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APPRAISING THE LAYERS OF GOVERNANCE UNDER THE PETROLEUM INDUSTRY ACT 2021

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Abstract

Regulatory Agencies play great roles in ensuring the steady production, distribution and marketing of petroleum products in the country. The role of the regulatory agencies is such that through them, the oil producing nationsexercise ownership and sovereignty over the natural resource deposits in the country. It is this exercise of ownership rights and incidents that make the need for adequate regulatory governance of great significance in the oil and gas industry as it determines the degree of participation by the industry players usually the multinational or international oil and gas companies (IOCs) and State-owned companies within the territory of every nation.This authors adopted the doctrinal legal research method, and examined the provisions of the Petroleum Industry Act,202 1 as it regards the regulatory governance structure for the oil and gas industry in Nigeria, particularly the Nigerian Upstream Petroleum Regulatory Commission (the "Commission"), and the Nigerian Midstream and Downstream Petroleum Authority (the "Authority") and found that there are still much grounds to be covered before the Act will adequately tackle the problems of regulatory conflict usually associated with instance where there are multiple regulatory authorities as provided for in the PIA. The authors recommended that the PIA beamended to reduce the powers of the Commission and Authority over the oil and gas industry being regulatorybodiesand not activeindustry players.

Keywords: Governance, Petroleum, Governance & Layers

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1. Introduction

The Petroleum Industry Act 2021 was recently assented into law by the President of the Federal Republic of Nigeria on August 16th, 2021 to repeal the extant Petroleum Act 2004, and therein created an array of provisions and innovations that will affect the private, public sector and stakeholders in the oil and gas industry. Under the old regime, the Minister of Petroleum and the Department of Petroleum Resources which is a Department of the Ministry of Petroleum Resources, were the main regulatory organs responsible for the regulatory governance structure for oil and gas operations in Nigeria. This situation was worsened by the fact that the Ministry through its Department of Petroleum Resources, was also an active player in the industry, through the Nigerian National Petroleum Corporation, thereby creating a situation where the regulator is also a player, and responsible for regulating itself.

Under the new PIA, there was a remarkable improvement in that the Nigerian National Petroleum corporation was unbundled and made to operate as a commercial entity whilst the regulatory aspect of its functions was handed over the Nigerian Upstream Petroleum Regulatory Commission (the "Commission"), and the Nigerian Midstream and Downstream Petroleum Authority (the "Authority") the twin regulatory agencies created by the PIA. How the provisions of the Act affect the oil and gas sector is the focus of this work.

2. ASSESSING THE TRAJECTORY OF REGULATIONS OF OIL AND GAS IN NIGERIA.

Nigerian Oil originated in 1914 with the Mineral Oil Ordinance of 1914, making oil and mineral under Nigeria soil legal property of the crown. By 1938 the colonial government had granted the state-sponsored company shell (then known as Shell D'Arcy) a monopoly over the exploration of all minerals and petroleum throughout the entire colony[2]. Commercially viable oil was discovered by shell in 1956 roughly 90kilometers (56mile) to the capital of Port Harcourt at Oloibiri, now in Bayelsa State. Initially a 50-50 profit sharing system was implemented between the company and the government. Until the late 1950's concessions on production and exploration continued to be the exclusive domain of the company.

However, other oil companies became interested and by early 1960. Mobil, Texaco, Gulf Agip etc. had purchased concession. In October 1960 Nigeria gained full independence from Britain with the British Monarch continuing to preside as Head of State, but the country quickly altered its relationship with its former colonial master by declaring Nigeria a Republic of three federated state (i.e., the Eastern, Western and Northern Region). The Petroleum Act, also came into existence which also helps to regulate the oil and gas activities in Nigeria by Section 1(1) Petroleum Acts which vest the entire ownership and control of all petroleum in the state.

The oil and gas industry has now been regulated by the Constitution of the Federal Republic of Nigeria[3], The constitution is the grund norm wherein other source of law derives its validity therefrom, and by S. 44(3) of the 1999 const.[4] as amended vested the ownership of oil in the Federal government and provides as follows:

> *Notwithstanding the forgoing provisions of this section, the entire property in and control in under or upon the land in Nigeria or in under or upon the territorial zone of Nigeria shall be vested in the government of the federation.*

This implies that the theories of ownership in oil and gas as stated in S. 44(3) of the constitute as amended is vested in the Federal government, while by S.1(1) of the Petroleum Act, Vested the ownership in the state government who shall hold same in trust on behalf of the federal government.Although there have been series of calls for the amendment of the Petroleum Act in recent times and finally the government of the day yield to these clarion calls, via their amendment in

[2] David Thomas (13 November 1995). "Niger Delta Oil Production, Reserves, Field Sizes Assessed" (https://www.ogj.com/articles/print/volume-93/issue-46/in-this-issue/exploration/niger-delta-oil- production-reserves-field-sizes-assessed.html). Industry Briefs. Oil and Gas Journal.

[3] The Constitution Federal Republic of Nigeria 1999 (as amended)

[4] S. 44(3) of the Constitution Federal Republic of Nigeria 1999 (as amended)

a bill passed by both Houses of the National Assembly on the 9th day of August 2021. Although, the Petroleum Industry Act 2021[5] is still in its transitional state.

3. LEGAL FRAMEWORK FOR PETROLEUM INDUSTRY GOVERNANCE IN THE OIL AND GAS INDUSTRY

3.1.1 The Nigerian 1999 Constitution (as amended)[6]

In the hierarchy of laws within the Nigerian legal system, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the 'Constitution) is the supreme law. The Constitution provides generally for the ownership of rights in all minerals comprised within Nigeria by the Federal Government. Recognizing the potential conflict between personal rights guaranteed to citizens to own and occupy private properties, and the all-encompassing rights to natural minerals, the Constitution provides for fundamental condition precedents to the acquisition of any private property by the government.

Specifically, with respect to rights in oil and gas, including oil and gas assets and its management thereof, the Constitution provides that the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly[7].

3.1.2 The Petroleum Industry Act, 2021 (PIA)[8]

The PIA was enacted in August 2021. It repealed the Petroleum Act of 1969. It is the principal legislation governing the Nigerian oil and gas industry. The PIA is an Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental thereto.The PIA makes robust provision for third-party contracts, by providing that a licensee or lessee may enter into a contract with.

3.1.3 The Nigerian Oil and Gas Industry Content Development Act (NOGICDA)[9]

The Local Content Act is a vital instrument that empowers Nigerian Companies to contribute tremendously towards the development of the Nigerian economy by encouraging value addition, job opportunities, and furthermore the award of different oil contracts and undertakings. In fulfilling this objective, *Section 4* of the Local Content Act established The Nigerian Content Development and Monitoring Board **(**hereinafter referred to as 'the Board' or 'NCDMB'**),** which is vested with the responsibility *"to make a procedure that will guide, monitor compliance by operators, coordinate and implement the provisions of the Act within the industry. The Local Content Board is empowered to execute its duties under the Act to ensure that all provisions contained in the Act are complied with."*

3.1.4 The Oil Pipeline Act, 1959[10] and Oil Pipelines Regulations 1995

The Oil Pipelines Act 1959 and the Oil Pipelines Regulations 1995 both govern the licensing processes for the construction, operation and maintenance of gas pipelines, including LPG storage operations. Applications under the Act are made to the Minister for Petroleum for access to pipelines. The Minister will grant the application if the pipeline can conveniently convey the gas. Terms and conditions of access will be as negotiated and agreed upon between the pipeline owner and the applicant, and where parties fail to reach an agreement, the Minister may impose such terms and conditions expedient to secure the access rights of the applicant and to regulate the access charge(s).[6]Theforegoing provisions will most likely be repealed by the PIA when it comes into operation. The Oil Pipeline Act mandates operators to use highly maintained and standard pipeline to transport their products.

[5] PetroleumIndustryAct2021
[6] The 1999 const. CAP LFN, 2004
[7] Section 1(3) 1999 Constitution
[8] Enacted 16th August, 2021
[9] The Act of 2010
[10] Oil Pipeline Act, Cap 107 LFN 2004

3.1.5 The Companies Income Tax Act (CITA)[11]

All companies involved in operations in the petroleum industry are subject to taxation under the provisions of CITA. For instance, gas utilization is defined under[12] CITA Section 39(3) as the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines. In essence, both parties to an equipment leasing contract are subject to taxation under CITA.

3.1.6 The Environmental Impact Assessment Act

The EIA sets out the procedure for prior consideration of environmental issues in certain categories of public and private projects. The Federal Ministry of Environment (FME) charged with the responsibility to enforce the requirements of this Act has published the EIA procedural guidelines which covers major development projects in the on and offshore oil and gas projects, and are intended to inform and assist proponents in conducting EIA studies.

4. INSTITUTIONAL FRAME WORK IN THE PETROLEUM INDUSTRY ACT, 2021

More strikingly, the President signed into Law now Petroleum Industry Act, 2021 or PIA on 16 August 2021. The Act is a single omnibus law that provides legal, governance, administrative, regulatory and fiscal framework for the Nigerian Petroleum Industry and development of Host Communities. It repeal existing petroleum-related laws (but for some savings provisions), with the bid to comprehensively reform the Nigerian Petroleum Industry. The Act contains five different chapters namely: Governance and Institutions; Administration; Host Communities Development; Petroleum Industry Fiscal Framework; and Miscellaneous Provisions with seven schedules.

Governance and Institutions

The chapter introduces changes to the governance and institutional framework of the Nigerian oil and gas industry, with the key objectives of creating effective governing institutions, promoting transparency and accountability in the administration of petroleum resources; and to establish the framework for the creation of a commercially oriented national petroleum company.Some of the key changes introduced under the governance and institutions include the following:

4.1 Establishment of Nigerian Upstream Regulatory Commission (NURC or the Commission):

The PIA provides for the establishment of the Commission to oversee the regulation of upstream petroleum operations in the country. A Chief Executive, who will be supported by six (6) Executive Commissioners, will handle the day-to- day administration of the Commission.

The Commission is to take over the current functions of the Department for Petroleum Resources (DPR), with respect to the regulation of technical, operational, commercial and environmental activities associated with upstream petroleum operations.

Establishment of Frontier Exploration Fund (FEF):

In furtherance of the role of the Commission in the exploration and development of frontier basins in the country, the PIA provides for the set-up of a FEF. The Fund will be managed by the Commission and it is to be used for promoting the exploration of frontier basins, while also developing exploration strategies and portfolio management for unassigned frontier basins in the country.

Thirty percent (30%) of Nigerian National Petroleum Company Limited's profit from production sharing, profit sharing and risk service contracts will be set aside for funding the FEF.

4.1.1 Establishment of Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA or the Authority):

The PIA provides for the establishment of the Authority to oversee the regulation of the midstream and downstream petroleum operations in the country. A Chief Executive, who will be supported by seven (7) Executive Directors, will handle the day-to-day administration of the Authority. The Authority will take over the current functions of the DPR, with respect to the regulation of technical

[11] CITA Act 2007

[12] Section 39(3) CITA Act

and commercial activities in the downstream and midstream petroleum operations. Furthermore, the Authority will be saddled with the responsibilities of providing pricing and tariff frameworks for natural gas in midstream and downstream gas operation, and petroleum products based on fair market basis, thus, absorbing the current responsibilities and functions of the Petroleum Products Pricing Regulatory Agency (PPPRA).

4.1.2 Establishment of Midstream and Downstream Gas Infrastructure Fund (MDGIF):

The PIA provides for the establishment of the MDGIF that will be managed by a Governing Council, with the objective of financing government's participating or shareholders' interests in infrastructure related to midstream operations to unlock private investments and to enhance domestic consumption of natural gas in Nigeria. The MDGIF will be mainly funded by the imposition of a 0.5% levy on wholesale price of petroleum products and natural gas sold in Nigeria. The MDGIF levy shall become due within 21 days of the sale of petroleum products and natural gas in Nigeria, while necessary administrative procedures and penalties for non- compliance will be specified in a regulation to be made by the Authority.

4.1.3 Establishment of Nigerian National Petroleum Company Limited (NNPC Limited):

The PIA provides for the establishment and incorporation of a new National Oil Company to be known as NNPC Limited within six months of the commencement of the Act. NNPC Limited will be fully owned by the Government of Nigeria and all shares in the company will be held in equal proportions by the Ministry of Finance Incorporated and Ministry of Petroleum Incorporated.

Upon incorporation of NNPC Limited, the Ministers of Petroleum Resources and Finance within an 18-month timeline, will determine the assets and interests of the current Nigerian National Petroleum Corporation (NNPC or Corporation) to be transferred to NNPC Limited or its subsidiaries, while also appointing NNPC Limited to act as the agent of NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of the Corporation.

The PIA further requires NNPC Limited and its subsidiaries to conduct their affairs in a commercial nature without recourse to government funds; and the expectation is for the Company to be operated as a full-fledge limited liability company with the goal of delivering value, profits and dividends on an ongoing basis to its shareholders.

Key roles of NNPC Limited include:

- Carrying out petroleum operations on commercial basis comparable to private companies in Nigeria engaged in similar activities
- Assuming the role of concessionaire of all production sharing contracts (PSCs), profit sharing and risk sharing contracts on behalf of the Federation
- Lifting and selling royalty oil and tax oil on behalf of the Commission and FIRS at commercial rates and payment of the corresponding revenue to the relevant government accounts
- Carrying out test marketing to ascertain the value of crude oil and report to the Commission
- Holding the rights to natural gas under PSCs entered prior and after the effective date of the Act
- Acting as agent of the Commission for the management of PSCs for a fee, in a contract between the Commission and the NNPC Limited
- Assuming the working interest of NNPC in joint operating agreements (JOAs) executed before the effective date of the PIA.

5. OVERVIEW OF THE PETROLEUM INDUSTRY ACT 2021

The new Petroleum Industry Act 2021 which was recently assented and signed into law by the President of the Federal Republic of Nigeria on August 16th, 2021 to repeal the extant Petroleum Act 2004, has created an array of provisions and innovations that will affect the private, public sector and stakeholders in the oil and gas industry. The provisions of the Act embody 5 Chapters, 319 Sections, and 8 Schedules.

The Petroleum Industry Act was enacted to provide for the legal, governance, the regulatory, and fiscal framework for the Nigerian Petroleum Industry, the establishment, and development of host

communities and other related matters in the upstream, midstream and downstream sectors of the petroleum industry.

Salient Provisions of the Petroleum Industry Act 2021

As earlier stated, the Act is categorized into 5 Chapters, 319 Sections, and 8 Schedules. Chapter 1 of the Act provides for the governance and institution of the petroleum industry. It lays emphasis on the fact that the ownership and control of petroleum within Nigeria and its territorial waters are vested in the Government of the Federation of Nigeria. The Minister of Petroleum Resources who heads the Petroleum Industry has enormous powers as vested on him[13]. Section 3(1) to formulate, monitor, and administer government policy in the petroleum industry, amongst other functions.

Introduction of Dual Regulatory Agencies

The Act establishes dual regulators for the petroleum industry called **The Nigerian Upstream Petroleum Regulatory Commission (the "Commission"),** which is a body corporate with perpetual successions whose functions are limited to only the upstream petroleum activities as provided for[14.] in the Act, which provides that "the Commission is responsible for the technical and commercial regulation of the upstream petroleum operations". Amongst other functions of the Commission is that it is established to ensure compliance with all applicable laws and regulations governing upstream petroleum operations. The other regulatory agency is the **Nigerian Midstream and Downstream Petroleum Authority (the "Authority")[15]**. This regulatory authority is responsible for the technical and commercial regulation of the midstream and downstream petroleum operations in the petroleum industry as provided for[16].

Establishment of the Nigerian National Petroleum Company Limited

Furthermore, the Act also established the Nigerian National Petroleum Company Limited (NNPC Limited)[17]. The NNPC Limited is established to be an agent of the Nigerian National Petroleum Corporation (NNPC) for the purpose of managing the winding down of assets, interest, and liabilities of the NNPC. Section 53 of the Act provides that- *"**the Minister shall within six months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called the Nigerian National Petroleum Company Limited**"*.

The ownership of NNPC Limited is vested in the Federal Government at incorporation and held by the Minister of Finance and the Ministry of Petroleum incorporated in equal portions on behalf of the Federation and the Ministry of Petroleum[18] of the Act. The Act also establishes incorporated joint companies[19]. The NNPC Limited is to conduct its affairs on a commercial basis in a profitable manner without recourse to government funds and their memorandum and articles of association shall state these restrictions. The NNPC is also required to declare dividends to its shareholders and retain 20% of profit as retained earnings to grow its business like any other incorporated entity incorporated under the Companies and Allied Matters Act, as provided under **Section 53(7)** of the Petroleum Industry Act.

General Administration of the Petroleum Industry

Chapter 2 of the Petroleum Industry Act 2021 provides for the general administration, with its objectives to promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people, to promote the efficient and effective development of the petroleum industry, amongst others. The Act provides that the administration and management of petroleum

[13] Section 3(1) PIA
[14] Section 4 PIA
[15] Section 29 PIA
[16] Section 29(3) PIA
[17] Section 53 PIA
[18] Section 53(3) PIA
[19] Section 65 PIA

resources are to be conducted in accordance with the Act and principles of good governance, transparency, and sustainable development in Nigeria[20].

General Administration of Upstream Petroleum Operations and Environment/ License and Leases under the Act

The Act, title to any data and its interpretation relating to upstream, petroleum operations are vested in the Government and shall be administered by the Nigerian Upstream Petroleum Regulatory Commission[21]. Where petroleum discovery is made in a frontier basin, the Minister on the recommendation of the Commissioner will reclassify all or part of the basin from frontier acreages to a general onshore area and the fiscal terms applicable to onshore shall apply to new licenses and leases in the basin after classification and any existing lease upon renewal, provided it is not applied to licenses and leases existing at the moment of reclassification.

A license or lease is granted to only companies incorporated and validly existing in Nigeria under the Companies and Allied Matters Act. The Act renames the existing licenses and leases related to the upstream petroleum operations and replaces it with the following[22]

- Petroleum Exploration License which may be granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis;
- Petroleum Prospecting License which is granted to qualified applicants to;
  - Drill exploration and appraisal wells and do corresponding text production on an exclusive basis and;
  - Carry out petroleum exploration on a non-exclusive basis and;
- Petroleum Mining Lease which will be granted to qualified applicants to;
  - Win, work, carry away, and dispose of crude oil, condensates, and natural gas on an exclusive basis;
  - Drill exploration and appraisal wells and carry out related test production on an exclusive basis and;
  - Carry out petroleum exploration operations on a non-exclusive basis.

The Act also provides for environmental management by the Commission in compliance with the Act in respect to environmental sustainability. The Act provides that a licensee or lessee who engages in upstream or midstream petroleum operations is required to within one year or six months of the effective date or after the grant of the applicable license or lease, submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or Authority as the case may be[23]. The plan shall be approved where it complies with relevant Environmental Acts and the applicant has the capacity to rehabilitate and manage negative impacts on the environment.

GENERAL ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS.

The Nigerian Midstream and Downstream Petroleum Authority under the Act may grant, renew, modify or extend individual licenses or permits, provided that where it relates to the establishment of refineries shall be issued by the Minister on the recommendation of the Authority[24].

A license for midstream and downstream petroleum operations may be granted where it meets the following[25]

- It meets the technical standards required for petroleum operations based on good international petroleum industry practices;
- The location and size of the area occupied by the facilities or right of way is acceptable to the Authority;
- It meets the health safety and environmental standards as determined by the Authority and;

[20] Section 67 PIA
[21] Section 68 PIA
[22] Section 70 PIA
[23] Section 102 PIA
[24] Section 111 PIA
[25] Section 111(3) PIA

- it provides for the efficient and economic use of facilities and pipelines.

By virtue of the Act, the Authority is required to also make regulations and guidelines for the grant or renewal of license for midstream and downstream petroleum operations.

ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM GAS OPERATIONS

The activities requiring a license for midstream and downstream gas operations involves establishing, constructing, or operating a facility for the processing of gas; engaging in bulk transportation of natural gas by rail, barge, or other means of transportation, operating gas transportation network, engaging in wholesale gas supply, engaging in the construction or operation of petrochemical or fertiliser plants, etc[26].

The Authority is also required to issue regulations with respect to midstream and downstream gas operations which includes the establishment and operation of a wholesale natural gas market scheme to ensure continuity of supply of natural gas to customers which applies to owners and operators of gas transportation pipelines, shippers of natural gas, holders of natural gas storage and distribution licenses and gas retailers and other matters consequential or ancillary to the activities stated above[27].

Host Communities Development

Chapter 3 of the Act provides for another salient introduction which is the Petroleum Host Community Development (PHCD)[28]. The objectives of the PHCD include fostering sustainable prosperity within host communities; providing direct social and economic benefits from petroleum operations to host communities; creating a framework to support the development of host communities, etc.

The Act also provides for the incorporation of host communities development trusts[29]; the settler is required to incorporate Host Communities Development Trust for the benefit of host communities which the settler is responsible for and the Act provides for the timeline within which to incorporate the Trust. The sources and allocation of the host communities' development trust are also provided for[30]. The funds are to be distributed by the Board of Trustees to host communities using a matrix as provided by the settler.

Petroleum Fiscal Industry Framework

Chapter 4 of the Act introduces the Petroleum Fiscal Industry Framework (PIFF). The objectives of PIFF include establishing a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria; provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism, and fiscal rules of general application, etc. the Act provides that all money collected from the petroleum industry that is due to the government are to be transferred to a federal account and such collection of the government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (FIRS).

Introduction of Hydrocarbon Tax

The Act introduces the Hydrocarbon Tax[31] which shall be applicable and levied upon the profits of companies engaged in the upstream petroleum operations in the onshore, shallow water, and deep offshore, payable during each accounting period. The crude oil revenue of the company shall be the value of any chargeable oil adjusted to the measuring points based on the proceeds of the chargeable oil sold by the company and the value of all chargeable oil disposed of by the company[32].

The chargeable tax for any accounting period shall be 30% of the profit from crude oil for petroleum mining leases with respect to offshore and shallow water areas and 15% of the profit from crude oil

[26] Section 125 PIA
[27] Section 126 PIA
[28] Section 234 PIA
[29] Section 235 PIA
[30] Sections 240 & 244 PIA
[31] Section 260 PIA
[32] Section 262 PIA

for onshore and shallow water for petroleum prospecting license. Also, the Company Income Tax (CIT) is now applicable to companies, licensees, concessionaire, lessees, contractors, or subcontractors engaged in the upstream, midstream, or downstream petroleum operations in addition to the hydrocarbon tax[33], subject to the Companies and Allied Matters Act. Failure to comply with this attracts the administrative penalty of N10,000 (Ten Thousand Naira), and where no other penalty is specifically provided for, a person found guilty is liable to a fine of N20 Million Naira or any amount prescribed by the Minister of Finance[34].

In conclusion, chapter 5 of the Act provides for miscellaneous provisions which deal with legal proceedings in relation to any suit instituted by the Commission or Authority or any of its employees. Finally, as earlier stated the Petroleum Industry Act 2021 provides the legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry and also the development of host communities.

6. OIL & GAS REGULATORY AGENCIES IN NIGERIA BEFORE THE INCEPTION OF THE PIA 2021

The legal framework regulating the oil sector in Nigeria is based on several laws. The Federal Ministry of Petroleum Resources has primary responsibility for policy direction and exercises supervisory oversight over the industry. The Minister of Petroleum Resources (the Minister) issues regulations, guidelines, and directives pursuant to the Petroleum Act and other enabling laws.

Nigerian National Petroleum Corporation (NNPC): NNPC was established in 1977[35] to have the sole authority over the petroleum activities in Nigeria. NNPC is involved in exploration, production, transportation, processing of oil, refining, and marketing of crude oil through its subsidiaries. These subsidiaries include National Petroleum Investment Management Services (NAPIMS), Petroleum Products Marketing Companies (PPMC), Nigerian Petroleum Development Company (NPDC), The Nigerian Petrochemical Companies in Kaduna and Warri, and The Refineries (2 in Port Harcourt) one each in Warri and Kaduna.

Department of Petroleum Resources (DPR)[36]: The Department of Petroleum Resources (DPR) is responsible for the day-to-day monitoring of the petroleum industry and for supervising all petroleum industry operations such as:

- Monitors the operations of oil companies,
- Sets and enforces environmental standards.
- Collects royalty and rents.
- Supervises and ensures compliance with oil industry regulations.
- Issues licenses and permits.
- Ensures the protection of all oil and gas investments.

The government participates in oil and gas operations through the Nigerian National Petroleum Corporation by adopting various contractual models for the development of oil and gas resources (such as concession agreements, traditional joint venture agreements, service contracts, production sharing contracts, and sole-risk contracts).

Nigerian Content Development & Monitoring Board (NCDMB)[37]: The primary duty of the NCDMB is to promote local investment and participation in the oil & gas sector. Consequently, the NCDMB registers and monitors companies participating in the upstream sector to ensure such a company has the requisite indigenous participation under the Act.

[33] Section 302 PIA
[34] Section 297 PIA
[35] Established by the NNPC Act now repealed
[36] DPR was carved out in 1970 due to expansion of activities in the Ministry of Petroleum
[37] Created by the NCDM Act of 2010 No. 2

National Oil Spill Detection & Response Agency (NOSDRA): NOSDRA is the government agency responsible for monitoring and control of oil spills in Nigeria. The functions of the Agency include the surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector. As part of its duties, the Agency receives reports of oil spillages and coordinate oil spill response activities.

Federal Inland Revenue Service (FIRS)[38]: is responsible for the administration of both the Petroleum Profit Tax Act and Company Income Tax Act.

The Central Bank of Nigeria[39]: The proceeds from the sale of crude oil paid in foreign currency are paid into Federal Government designated bank overseas and transferred into the Federation Account in the Central Bank of Nigeria. The most recent and reforming legislation is the Nigerian Oil and Gas Industry Content Development Act 2010 that mandates the compulsory participation of Nigerian citizens in the upstream sector.

ASSESSMENT OF THE NIGERIAN OIL SECTOR

The Nigerian Oil Sector upstream market is segmented by site of deployment (Onshore and Offshore). In a definition giving by the Petro-Online, this category is commonly referred to as the exploration and production sector. This involves companies actively searching for underground and underwater sources of crude oil and natural gas. This is done using sophisticated drilling equipment which is used to tap into the sources and draw oil and natural gas to the surface. The upstream petroleum industry is associated with the most lucrative merger, acquisition and divestiture deals.[40]

Investopedia defines Upstream as a term for the operations stages in the oil and gas industry that involve exploration and production. Oil and gas companies can generally be divided into three segments: upstream, midstream, and downstream. Upstream firms deal primarily with the exploration and initial production stages of the oil and gas industry. Another name for the upstream oil sector, which is actually more representative of what occurs in this stage of development of an oil asset and/or natural gas asset, is the exploration and production (E&P) sector. The E&P segment is the earliest portion of the oil and gas production process. Companies within this segment are primarily focused on locating and extracting commodities from the earth.[41]

Upstream is a sector of the oil and gas business which deals with exploring hydrocarbon reserves, extracting and shipping them for auxiliary processing. In simpler terms Upstream Oil and Gas is also referred to Exploration and Production (E&P) sector. The Exploration of reserves can be on-land also called as onshore or in sea also called as offshore.[42]The Upstream sector typically involves companies that search for deposits of oil or gas and then its extraction through drilling or other methods. Upstream also includes related services companies such as those dealing in rig operations, feasibility studies, machinery rental, and extraction of chemical supply. Some examples of upstream companies are: Chevron Corporation are:

1. ExxonMobil
2. Royal Dutch Shell
3. Total Energies

THE NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION;

Section 4 of the PIA[43]establishes the Commission to have primary regulatory powers and oversight over technical, operational, and commercial activities of the upstream petroleum industry The Commission regulates all activities in the upstream sector by enforcing, administering, and

[38] Created by NOSDRA ACT 2006 as Amended

[39] Founded in 1943, presently regulated by Federal Inland Revenue Act 2007 No 57.

[40] https://www.petro-online.com/news/fuel-for-thought/13/breaking-news/upstream-midstream- and-downstream-ndash-understanding-the-three-petroleum-markets/32165#:~:text=This%20category%20is%20commonly%20referred,crude%20oil%20and%20natural%20gas.

[41] Investopedia is the world's leading source for financial content on the web. www.investopedia.com

[42] https://www.investopedia.com/terms/u/upstream.asp

[43] PIA 2020

implementing all laws, regulations, national and international policies, standards, and practices that relate to the sector.

The Commission also enforces compliance with the conditions of all leases, licenses, permits and authorizations issued to companies in the sector. Such technical activities include seismic operations, drilling operations and design, construction, and operation of upstream facilities among others. Given that theses powers were exercised by the Department of Petroleum Resources (DPR), it is clear that the Commission would replace the DPR in that regard as Section 10 of the PIA vests the Commission with the power as the successor to the DPR and Petroleum Inspectorate Division.

The PIA empowers the Commission to oversee commercial activities in the upstream, such as reviewing and approving commercial aspects of field development plans, supervising costs and cost control in upstream petroleum operations, implementing cutback orders by the Minister. It is therefore safe to surmise that the Commission is to take over some of the commercial regulatory previously undertaken by NNPC's National Petroleum Investment Management Services (NAPIMS). Further, with a firm view on encouraging activities in the frontier basins, Section 9 of the specifically outlines the responsibilities of the Commission in that regard. To ensure that the desired promotion activities over frontier basins are undertaken, a Frontier Exploration Fund to consist of 10% of rents on petroleum prospecting licenses and petroleum mining leases.

MANAGEMENT OF THE COMMISSION

The Commission is to be run by a Government Board, which is responsible for its policy and general administration. The members of the Governing Board which is to be headed by a non- executive Commissioner are to be appointed by the President subject to the Senate's confirmation. The Commissioners are to hold office for a term of 5 years which is renewable for a future 5-year term. The confirmation of the members of the Governing Board is commendable as it enables the Senate to discharge its constitutional oversight function. However, the President solely has the power to remove the members without deferring to the Senate. The Commission will have six Executive Commissioners for its operational management although only two of the Executive Commissioners (those for Exploration and Acreage Management and Finance) are to be members of the Governing Board along with the Chief Executive Officer.

The Nigerian Midstream and Downstream Petroleum Regulatory Authority ('the Authority'), Section 29 of the Act establishes the Authority to have technical and commercial regulation of midstream and downstream petroleum operations in the midstream and downstream segments of the petroleum industry.

The Authority's functions include the regulation of petroleum liquid operations, domestic natural gas operations and export natural gas operation. It is also to determine the appropriate tariff methodology for processing of natural gas, transportation and transmission of natural gas, transportation of crude oil and bulk storage of crude oil. The Authority is empowered to issue regulations in pursuance to its regulatory oversight powers.

The PIA also has the sole power to grant, issue, modify, cancel or terminate all licenses, permits and authorizations for midstream and downstream petroleum operations is vested in the Authority. This is a significant departure from the previous regime whereby such powers were typically vested in the Minister.

THE NIGERIAN MIDSTREAM AND DOWNSTREAM PETROLEUM REGULATORY AUTHORITY (THE AUTHORITY)

The Authority is a body corporate established pursuant to the PIA[44]and it is responsible for the technical and commercial regulation of the midstream and downstream petroleum operations in the petroleum industry. Some of the functions of the Authority are to[45];

[44] (n 12) s. 29
[45] Ibid, s. 31

- Ensure efficient, safe, effective and sustainable infrastructure development of midstream and downstream petroleum operations
- Promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner
- Promote a competitive market for midstream and downstream petroleum operations
- Promote the supply and distribution of natural gas and petroleum products in the midstream and downstream petroleum operations and the security of natural gas supply for the domestic gas market
- Ensure compliance with applicable laws and regulations governing midstream and downstream petroleum operations
- Determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to midstream and downstream petroleum operations pursuant to good international petroleum industry practices.

The Midstream Gas Infrastructure Fund (MGIF) is established under Section 52 of the PIA. It would be utilised by the government to make equity investments in midstream gas infrastructure that will increase domestic natural gas utilisation/consumption. Such infrastructure will include gas processing plants and gas transportation infrastructure. The rationale behind the establishment of the MGIF appears to be that the government's involvement as an equity investor in a midstream gas infrastructure project will help reduce (via risk-sharing with the government) the risk that investors would typically have when developing a midstream gas infrastructure project.

MANAGEMENT OF THE AUTHORITY

The Authority is also to be run by a Governing Board which is responsible for its policy and general administration. The members of the Governing Board are headed by a non-executive. Commissioner are appointed by the President subject to the Senate's confirmation. The Commissioners are to hold office for a term of 5 years which is renewable for a future 5-year term. One of the sources of funds to the Authority is to be from fees earned from services rendered to licenses. Again, of worthy of note is the 1% levy imposed on the wholesale price of petroleum products in Nigeria. The stated intention of the Act is to move away from regulated prices to those determined by market forces. A multiplicity of levies and charges may act to distort that reality.

The MGIF will be a body corporate with powers to acquire, hold and dispose of property. It is to be funded through a charge of 0.5% on the price to be paid by wholesale purchasers of natural gas and petroleum products; other sources of funding include grants from multilateral and bilateral institutions, donations, and gas flaring penalties.

'Wholesale customer' is not defined under the Act; however, they are typically those who buy products from the refiners or processors of the product and typically sell to other retailers or use the products as fuel for utilities or as feedstock. The concern for operators in this sector of the industry is the addition of another layer of cost. There is potential for adverse trickle-down effect, especially with respect to gas for power generation, petrochemicals and other products that use wholesale petroleum products and as fuel or feedstock.

It should be noted that moneys received from gas flaring penalties by the Commission pursuant to Section 104(4)[46]will also be remitted to the Midstream Gas Infrastructure Fund and will be utilised not for investment in midstream gas infrastructure but for the remediation of the host communities affected by gas flaring. This creates the need to ring-fence funds received from flared gas penalties to ensure it is applied as prescribed by the PIA. For gas flaring penalties from shallow water and deep offshore, it will appear that the beneficiaries of the midstream gas infrastructure projects will be how that would be determined and in what proportion is yet to be seen.

The application of part of the MGIF to the remediation of the host communities will blur the clarity that is required with respect to having a clear purpose for each fund under the PIA. It is important to note that there is another fund that has been established under the PIA for environmental remediation.

[46] PIA 2020

The MGIF has the potential to stimulate real growth in the midstream of the gas value chain in Nigeria. The ability of project sponsors to de-risk capital intensive midstream infrastructure projects in Nigeria will be enhanced if the MGIF is utilised to procure equity positions for government in projects pending when the project is self-sufficient and then, government exits. The MGIF can also increase its profits and, through such targeted interventions, take on more projects as the fund pool grows.
A high level of skill is required to manage the MGIF if its objectives are to be achieved. While the PIA provides for the appointment of a transaction adviser as needed, most of the governing council of the MGIF are drawn from other agencies of government, with at least five political appointees out of nine members. The remuneration provisions for members of the governing council will add to the administrative cost of the MGIF.

7. OVERVIEW OF THE REGULATORY INSTITUTIONS IN BRAZIL. General Structure of Petroleum Ownership and Regulation in Brazil

The Brazilian Constitution[47] provides that the Federal Government has ownership over the petroleum and mineral resources located in the subsoil, in the continental shelf and in the exclusive economic zone (ZEE)[48]. Also, pursuant to the Brazilian Constitution, oil and natural gas exploration and production activities, refining, the importation and exportation of by- products, maritime transportation of crude oil or by-products and pipeline transportation of petroleum and natural gas are activities under the monopoly of the Federal Government[49].

However, the Federal Government can contract with state owned or private entities to conduct the petroleum activities referred to above, subject to certain conditions set forth in the applicable laws.
The economic reforms in the early 1990s brought about an exception to the Federal Government monopoly over petroleum activities. After several years of monopoly over petroleum activities (exclusive to Petróleo Brasileiro S.A. - Petrobras since 1953), the government authorities concluded that keeping the Federal Government's monopoly on the exploration and production of oil and natural gas could be an obstacle to the development of the petroleum industry.
Thus, aiming to provide legal mechanisms to attract both domestic and international private capital to Brazil, the Brazilian Congress enacted Constitutional Amendment[50], which amended the first paragraph of Art. 177 of the Brazilian Constitution and allowed petroleum activities to be contracted by the Federal Government with state-owned or private entities (subject to certain conditions set forth in the applicable laws).

In this context, the Petroleum Law[51] was enacted and, among other provisions, implemented the concession regime for the award of E&P rights by the Federal Government in Brazil. A few years later, following the discoveries of huge oil reserves in ultra-deep-water of the pre-salt layer in the Campos and Santos basins announced by Petrobras in 2007 and several discussions within the Federal Government and Congress about the best way to exploit those resources, the Pre-Salt Law[52] introduced the production sharing regime in Brazil, which is applicable to areas located within the pre-salt areas (within the limits of a defined pre-salt polygon) and other strategic areas.
In addition, in the face of massive investments that Petrobras was required to make in the oil and gas sector, Law No. 12,276/2010 introduced the Transfer of Rights (TOR), which defined a special capitalization of Petrobras at the time and gave Petrobras (upon consideration) the right to produce up to five billion BOE (barrels of oil equivalent) in certain pre-salt areas.

Regulatory Bodies

Petroleum activities are regulated by the following main governmental bodies:

- The Ministry of Mines and Energy - *Ministério de Minas e Energia;*
- The National Council of Energy Policy-*Conselho Nacional de Política Energética;* and

[47] 1988 Constitution of Federative Republic of Brazil
[48] Ibid, Arts. 20 and 176
[49] Ibid, Art. 177.
[50] Amendment No. 9/95
[51] Law No. 9,478/97 The Petroleum Law
[52] Law No. 12,351/2010 The Pre-Salt Law

- The National Agency of Petroleum, Natural Gas and Biofuels - *Agência Nacional do Petróleo, Gás Natural e Biocombustíveis.*

The Ministry of Mines and Energy

The Ministry of Mines and Energy[53] was originally created by Law[54] and then later recreated by means of Law[55], which governs its organizational structure. The MME's main activities are focused on political co-ordination and interaction with its related entities.

The MME promotes and supervises the implementation of public policies in the following sectors:

a. geology, mineral and energy resources;
b. hydraulic energy;
c. mining and metallurgy; and
d. oil, fuel and electricity, including nuclear energy.

The National Council of Energy Policy

The National Council of Energy Policy[56] CNPE. The National Council of Energy Policy was created by the Petroleum Law. It is a joint ministerial entity, presided over by the Minister of Mines and Energy and formed by representatives of other Ministries and relevant entities, such as the Energy Research Office (EPE).

The CNPE is a consulting body and assists the President of Brazil with recommendations and proposals regarding policies and guidelines for the energy sector. In general, it is responsible for promoting rational use of the energy resources in Brazil and ensuring the proper supply of energy throughout the country.

The attributions of the CNPE have been amplified under recent regulations. One of the main changes in this regard was brought by the Pre-Salt Law, which provides that the CNPE is entitled to define the blocks to be offered in bid rounds for the exploration and production of oil and natural gas.

The National Agency of Petroleum, Natural Gas and Biofuels

The National Agency of Petroleum[57], Natural Gas and Biofuels is the regulatory agency for petroleum activities. It is connected to the MME and is part of the indirect public administration.

The ANP was created by the Petroleum Law and has the authority to regulate, intervene and oversee petroleum activities, including the creation of infra-legal rules (eg, the ANP resolutions), the institution of administrative proceedings and the application of the relevant penalties, the issuance of authorizations to companies that carry out the relevant regulated activities, and the promotion and disclosure of geological and geophysical studies related to petroleum activities, including official statistics on the national reservoirs and production.

The ANP is also authorized to promote and organize bid rounds for the award of E&P rights, and to execute concession contracts on behalf of the Federal Government. It must be pointed out that the attribution to execute production sharing contracts was granted to the MME, as a representative of the Federal Government, in accordance with the Pre-Salt Law. The ANP executes the sharing contracts as the regulatory body responsible for supervising petroleum activities.

The structure of the recently passed Petroleum Industry Act 2021 makes innovations similar to that of Brazil and it is my utmosts believe that when the Act is fully implemented, it will have great and similar result as that of Brazil.

8. CONCLUSION & RECOMMENDATION

This work has examined the twin regulatory organs created by the PIA and made a general overview of the Petroleum Industry governance structure in Nigeria, under the Petroleum Act, (now repealed) and in the provisions of the PIA. The Act is a new frame work with robust provisions which are

[53] MME http://www.mme.gov.br
[54] Law No. 3,782/1960
[55] Law No. 8,422/1992
[56] CNPE – http:// www.mme.gov.br/web/guest/conselhos-e-comites/cnpe
[57] ANP - www.anp.gov.br

innovative in nature, its implementation and operation will determine the amendments that will be recommended.

There is likely overlap in the functions of the two major regulatory institutions, however, it will be much in a hurry to make final recommendation for amendment without such overlap and infusion being experienced practically.However, in view of the findings in this work that the governance and institutional structure may have overbearing influence by the exercise of the powers of the minister and there is need that such powers be curtailed by legislative amendments. It is therefore the recommendation of this work that the PIA be amended to reduce the powers of the Minister, to make room for the smooth and unfettered operation of the functions of the Commission and Authority. The PIA should have provisions which protect industry players from unfair and prejudicial market practices, as part of the regulatory policy.