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A CRITICAL APPRAISAL OF THE PETROLEUM INDUSTRY ACT 2021: CHALLENGES AND OPPORTUNITIES

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Abstract

The oil and gas industry have a significant impact on the economy of Nigeria. The industry contributed less than 10% of the country's Gross Domestic Product (GDP), nevertheless, it contributed about 90% of the foreign exchange earnings and 60% of total income. Consequently, any adverse change in the industry will have a big and long-term impact on government finances. In analyzing the issues identified in line with the novel Act. The paper adopted the doctrinal methodology, with primary sources distilled from Nigerian Constitution 1999 and the Petroleum Industry Act 2021. The paper revealed the new reforms initiated into the petroleum industry by the novel legislation and as well spotted out the gaps in the new legislation. For the past 20 years, there had been various attempts at reforming the industry. However, none of these efforts had yielded any tangible result because of factors such as ownership, misalignment of interests between the National Assembly and the Executive; perceived erosion of ministerial powers, stiff opposition by the petroleum host communities and so on and so forth. The Petroleum Industry Act (PIA) signed into law on 16th August 2021 to reposition the oil and gas sector, revamp the legal, regulatory, institutional, and fiscal framework for the oil and gas sector in Nigeria. The PIA repealed the Petroleum Act 1969 and other laws, it acts as a consolidation of all the key laws governing the oil and gas sector and is expected to drive reforms and trigger critical investments in the sector. The paper concluded with useful recommendations on the way forward for the new act, although, the new act is still transitional in nature. The appropriate suggestions were proffered at the end, with useful lessons drawn from other jurisdictions.

Keywords: Petroleum, Challenges and Opportunities

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1. Introduction

After several years of missteps, intrigues, legislative summer saults and restart, the President, General Muhammadu Buhari finally signed the Petroleum Industry Bill (PIB) into the Petroleum Industry Act (PIA)[2] on 16th August 2021. We now have an Act that provide for legal, governance, regulatory and fiscal frame work for the Nigerian Petroleum Industry, development of Host Communities, and for related matters. Further, thisveryunique legislation has been long overdue in resolving the lingering petroleum challenges facing Nigerian hydrocarbon industry. From the time the legislation was conceived some twenty (20) years ago, through different transmutations it under went and particularly following its recent passage into law, there has been rare reviews and interactions by stakeholders around the contents of what has now finally become the PIA. Themost focal of the contentions attracting reviews is the 3% settlor's annual operating expenditure to bededicated to the host community trust fund section 240(2)[3]vis-à-vis the30%f und[4] for the frontier basin exploration development.

AN OVERVIEW OF THE PETROLEUM INDUSTRY ACT 2021[5]

- The PIA contains a total of 319 sections, 5 chapters with a categorization into numbered Parts:
- **Chapter1**: provides for Governancea nd Institutions
- **Part1 of Chapter 1**–contain sections1and 2 and provides for theVesting and Objectives.
- **PartII** –Minister of Petroleum section 3 provides for Powers of the Minister.
- **Part III**– The Commission which covers sections 4– 28[6] provides for the Nigerian Upstream Regulatory Commission.
- **Part IV**-The Authority which covers from sections 29– 52[7] makes provisions for the Midstream and Downstream Petroleum Regulatory Authority.
- **Part V** is the last Part of the Chaptalization and it is dedicated to the Nigerian National Petroleum Company Limited and has a total of 13 sections– from sections 53 – 65[8].
- **Chapter2**–Administration. This Chapter is dedicated to the Petroleum Administration generally. Part 1 of Chapter2 from sections 66-67.[9]
- **Part II** straddles sections 68–110 and makes significant provisions for Administration of Upstream Petroleum Operations and Environment.
- **Part III** begins with section 111 and ends with section 124[10] (that is sections 111 to 124). This Part focuses on the General Administration of Midstream and Downstream Petroleum Operations.
- **Part IV** is dedicated tothe Administration of the Midstream and Downstream Gas Operations fromsections 125 – 173.[11]
- **Part V** is for Administration of Midstream and Downstream Petroleum Liquid Operations and addressed in sections 174– 208.[12]
- **Part VI** provides for other matters related to the Midstream and Downstream Operations from sections 209– 215.[13]
- **Part VII** provides for the Common Provisions for Upstream, Midstream and Downstream

[2] Petroleum Industry Act 2021
[3] *Ibid*
[4] *Ibid*, s9(4)(5)
[5] Ibid
[6] (n1)
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*
[10] *Ibid*
[11] *Ibid*
[12] *PIA 2021*
[13] *Ibid*

Operations in sections 216– 233[14].

- **Chapter 3** – Host Communities Development. This Chapter is packed in sections234–257, [15]it includes the objectives contemplated in introducing this segment of the Act, methods, and procedures that are necessary for the implementation of the aims of the drafters of the Act and how to bring the benefits envisaged to thetraumatized communities hosting the petroleum assets and operations. Creation of trust funds, sources of funding and such other important provisions necessary arecontainedin this part.
- **Chapter 4** – Petroleum Industry Fiscal Framework. This Chapter contains a total of Eleven (11) Parts. Part I- provides for the Objectives and Administration aspects insections 258–259[16]. While sections 260–266[17] are dedicated to Hydrocarbon Taxin Part II. Part III is for the Ascertainment of Chargeable Tax sections 267 – 268[18]; Part IV is for the Ascertainment of Chargeable Profits and Consolidation for Tax Purposes sections 269 – 272[19]. Part V has Persons Chargeable in sections 273 – 276[20] While sections 277 to 287[21] are provided in Part are in Part V – Applicability, Accounts and Particulars; Part VII contain sections 288[22] and 289 for appeals inrespect to taxes. Part VIII provides for Collections, Recovery and Repayment of Taxand covers section 290–296[23]. For Offences and Penalties–Part IX covers sections 297–301[24]. The lone section 302[25] is provided in Part X-Application of Companies Income Taxto Petroleum Operations.
- **Chapter 4** concludes with Part XI which is the General Provisions in sections 303–306[26]
- **Chapter 5** provides for Miscellaneous Provisions in sections 307– 319.[27]

4. CRITICAL ANALYSIS OF THE PIA 2021

Chapter 1 of the PIA vests the property and ownership of petroleum within Nigeriaand its territorial waters, continental shelf and exclusive economic zone in the Federal Government of Nigeria and outlines the following objectives for the governance and administration of thepetroleum industry:

a) To create efficient and effective governing institutions with clear and separate rolesforthe petroleum industry.
b) To establish a framework for thecreation of acommercially oriented and profit driven national petroleum company.
c) To promote transparency, good governance, and accountability in the administration of the petroleum resources of Nigeria
d) To foster a business environment conducive for petroleum operations and
e) Deepen local content practice in Nigeria oil and gas industry

The broad objective of the Act is to regulate the entire sphere of the oil and gas industry and repeal most existing oil and gas legislation in section 310[28]. The Act seeks to increase Government revenue from oil a swell as lay down a strengthened legal and regulatory framework for the Nigerian oil industry, setup structures for the establishment of commercially driven petroleum entities and promote transparency in the administration of Nigerian Petroleum Resources.

4. ORANOGRAM OF THE GOVERNANCE STRUCTURE UNDER PIA 2021

The Act formally segment the Nigerian petroleum industry into upstream sector on one hand, and the

[14]*Ibid*
[15]*Ibid*
[16]*Ibid*
[17]*Ibid*
[18]*Ibid*
[19]*Ibid*
[20]*Ibid*
[21]*Ibid*
[22]*PIA 2021*
[23]*Ibid*
[24]*Ibid*
[25]*Ibid*
[26]*Ibid*
[27]*Ibid*
[28]*Ibid*

midstream and downstream sectors on the other. The upstream sector is to be over seen by the Nigerian Upstream Regulatory Commission ('the Commission'), while the midstream and downstream sectors would be under the oversight of the Nigerian Midstream and Downstream Petroleum Regulatory Authority ('theAuthority'). General oversight powers over the petroleum industry is vested in the Minister of Petroleum ('the Minister'), whom the Commission and Authority are required to report to.

a. The Minister of Petroleum

Section 3 of the PIA[29] retains the Minister's general oversight and supervisory powers over all facets of the petroleum industry. Specifically, the Minister is empowered to formulate, monitor, and administer the Federal Government's policy overpetroleum industry. The Commission and Authority are required to report to the Minister, ensuring his oversight powers over the industry are total. However, there have been importantdeviations from the general powers of the Minister of Petroleum as hither to granted under the previous regime. A glaring change is tha the Minister's former unfettered, sole discretion and power to grant or revoke oil licenses have been curtailed. The PIA specifically requires that the Commission providere commendations to the Minister before the Minister can exercise such powers. The key question, therefore, is whether the Minister of petroleum who is also the President, may be bound by there commendations o fthe Commission on the award of licenses given that the President can remove any member of the Commission. Notwithstanding the bold changes in the PIA, it seems the Minister will continue to exercise significant influence in theindustry.

b. The Nigerian Upstream Petroleum Regulatory Commission

Section 4 of the PIA[30] 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 implementing all laws, regulations, national and international policies, standards, and practices that relate tothe sector. The Commission is also to enforce compliance with the conditions of all leases, licenses, permits and authorizations issued to companies in the sector. Such technical activities includes is cooperations, drilling operations and design, construction, andoperation 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 thesuccessorto the DPR and Petroleum Inspectorate Division. The PIA empowers the Commission to oversee commercial activities in the upstream, such asreviewing and approving commercial aspects of field development plans, supervising costs and cost control in upstream petroleum operations, implementing cut back 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 PIA[31] 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 petroleummining leases.

It is pertinent to note that the vision to promote exploration activities in frontier basins is commendable asit will ensure long term sustainability of the industry by boosting the available reserves. However, discretion must be exercised to ensure that current reserves are maximized and the promotion activities overfrontier basins are undertaken in areas that are potentially commercially viable and not a dissipation of energy.

[29]*Ibid*
[30]*Ibid*
[31]PIA 2021 s.20

c. 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 aterm of 5years 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 oversightfunction. 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 managemental though 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. Section 13 of the PIA[32] requires that the salaries of the Commission's employees to be bench marked against the general standard inthepetroleum industry after consultation with the National Salaries, Incomes and Wages Commission.

d. The Nigerian Midstream and Downstream Petroleum Regulatory Authority

Section 29 of the Act[33] 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 naturalgas, transportation of crude oil and bulk storage of crude oil. The Authority is empowered to issue regulations inpursuance to its regulatory oversight powers.

Interestingly, the PIA seems to suggest that 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 where by such powers were typically vested in the Minister. The powers vested in the Authority seem to indicate that it is taking over the functions of the NNPC (PPMC) and the PPPRA.

e. Management of the Authority

The Authority is also to be run by a Governing Board whichis responsible for its policy and general administration. The members of the Governing Board which is headed by anon-executive Commission era reappointed 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.

As noted with the Commission, one of the sources of funds to the Authority is to be from fees earned from services rendered to licenses. As previously noted, this should be revisited, and eliminated to ensureth at the Regulators are put on a proper pedestal. 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 tothose determined by market forces. A multiplicity of levies and charges may act to distort that reality.

f. The Midstream Gas Infrastructure Fund

Section 52 of the PIA[34] establishes the Midstream and Downstream Gas Infrastructure Fund which is to be a body corporate with its own Governing Council chaired by the Minister of Petroleum. The major source of funding for the Midstream Gas Infrastructure Fund is a 1% levy on the wholesale price of petroleum products sold in Nigeria and natural gas produced and sold. This levy seems to be the sameone to be collected by the Authority with the only distinction that the base is expected to include natural gas produced and sold. Given the oversight of the Authority over this area, it may have been more optimal to make this fund a part of the Authority rather than seek to have it stand alone as

[32]*Ibid*
[33]*Ibid*
[34]*Ibid*

it has been currently setup as this seems a duplication of governance structure.

g. The Nigerian National Petroleum Company Limited ('NNP CLimited')

Section 53 of the Act[35] directs that the Minister within six months form the commencement of the Act in corporatea Nigerian National Petroleum Company Limited at the Corporate Affair Commission. The shares are to be held by the Ministry of Finance Incorporated on behalf ofthe Government. The Act provides that the Minster of petroleum and Minister of finance areto determine which assets, interest, and liabilities of the current statutory NNPC are to betransferred to NNPC Ltd. Any other assets, interests and liabilities not transferred to NNPCLimited would continue to be held by NNPC until they are extinguished or transferred to the Government upon which the NNPC would cease to exist. It should be noted that the Actempowers the Minister to consult with the Minister of Finance to appoint NNPC Limited astheliquidation agent of theNNPC. Section 58 of the Act[36] indicates that the Board of NNPC Limited is to be constituted inaccordance with the provisions of the Companies and Allied Matters Act (CAMA) and thecompany's Articles of Association. Therefore, it seems contradictory that section 59 (2) of the Act[37]indicates that the members of the Board would be appointed by the President, andSection 60[38] comments on the constitution of Committees for the Board. Indeed Sections 61, 62, 63, 64 of he PIA[39] highlight matters which are ordinarily determined by CAMA, Memorandum and Articles of Association and Shareholders Agreements. The Governmenthas taken a bold step by incorporating NNPC Limited as a CAMA entity; it should bite the bullet by freeing it up to run the same way that other private companies are run, albeit with interventions as its shareholder.

Interestingly, Section 65 of heA ct[40] encourages NNPC Limited and its Joint Venture Partners to explore the use of incorporated joint venture companies, underthe principles enumerated in the Schedule to the PIA (on Principles of Negotiating Incorporated Joint Ventures).

Significantly, **t**he Act does not make robust provisions for energy transition and climate change contrary to the expectations of industry stakeholders and considering the global trend in the industry towards sustainable energy development, energy transition and climate change. The only reference to cleaner energy sources considering the energy transition debate is regarding one of the objectives listed for NNPC Limited in Section 64 (h)[41], to the effect that the company will engage in the business of renewables and other energy investments.

h. Environmental Management

The Commission has a regulatory role of monitoring and ensuring compliance with the Act with respect to environmental sustainability and environmental degradation that may result from petroleum operations of licensees and lessees. A licensee or lessee who engages in upstream petroleum operations is required by the Commission to submit for approval an environmental management plan in respect to projectswhich require Environmental Impact Assessment (EIA) within one year of the effective dateof the Act or six months after the grant of the applicable license or lease. The Commission gives its approval of such plan provided for the capacity to rehabilitate and manage negativeimpacts on the environment. The Act requires that the applicable permit and approval isgranted by the Commission to upstream operators before chemicals can be used for theiroperations. As a condition for the grant of a license or lease and prior approval of the environmental management plan by the Commission, a licensee or lessee is required to pay a prescribed financial contribution to an Environmental Remediation Fund established by the Commission for the rehabilitation or management of negative environmental impacts withrespectto the licenseor lease issued to such licenseeor lessee. This is a notable feature of the Act that is aimed at engendering a culture of good environmental consideration practice that has been called to question in the oil and gas sector. It may

[35] (n1)
[36]*PIA 2021*
[37]*Ibid*
[38]*Ibid*
[39]*Ibid*
[40]*Ibid*
[41]*PIA 2021*

also help to deal with the perennial issue of oil spillage in the Niger Delta as a result of petroleum operations.

i. Gas Flaring Management

Section 52 (d), and 52 (10)(c); section 79(j), section 104[42] - Gasflaring is one of the age – long ills plaguing the Nigerian Oil and Gas sector. It has been attributed to unfavorable cost – benefit outcome to the operators in the sector that may choose to harness and monetize associated gas. The cost of processing gas for sale is generally adjudged higher than the benefits that would be derived from commercializing the processed gas. As such, associated gas is preferred to be flared or vented by operators. Considering theenvironmental impact of gas flaring. The Act has upheld the prohibition of gas flaring, except for a few circumstances in which there is no other reasonable option than to flare.

According to the Act, a licensee or lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations 2018. The only recognized few instances where gas flaring may be allowed by theAct areas follows:

i. In the case of an emergency
ii. Pursuant to an exemption granted by the Commission
iii. As an acceptable safety practice underestablished regulations.

Aspart of the efforts to manage the flaring of gas, the Commission require supstream operators that produce natural gas to submit within 12 months of the effective date of the Act, anatural gas flare elimination and monetization plan to the Commission. This is expected to be prepared in accordance with the regulations to be prepared by the Commission under the Act.

j. Domestic Crude Oil Supply Obligation

Section 32 (v)[43]. In line with the principles of freemarket and healthy competition, the Act provides that the supply of crude oil and condensatesfor the domestic market shall generally be on a willing supplier and a willing buyer basis.However, to manage national exigencies and inthe interest of the Nigerian people, the Commission is empowered to issue regulations or guidelines on the mechanism for settingdomestic crude oil supply obligation for lessees in the upstream petroleum operations. This power is exercised where in the opinion of the Commission the domestic market results in shortages or inadequate supplies of crude oil and condensates for holders of crude oil refining licenses. The Commission liaises with the Nigerian Midstream and Downstream Petroleum Regulatory Authority to ascertain the crude oil requirements of refineries in operation. This isa mediation role of the Commission to ensure that the local market is adequately supplied to the extent possible for the benefit of Nigerian peoplein linewith the objectivesof theAct.

k. Domestic Gas Delivery Obligation

In order to establish an orderly competitive commercial environment within the petroleum industry, the Commission, working hand in hand with the Nigerian Midstream and Downstream Petroleum Regulatory Authority, is responsible for determining, monitoring and ensuring that the volume of natural gas that is expected to be supplied by lessees to strategic sectors and aggregators is achieved. The Commission would manage this through an allocation system among lessees as determined by the Commission upon consultation with the Authority with consideration of supporting infrastructure availability.

l. Host Communities Development

One of the issues that contributed to the delay in passing the previous versions of the PIB is host community. The host communities, Government and operators could not agree on the best way to address the concerns of the host communities. While the host communities are demanding more to deal with the issue of the environmentaleffect of oil operations, government believes that enough is already being done in this areagiven all theagencies that are involved in the development of the Niger Deltaregion.

Chapter 3 of the PIA[44]provides for the host communities development which the following objectives:

[42] (n1)
[43] (n1)
[44] (n1)

- To foster sustainable prosperity within host communities
- To provide direct social and economic benefits from petroleum operations to host communities
- To enhance peaceful and harmonious co-existence between licensees or lessees and host communities and
- To createa framework to support the development of host communities.

The objective of the host community development is to provide direct social and economic benefits from petroleum operations to host and impacted communities. The Act seek to further enhance peaceful and harmonious coexistence between the E&P companies on the one hand and host and impacted communities on the other with anobjective to foster sustainable and shared prosperity amongst oil and gas companiesand host communities similar to sections 25, 26, and 27 of the Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010[45].

Section 235 of the PIA[46] requires a settlor or a group of settlors under the joint operating agreement to incorporate a host community development trust. The Trust is to aid the development of the economic and social infrastructure of the communities with in the petroleum producing area. Where the host community development trust is incorporated by a group of settlors under a joint operation, the operator under the agreement will be responsible for the Trust on behalf of the other parties. Section 240 provides for an operator to make 3% contribution of its annual operating expenditure of the preceding year in the upstream petroleum operations to the hostcommunity development trust fund. The host community development trust may alsobe funded by donations, gifts, grants, or honoraria (received to achieve its objectives) and interests accruingtothe Trust's reserve fund. Section 252(f) of the Act[47] requires that in the submission of a Host Community Development plan, the Plan must conform with the Nigerian Content requirements provided fo rin the NOGICD Act. Section 242 of the PIA provides for the composition of the Board of Trustees management. Now, the Board of Trustees is to be set up by the settlor and it is subject to the approval of the Commissionor theAuthority. Section 243(a -f) provides that the Board of Trustees shall be responsible for the management of the host communities development trust. Section 247 of the Act requires the Board of trustees to set up a management committee forthehost communities development trust.

Sections 256 – 257 of the Act[48], the funds of the host community development trust areexempted from tax while contributions made by the settlor to the Trust are deductible for hydrocarbon tax and companies income tax purposes respectively. Section 249 of the Act[49] mandates the management committee to setup an advisory committee known as 'host communities advisory committee'. There is bound to be overlap offunctions in these three layers (Board of Trustees, Management Committee, and the Advisory Committee).

The Act further provides that the host community will forfeit its entitlement to any contribution to the extent of the cost to repair damages to the petroleum and designated facilities or disruption to production activities within the host community caused by an act of vandalism, sabotage, or civil unrest. Therefore, the amount to be contributed by the settlor to the Trust shall exclude the computed cost of such repairs or disruption in petroleum productions. Some have argued that this aspect will foster responsibility and accountability amongst the host communities regarding petroleum assets operated in the irrespective communities. However, I strongly disagree on this as could be seen in the preceding discussion (particularly on the sub– head Suggestions for Reforms).

Section 244 of theAct[50]provides for -Allocation of funds, it prescribes the followingallocationration forannual contributions to the fund:

a) 75% of the annual contribution shall be used to fund capital projects
b) A maximum of 5% of the annual contribution shall beutilized solely for a dministrative costs of running the Trust and special projects and

[45] Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010
[46] (n1)
[47] PIA 2021
[48] (n1)
[49] Ibid
[50] Ibid

c) 20% of the annual contributions shall be retained as a reserve fund. Also, the reserved fund shall be invested for the utilization of the Trust when contributions from the settler ceases.

Section 309 of the PIA provides that *"subject to the constitution of the Federal Republic of Nigeria, 1999, upon the commencement of this Act, where the provisions of any other enactment or law except the Nigerian Oil and Gas Industry Content Development Act areinconsistent with the provisions of this Act, the provisions of this Act shall prevail and theprovisions of that other enactment or law shall, to the extent of that inconsistency, be void inrelation to the matters provided for in this Act".* To this extent, the NOGICD Act is notinferior to the PIA. The potency of this provision cannot be over-emphasized, vi-a-viz the effect the operations of the Local Content Board. Section 310 repealed a list of enactments and regulations

5. IDENTIFYING THE GAPS/LOOPHOLES IN THE PETROLEUM INDUSTRY ACT 2021

The Petroleum Industry Act[51] provides for legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry and as well marginal participation of the host communities, it is worthy of note that the panacea to every positive out come in a political driven economy is the implementation of the laws placed in the background of its policy. However, the question is; will the government be willing to implement all the salient provisions of the Act and whether the implementation will bring about the desired goal? The Federal Government should put in place machinery to ensure a hitch free take off the new PIA.

a. Section 1 of the Act[52] dealing with the vesting of petroleum on the Government of the Federation of Nigeria should have properly been best couched to vest ownership of petroleum on the Government of the Federation, State Governmentand Local Government. The vesting right should have touched on the three tiers of Government.Giving the right in the property of petroleum only to Federal Government is foggy. Itisan aberration. The vesting right should havebeen forall Nigerians.
b. Section 4 (1) of the Act[53] dealing with the Establishment of Nigerian Upstream Petroleum Regulatory Commission while making provisions for two tiers regulations; section 7 of the Act[54] provides for technical regulatory functions while section 8 provides for commercial regulatory functions of the Commission. It is observed thatthe provision of dual regulations for the industry as contained in the Act will generatea regulatory conflict in the future. The Act provided for the upstream regulatory commission and the downstream regulatory authority, meanwhile, there is a thin line between these streams of operations vis a vis upstream, midstream, and downstream. By creating two regulatory agencies one for upstream and midstream and the other for downstream, there is bound to be an overlap. Each of the sector will want to take charge of its jurisdiction and issues may emanate from there. This will not augur well with the industry.
c. Globally, there is tendency to deregulate. This regulatory mentality of the IOC and gas industry should be dispelled. Most developed countries in the oil and gas business allow the IOC to self-regulate. Granted that the cost of self-regulation is quite high but ultimate goal is achieved.
d. Provisions of the law are to ultimately improve transparency in the oil and gas sector while ideally lowering revenue losses due to corrupt practices lack of accountability; the new law is expected to attract investment and equally boost production, but these cannot adequately come to play if the shareholders do not work dispassionately by putting the interest of the nation first overpolitical apathy.
e. There has been outcry over the horrendous three percent (3%) contribution of the operator's annual operating expenditure of the preceding financial year in the upstream petroleum operations to the host oil producing communities, but the outcry was overlooked which is a height of contempt to the oil communities considering the challenges they are faced with as a result of oil exploration and environmental degradation.

[51] (n1)
[52] *Ibid*
[53] *PIA 2021*
[54] (n1)

f. Section 9 (4) of the Act[55] - There shall be maintained for the purpose of this section, a Frontier Exploration Fund which shall be 30% of NNPC Limited profit oil and profit gas as in the production sharing, profit sharing and risk service contract

Section 9 (5) of the Act[56] states that *"NNPC Limited shall transfer the 30% of profit oil and profit gas under subsection (4) to the Frontier Exploration Funde scrow account dedicated for the development of frontier acreages and utilizethe funds to carry out exploration and development activities in the Frontier acreages subject to appropriation by the National Assembly."* There is agitation to reduce government's interference, but government is interested inprivatizing NNPC by stating that they want NNPC to be conducted as Private Limited Liability Company, but accompany limited by shares, guarantee, or incorporated in this form is supposed to be independent. Meanwhile, government is directing that thirty percent (30%) of NNPC's profit be employed for the development of frontier basin. Telling a limited liability company how to spend its profit is a disregard to mission, vision, and the role of the board of trustees of that company. It is totally frowned at. The question is, is the government supposed to dictate to a limited liability company how to spend its profit? We are advocating that all the three tiers of government be part of the shareholders to NNPC incorporated.
While the Act stands a good chance to enhance the industrial value, it nevertheless captured the wellbeing of the citizens adversely affected by the obnoxious fumes emanating from the activities of gas flare and emergence of climate change.

6. HIGHLIGHTS OF THE NOVELTIES UNDER THE PIA 2021

There can never be a perfect legislation, despite the outcry that greeted the PIA, there are no doubts some benefits of the Act. The PIA aims to aggregate all the laws that govern the Nigerian Petroleum Industry from upstream to downstream sector. The Act establishes and clarify the rules, procedures and institutions that will entrench good governance, transparency and accountability in the oil and gas sector.

a. The Act[57] creates a regulatory environment that ensures efficiency and accountability (transparency) across the oil and gas value chainand reposition NNPC to a commercially driven National Company that is accountableto the federation.
b. The Act will create jobs for Nigerians and deepen local content. More jobs for Nigerian local contractors in the oil and gas sector. More local firms will benefit fromthe Act due to strict enforcement and deepening the local content aspect of the Act asprovided forin sections 2(e), 79(g), 252 (f), and 309[58]
c. The Act will accelerate the skill development of Nigerians in the oil and gas sector.
d. Development of Natural Gas for power generation.
e. Government to maximize its revenue from oil and gas industry.
f. The Act provides for a direct benefit framework that will enable sustainable development of Host communities, environmental protection where exploration and oil and gas facilities are domiciled.
g. The Act provides for open andc ompetitive bidding process for oil and gas sector.
h. The Act provides for the establishment of Frontier Oil Services Agency (FOSA) which is saddled with the task of prospecting for more opportunities in the frontier states that are capable of producing goil and gas.
i. The Act will give Nigerians the opportunity to own shares in oil and gas companies. The National Petroleum Company and the National Gas Company will be listed under the Nigerian Stock Exchange, the public will be able to buy shares. It will also create a conducive business environment for Petroleum operations in the country and encourage more investment in the Petroleum Industry. The listing in the NSE drawsfrom the experience of Saudi Aramco, the Saudi Arabian oil giant that was listed in 2019.
j. The Act offers the IOCs fairness in operating in the country as the Act encourages investment.

[55] *PIA 2021*
[56] *Ibid*
[57] (n1)
[58] (n44)

k. The Act will fast track Nigerian technological development in the oil and gas sector and other critical sectors of the economy.

7. LESSONS FROM OTHER JURISDICTIONS PETROLEUM INDUSTRY DEVELOPMENT (UK, BRAZIL AND NORWAY)

The choice of these countries is deliberate, apart from the fact that these countries are hydro carbonnations[59]. Just like Nigeria, they also have their own petroleum legislation/Act that regulates their petroleum industries. An evaluation of their Petroleum Act will enable us to draw some lessons that will be beneficial to our PIA.

7.1 UNITED KINGDOM

The oil and gas industry play a central role in the economy of the United Kingdom, Ownership of oil and gas within the land sea of Great Britain is vested in the crown by the Petroleum Act[60]. The Continental Shelf Act 1964 applied the provisions of the 1934 Act to the UKCS outside the territorial waters. The security supply obligation fordomestic consumption falls within the social obligation of the UK government to the people. There is no direct state involvement in any stage of production activity or disposal of any petroleumresource in UK, this is the same position in Nigeria, there is no state involvement in the PIA.UK has eight private owned refineries with high production capacity by the provision of the PIA the NNPC will seize to exist after six (6) months of signing the PIA into law and theshares of the newly incorporated Nigerian Petroleum Company Limited will be run as any other private company, this will to a large extent bring in the private sector into the management of NNPC Limited. Our moribund refineries will be revived since NNPC Limited will now beowned by share holders.

According to S. C Dike[61]‘ *The Petroleum Licensing (Production) Seward Areas Regulation of 2008 provides for zero tolerance of gas flaring by stating that flaring is prohibited except by Ministerial consent*". There is however an exception to this rule when it becomes imperative to maintain petroleum flow from the wells or in the case of preventing injury. Thelicensee must inform the Minister when gas flare occurs and must stop gas flare when directed to so do. The provisions of the UK law do not expect the licensee to give a date in his written application when to end gas flaring, obviously, this creates a regulatory gap. The Department of Energy and Climate Change (DECC) of the UK is an independent agency that enforces the relevant regulations. The UK model is like the provisions in the PIA on gas flare, the PIA has upheld the prohibition of gas flaring, except for a few circumstances in whichthereis no otherreasonable option than to flare.

According to the Act, a licensee or lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations 2018. The only recognized few instances where gas flaring may be allowed by the Act areas follows:

i. Inthe caseofan emergency
ii. Pursuantto an exemption granted by the Commission

7.2 BRAZIL

Like in Nigeria, the Brazilian government is involved in providing energy to the people[62] Brazil has no competitive petroleum industry, however it is opening its acreages for foreign investors. It has a dominant national oil company Petro Bras. The Brazilian constitution hasan impact on the Brazilian petroleum policy. Article 177 Item 1 of the Brazilian Constitution provides that *the exploration for and production of oil and natural gas in Brazili annational territory is a federal government monopoly* "Thus the constitution[63] vests in the federal government of Brazil, the ownership of oil and gas onshore and offshore. This is the same position in Nigeria where section 1 of the PIA vest ownership of petroleum in the federation of Nigeria. The Brazilian law No 09478 of 6th August 1977

[59] S. C. Dike, ‘Energy Security, The Case of Nigeria and Lessons from Brazil, Norway and the UK’ (Pearl publishers 2015)19
[60] Petroleum Act 1934
[61] (n58), 152
[62] (n58), 4
[63] Article 176 (3) 1998, Article 3 Petroleum Act 1997

(Brazilian Act) regulates the industry.[64] It creates the nation council for energy policy and makes other provisions this excludes the states jurisdiction over petroleum, ethanol, or biomass. Brazil shares same similarities with the practice in Nigeria under section 44(3) Nigerian Constitution 1999 which vests all minerals, mineral oils, and natural gas in the federal government to the exclusion of the state.

Subsidy in Brazil under the Petroleum Act[65] promotes reliability of petroleum resources under Chapter 11, Article 2(11) through the national system for fuel stock (SINEC), the Act makes provision for subsidy where necessary and provides for environmental protection. In Nigeria, no specific date for the removal of subsidy, however, conscious efforts are being made by government in this regard and very soon Nigerians will know the date for theremoval of subsidy. It is hoped that within the next six (6) months the subsidy will beremoved from petroleum products in Nigeria. This will be a welcome development since thepoor are not benefiting from the subsidy. In Brazil subsidy applies to those in need.[66] The Brazilian petroleum Act promotes transparency by engaging the municipalities in decision affecting the industry this is in addition to the effective allocation of its petroleum revenues tostates. The PIA addresses the problem associated with the lack of transparency in petroleum revenue sharing in Nigeria.

In the Brazilian Act upstream activities are equally transparent.[67] In Nigeria the PIA made provision for 3% contribution of the operators annual operating expenditure of the preceding financial year in the upstream petroleum operation to the host oil producing communities unlike the position in Brazil. In Nigeria the minister for petroleum who is the president formulates and administers government policy in the petroleum industry. He shall exercise general supervision over the operation of the petroleum industry in accordance with theprovision of this Act. The Brazilian oil company is regulated by a higher regulatory agency, and this reduces conflict of interest and regulatory capture. The Brazilian Petroleum Act encourages diversification to ethanol nuclear and biodiesel there by reducing the dependence on petroleum[68]. Brazil has achieved energy independence unlike Nigeria. In Nigeria we aresolely dependent on petroleum ignoring the fast-changing narrative of other developed and developing countries that are using fossil fuel and other energy sources.

7.3 NORWAY

Norway is one of the highly developed and well managed hydrocarbon nation[69] it also ranksas number (1) one in the United Nations human development index. The Norwegian state has a petroleum policy that involves state participation interest[70] this was later organized aroundits national oil loy statocl through the management of the State Direct Finance Investment (SDFI) and the PetroASA [71] and through an efficient taxing regime based on a sound ideological principle[72]. This position is different from what we have in Nigeria and Brazil where there is federal monopoly.

In Norway gas sale by production companies are encouraged by a framework that permitseach license to sell its own gas. Unlike the situation in Brazil. According to 'Facts 2013', the Norwegian Gassco is the operator of the gas transport system in Norway band, it manages the available capacity, while the Norwegian gas pipeline is a natural monopoly, its gas transport system is regulated, the aim is to promote efficiency and reduce conflictof interest. In the PIA subject to Sections 111 and 125, the authority may upon approval of application and payment of prescribed fees grants and issues bulk gasstorage license to a qualified person.[73]the authority may upon approval grant gas transportation pipeline license to a qualified person this is similar to what is obtainable in Norway going by the PIA individual participation and government supervision will go a long way to address the very terrible

[64] Chapter 1 & 2 (amended) no 12331, 2010
[65] Petroleum Act 1997
[66] (n64)
[67] (n64), Chapter Viii
[68] Chapter 1 Article (vii) 1997
[69] (n58) 131
[70] Petroleum Act (Act of 29 November 1996 No. 72 relating to petroleum activities), ss1-270
[71] Facts 2013 (n3) 16-17
[72] (n1) s.132
[73] (n1) s.132

issue of gas flaring in Nigeria. In Norway, state of dominates the retail product market they take care of their citizens before exporting to other countries. The Norwegian energy policy promotes security of supply of petroleum directorate assists theministry in the administration of the industry and in advising the ministry on regulatory matters. Here policy matters are clearly separated from commercial management and regulatory issues.[74] This is unlike in Nigeria where the minister of petroleum performs commercial regulatory and policy functions. The ownership of petroleum is vested in the Norwegian people, the Norwegian Petroleum Act complies with the United Nations General Assembly Declaration on permanent sovereignty.

By this provision the Norwegian people have sovereignty over their natural resources andthese resources will be harnessed for their total welfare.[75] To avoid any conflict Norway as aunitary state have vested ownership on the people and the managementon the king[76]. In Nigeria ownership of petroleum within Nigeria and its territorial waters, continental shelf andexclusive economic zone is vested in the government of the federal republic of Nigeria.[77]Norwegian Act addresses security of supply for domestic consumption through its state participation approach. The Norwegian Act as provided insections 4-11 on landing of petroleum in Norway and sections 4,5 and 7 on the joint and several liabilities for polluters ensures adequate payment of compensation for victims of environmental pollution and makes liability for licenses strict. In Norway, its Act separates the management functions from the commercial interest of the state thus reducing conflict of interest. The Norwegian Act promotes energy security and presents a superior Petroleum regime that can be adopted in Nigeria.

8. CONCLUSION

After several years of missteps, intrigues, legislative summersaults, and restart, the president, General Muhammadu Buhari finally signed the Petroleum Industry Bill (PIB) into the Petroleum Industry Act (PIA) on 16th August 2021. The provisions ofthe PIA are all encompassing covering virtually all imaginable areas of the Nigerianoil and gas industry and its objective is laudable. Despite the outcry that greeted itfrom a section of the country, it is a welcome development as its enactment into law will reposition the Nigerian oil and gas sector to stimulate and accelerate economy growth for the nation.

9. PROSPECTS FOR THE PETROLEUM INDUSTRY DEVELOPMENT IN NIGERIA

The 9th National Assembly (NASS) broke the jinxby passing the PIB for over 20 years when it was presented to NASS.The challenges and outcry of some of the in adequacies will continue to hunt the Act[78] if the following suggested reforms are not implemented:

a. NNPC, a profit oriented incorporated company will direct 30% of its profits for the development of frontier basins – acreages where there is low confidence of the existence of crude oil located mainly in the fringes of some Northern states and the Lake Chad. The frontier basins are new areas where oil is likely to be found and NNPC is directed to spend 30% of its profit in developing those areas even though they are not sure of getting oil. We believe that this is nebulous and an aberration and therefore should berejigged/amended.
b. How can one explain the rationale behind a provision that holds host community liable for any act of sabotage on the IOCs facilities domiciled in the community when research had shown that most of these acts of sabotages could be committed by strangers and collusion with some operational staff of the IOCs. We suggest that this aspect of the Act be amended.
c. There is need for Domestic Supply Obligation from the IOCs to make sure that they supply to the market first. Unfortunately, the IOCs have to supply crude oil to the NNPC. We are saying that it is an aberration to supply crude oil to NNPC and expect NNPC to make thecrude oil available to the people, when NNPC is a limited liability company and as a limited liability company, the interest is profit making and you cannot tell them how to manage their profits. It will be difficult

[74] Mark Thurber & others 'Exporting the Norwegian Model the Effect of Administrative Design on Oil Sector Performance' (2011) 39
[75] 1803 URES (vii)1963 United Nations General Assembly Resolution on permanent Sovereignty
[76] (n69), Chapter 1
[77] (n1)
[78] Ibid

for ordinary Nigerians to even buy kerosine. We suggest that this part of the provision in the Act be amended.

d. The Domestic Supply Obligation clause in the Act should be amended to reflect the emerging realities in other developed countries. In other developed countries the domestic supply clause is intended to make sure that there is energy security – security of supply of all products including crude oil to the people and not to the company.
e. The PIA did not define a clear process for dispute resolution between the operators and the Commission/Authority. It is important for the Act to be rejigged for there to be clarity on how to resolve any ambiguity or dispute that may arise from the implementation of the Act.
f. **Section 1** of the PIA vest petroleum *„…property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested inthe Government of the Federation of Nigeria"*.Similarly, **section 44 (3)**[79] which provides that *Notwithstanding the foregoing provisions of this section, 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 bevested in the Government of the Federation…"*

These provisions vest ownership of petroleumin the Federal Government and makes **Section 6 (6) (c)**[80] non – justiciable. By a combinedreading of section 1 of the PIA, section 44 (3) and particularly section 6 (6) (c) of the Constitution[81] that prevent one from approaching the courts to question how Federal Government is managing the country's resources. The PIA gives power to the Federal Government over ownership of petroleum to the exclusion of the 36 states and in particular the oil producing communities. This section should be amended.

a. The word **'settlor'** in the Act is very nebulous and as such should be (amended) expunged from the Act and replaced with the word 'operator'.
b. The operator's 3% contribution of its annual operating expenditure for the preceding year in the upstream petroleum operations to the host community development trust fund is a by smally low to address the various neglect, environmental degradation of the oil-bearing communities. This should be amended to 100%. The era of Corporate Social Responsibility (CSR) is over, the host communities should be co-owners (equity participation) with the Federal Government.
c. Zero gas flare regime. The Act be amended to reflect the wishes and aspirations of every segment of the nation, most especially the host communities. The Act should also be amended to mandate the IOC to install adequate gas flaring facilities as practiced in the developed countries.

[79] Constitution of the Federal Republic of Nigeria 1999 (as amended)
[80] (n78)
[81] Ibid