determination procedure;
(f) The refund, obligation under this subsection may be in the form of kind from future share of production or entitlements from the effective participation date; and
(g) The terms, conditions and financial details of any right of participation by the government under this subsection shall be contained in the model contract prepared by the commission in consultation with NNPC Limited.[65]

3.4 Renegotiated PSCs

Less than a month after the unveiling of NNPC Ltd by Mr. President, NNPC Ltd and its production sharing contract (PSC Contractors are pleased to announce the execution of fully termed agreements for the renegotiated PSCs[66].

In an event to mark the landmark achievement held at the NNPC Towers in Abuja, the parties renewed their agreements in five Oil Mining Leases (OMLs 128, 130, 132, 133 and 138)[67], a development that would not unlock further investments in the upstream sector and boost investors confidence, but would also unlock over $500bn in revenue for the country.

Group CEO, NNPC Ltd, Mallam Mele Kyari, said renegotiations of sections 311 of the PIA[68] with other improvements to the PSCs aimed at driving performance in the PSC operations.

Kyari further explained that the negotiations were completed within the framework specified by PIA for all renegotiated PSCs, stressing that the meaning of this is that there is now a great deal of clarity between NNPC Ltd and its partners in the deepwater space[69].

Kyari commended president Muhammadu Buhari for his leadership in providing the NNPC Ltd and its contractors the opportunities for boosting the nation's crude oil production and revenue base. In his remarks, country Chair, Shell Companies in Nigeria, Mr. Osagie Okunbor described the execution of OML 133 PSC contract as a significant progress towards harnessing the deepwater resources of Nigeria., Mr. Richard Laing noted that the renewal of the Usan and Erha leases has company's commitment to maintain a significant deepwater presence in Nigeria, through Esso Exploration and production Nigeria (Deepwater) Limited.

On his part chairman/managing Director of Chevron is proud of its strong partnership with Nigeria and its various partners and remains committed to supporting the country to develop its energy resources safety

[65] PIA Section 85(2)
[66] PIA 2021 Section 85 (2) (a) (b) (c) (d) (e)
[67] PIA 2021 (n[16])
[68] PIA 2021 Section 85 (3)
[69] PIA 2021 Section 85 (4) (a) (b) (c) (d) (e) (f) (g)

and reliably. The recent negotiations put to rest the protracted dispute to the protracted dispute between the NNPC Ltd and the contractor parties in Oil Mining Leases (OMLs) 125, 128, 130, 132 and 133 as well as 138 PSCs[70]. The PSCs and their leases, except OML 130, will run for another 20 years term under pre-PIA laws, while OML 130 is to be renewed under PIA terms.

The PIA in Section 311 (2)[71] stipulates that new PSC agreements under new Heads of Terms will be signed between NNPC Ltd as Concessionaire and her Contractor parties within one year of signing the PIA into law, giving deadline of 15th August, 2022. The provision paved the way for resolution of lingering disputes which created investment uncertainty and stifled new investments in the nations deep offshore assets[72].

To achieve this, NNPC Ltd leveraged on the, near end term of the PSCs and the parties interest to renew the PSCs as a negotiation currency in bringing the contractors to work towards trading the part for the future. These renewed PSC, would provide several benefits such as improved long-term relationships with contractors, elimination of contractual ambiguities especially in relation to gas terms, enable early contract renewal amongst others.

The signing ceremony was witnessed by the Honourable Minister of State for Petroleum Resources, Chief Timipre Sylva (represented by the Permanent Secretary in the Ministry), Board Members of NNPC Ltd, led by the Chairman, Senator, Margene Chuba Okadigbo; Chief Executive of NUPRC, Engr. Gbenga Komolafe; Chief Executive of NMDPRA, Mr. Farouk Ahmed, Executive Secretary PTDE, Dr. Bello Aliyu Gusau and the Executive Chairman, Federal Inland Revenue Service (FIRS), Mr. Muhammad Nanue[73].

3.5 Host Communities

The relationship between oil and gas host communities in Nigeria has historically been very poor. The PIA aims to address this problem by creating The Host Community Development Trust Fund (HCDTF) whose purpose will be to, among others, foster sustainable prosperity, provide direct social and economic benefits from petroleum to host communities, and enhance peaceful and harmonious coexistence between licensees or lessees and host communities. Specially, the law stipulates that existing host community projects must be transferred to the HCDTF, and each settler (or oil license holder) must make an annual contribution of an amount equal to 3 percent of its operating expenditure for the relevant operations from the previous year. The management committee of the trust must include one member of the host community. In addition, the act stipulates a penalty for failure to comply with host community obligations, including revocation of license.

[70] News-petroleum…pio.gov.ng
[71] Oil Mining Leases (OMLs)125, 128, 130, 132 and 133
[72] Section 311 92) PIA
[73]https://pia.gov>category>newsaccessed11thJuly2024

Interestingly, the PIA also imposes the duty and responsibility to protect oil and gas assets on host communities. Most specifically, clause 257[74] stipulates that any host community that fails to protect oil assets in its community from vandalism will be held accountable for the repairs.
A persistent concern for host communities is the continued degradation of their environment and habitat from gas flaring associated with oil drilling. Nigeria has passed several laws to stop this with little effect. The PIA penalizes companies for gas flaring and provides that the revenues from the penalties will be used for environmental remediation and relief of the impacted host communities. However, the penalty must be steep enough to achieve its intended purpose. If it is not, oil companies will continue to flare gas if doing so minimizes their cost more than the penalty adds to it.

4.0 Resolving disputes under the Petroleum Industry Act 2021

The Authority has powers under section 33 to issue regulations relating to dispute resolution[75] and consumer protection. However, the Authority must, subject to cases relating to national interest or exigency, consult stakeholders before issuing such regulations (section 216). It is interesting to note that under the Petroleum Industry Bill, the Commission had similar powers but this did not make it into the Act.

Under sections 163, 179 and 180, the Authority has powers to mediate over disputes arising from rights of third parties to access areas for midstream and downstream gas and petroleum liquids operations as well as open access respectively. In relation to Host Communities, section 234 gives both the Commission and Authority powers to issue regulations which shall contain a grievance mechanism to resolve disputes between settlors and host communities.

Under section 318, where there is a dispute[76] with respect to the date of first sale of chargeable oil or date of cessation of petroleum operations, the Commission is vested with powers to determine the said date. This decision cannot be appealed.

Under section 76(f), model licences and leases shall contain rules for resolution of disputes[77] including arbitration, mediation, conciliation, or expert determination. This is novel but is only a reflection of what obtains in practice. For both upstream and mid/downstream operations, a licence, lease or permit may be revoked by the Minister if a licensee, lessee or permit holder fails to abide by an expert determination, arbitration award or judgment arising from the dispute resolution provisions in the licence or lease (see sections 96(1)(i) and 120 (j).

With respect to tax and general disputes, the Act does not provide any sweeping changes. For these disputes, it will be business as usual as the forums for hearing tax and general disputes remain the TAT and the FHC

[74] Clause 257 PIA 2021
[75] Section 33 of PIA 2021
[76] Section 318 of PIA 2021
[77] Section 76(f) of PIA 2021

respectively. In the case of tax disputes, appeals from the TAT lie to the FHC Court of Appeal and then the Supreme Court.

For specific examples mentioned in the Act e.g, applications refused by the Authority, businesses can seek judicial review from the FHC whose duty will not be to remake the decision challenged but to review the process by which the decision was reached. With respect to disputes arising from determining ownership and adequate compensation payable for private land, it is not clear[78] why there is a requirement to pay to the FHC a sum as determined by the FHC except perhaps to hold the funds in escrow (to secure an amount for the owner of the private land) pending the resolution of the question on adequate compensation.

Both the Commission and Authority also play different roles in resolving disputes. One area to pay particular attention to would be the Commission's absolute power to determine the date of first sale and cessation of petroleum operations. This power may be challenged on constitutional grounds and principles of natural justice.

5.0 Conclusion

In conclusion, this paper after a careful evaluation of the impact of PIA on PSC in Nigeria found that although the PIA has made several provisions to enhance PSC in the upstream sector of the petroleum industry, there are still grey areas in the Act. There are some aspects of ambiguity and lack of clarity. The 40 billion barrels of reserves and production levels of crude oil per day advocated by NNPC Limited is unrealistic due to massive oil theft of Nigeria crude oil. The regulatory agents seem to lack zest and insights to tackle this menace threatening the Nigerian economy. The 30% of NNPC profits to fund the exploration for frontier basins, though a good idea but it has not helped the economy. The allocation has created tension over revenue sharing in the country. The three tiers of government that rely on oil revenue in running their states felt cheated as they noted reduction in their revenue by allocating this huge chunk of revenue to NNPC Limited for frontier basins.

Also host communities remain unhappy with the PIA's provision that oil companies must allocate 3 percent of their annual operating expenditure in the proceeding calendar year to HCDTF; as they had asked for 10%. From the foregoing, this paper summarizes the PIA needs legal reforms.

6.0 Recommendations

This paper recommends as follows:

1. The PIA should be amended within the nearest possible time to consider the request of the host community to increase their 3% development allocation to 10%. This will create peaceful coexistence between the host communities and the IOCs.
2. Local refineries should be revitalized to increase production of refined products to enhance energy security in Nigeria.

[78] www.pwc.com/ngaccessed 14th March, 2024

3. NNPC should ensure reduction of taxes, royalty and abolish signature bonus to encourage the IOCs and other investors in the petroleum industry.
4. The regulators should ensure that they maintain the objectives of the PIA that is ensuring efficiency, effective institutions, transparency and accountability.
5. The PIA should be renewed periodically to establish a system of resolving disputes between host communities and oil companies as this will protect the interests of both parties.