
Cited as: O John-Kennedy, 'An Appraisal of the Legal Framework of the Nigerian Oil and Gas Industry' (2023) 14(1&2) EBSU L.J. 91-109.

An Appraisal of the Legal Framework of the Nigerian Oil and Gas Industry

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Abstract

The oil and gas industry is a critical sector that drives other sectors in Nigeria's economic governance, contributing significantly to the country's revenue earnings. This paper audited the myriad of laws pervading the industry and the resulting confusion in determining the extant laws governing the industry and their corresponding strength and weaknesses. The industry's operations have been affected by ecological deprivation, revenue mismanagement, disillusionment, host community exclusion and foreign dominance. Using the doctrinal methodology, the paper argued that the industry is plagued with myriads of laws and regulations, Petroleum Industry Act (PIA) 2021 being the principal legislation with others playing vital roles in addressing the industry's current and primordial challenges to achieve sustainable development in Nigeria and the oil rich region. The paper discovers that the legal framework is marred by innumerable challenges, including continuity in the midst of change of regulatory bodies, too many regulations and laws to obey yet without much effect, weaknesses of enforcement institutions, persistent environmental and social concerns and increasing host community concerns. It concluded that the legal framework aims at driving a peaceful environment, a seamless and hitch-free exploration in the oil rich region and recommended regular review and update of laws, strengthening of the regulatory agencies, improvement of the environmental and social standards and increase transparency and accountability in the operations to avert non-participation of the host communities.

Keywords: Oil and Gas Industry, Legal Framework, Institutional Framework, Petroleum Industry Act.

DOI: [10.5281/zenodo.19626852](https://doi.org/10.5281/zenodo.19626852)

1. Introduction

The Nigerian oil and gas industry is a critical industry and the life-wire of Nigeria's economy, playing a crucial role in determining the country's economic, social, and political well-being.¹ As the primary source of foreign exchange earnings and government revenue, the industry's

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¹ K.C. Njoku, J. I. Ndifon, et al 'Petroleum Industry and the Nigerian Economy', (2025), 4(1) *Scholarly Journal of Social Sciences Research*, 1-15; C.S. Ayonmike, 'Technical and Vocational Education and Training (Tvet): Model for Addressing Skill Shortage in the Nigerian Oil and Gas Industry', (2015) 3(1) *American Journal of Educational Research*, 62:66.

performance has far-reaching consequences for the country's growth and development. The Niger Delta oil rich region, the centre place of the extractive industries, the location-warehouse of the majority of Nigeria's oil and gas reserves, has particularly suffered the incidences of these industrial activities, with widespread negative environmental impact including pollution, community displacement, human rights abuses and all sorts of restiveness and criminality.²

The complexities surrounding the industry's operations have raised questions about the inadequacies and effectiveness of the legal frameworks governing the sector in spite of the avalanche of reforms and deluge of laws. Over the years, Nigeria has enacted various laws and regulations aimed at promoting sustainable development, environmental protection, peaceful operations, gainful participation of the host communities, maximum revenue generation as well as sustainable maintenance of the international image at the global market.³ The passage of the Nigerian Petroleum Industry Act (PIA) 2021 represents a significant milestone in the country's efforts to reform the industry and address some of the long-standing, age long challenges. This paper made a broad assessment of the legal frameworks of the oil and gas industry in Nigeria, their strengths and weaknesses and posed requisite recommendations to enhance the industry's performance, promote sustainable development, transparency and accountability, equitable utilization of revenue and peaceful exploration.

2. Clarification of Concepts

2.1 Oil and Gas Industry

The oil and gas industry is a complex, multifaceted industry involving exploration, production, transportation, refining, and marketing of oil and natural gas.⁴ The industry is a critical component of many economies, providing energy for industrial, commercial, and residential uses. The oil and gas industry is categorized into three main sectors, namely; the Upstream, Midstream and the Downstream which involves refining and marketing of oil and gas products, including activities such as refining, distribution, and retail sales.⁵

2.2 Legal Framework

The legal framework for the oil and gas industry refers to the laws, regulations, and policies that govern the industry's operations. The legal framework provides a structure for the industry's activities, outlining the rights and responsibilities of companies, governments, and other stakeholders. The major aspects of the legal framework are licensing and leasing, environmental protection, health and safety, revenue generation and management.⁶

² A.T. Umar; M.S.H. Othman, et al, "Causes and Consequences of Crude Oil Pipeline Vandalism in the Niger Delta Region of Nigeria: A Confirmatory Factor Analysis Approach" *Cogent Economics and Finance* 2017, Vol. 5 (1), 3; J.S. Omotosho, "Liberation Movement and Rising Violence in the Niger Delta: The New Contentious Site of Oil and Environmental Politics, Studies in Conflict and Terrorism", (2009) 33-36; A. Raji and T.S. Abejide, "As Assessment of Environmental Problems Associated with Oil Pollution and Gas Flaring in the Niger Delta Region, Nigeria, C. 1960-2000", *Oman Chapter Of Arabian Journal of Business S and Management Review* (2013) 3, 48-62; C.O. Mgbame, P.A. Donwa and E.O. Osunbor, "Nigerian Oil and Gas Background, Reform Efforts and Implication for Economic Growth", *International Journal of Multidisciplinary Research and Development*, (2015) Vol 2 (9) 508-515.

³ M.O. Omozue, E.T. Kore-Okiti, E. Okwuokei, 'Assessing the Right of Sustainable Environmental Development in Nigeria', (2024) 5(3) *International Research Journal of Multidisciplinary Scope*, 865-878.

⁴ Sections 7, 70-72, 81, 100, 113, 129, 135, 183, 184, 203, 204, 261 and 262 of the PIA 2021.

⁵ Sections 111 - 233 of the PIA 2021.

⁶ *Ibid*, n 4.

2.3 Petroleum Industry Act⁷

A Petroleum Industry Act 2021 is the principal law governing the oil and gas industry in Nigeria, now. The Act typically outlines the framework for the industry's operations, including licensing, exploration, production, transportation, and revenue management.⁸ The major provisions of the Act⁹ covers licensing and leasing, provisions governing the issuance of licenses and leases for oil and gas exploration and production. It made provisions for the regulatory framework, which outlined the roles and responsibilities of regulatory agencies¹⁰ and other institutions.¹¹ The PIA makes provision for revenue generation and collection, allocation and management of revenue generated from oil and gas operations,¹² and aims to reform the industry and address some of the long-standing challenges.¹³ The PIA establishes new institutions¹⁴ and outlines new frameworks for licensing, revenue management, and environmental protection.

3. Historical Development of the Oil and Gas Industry in Nigeria

The British's quest for the Nigerian hydrocarbon crude predates the actual search for crude oil in Nigeria in 1908. Tubman obtained a royal charter with the indigenous leaders in 1886 which empowered the National African Company to collect custom duties and make initial pacts that did not restrain the indigenous chiefs from similar agreements with the Germans and the French nationals.¹⁵ The local leaders were subsequently barred from entering into similar agreements with other group of people.¹⁶ The Treaty of 1885¹⁷ granted the Company sovereign powers over the native chiefs and indigenous leaders, in these words:

We the undersigned King and Chiefs [...with the view to bettering the conditions of our country and people], do this day cede to the National African Company (Limited), their heirs and assigns, forever, the whole of our territory [...We also give the said National African Company [Limited] full power to settle all native disputes arising from any cause whatever, and we pledge ourselves not to enter into any war with other tribes without the sanction of the said National African Company (Limited). In conclusion of the foregoing, the

⁷ Petroleum Industry Act (PIA) 2021.

⁸ Ibid, n 4.

⁹ Ibid, n 7.

¹⁰ Nigeria Upstream Petroleum Regulatory Commission (NUPRC) and the Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).

¹¹ Nigeria National Petroleum Company Limited (NNPC L).

¹² Fiscal Framework of the PIA 2021 contained in Chapter four thereof, constituted in sections 258 to 306 of the Act.

¹³ It repealed about ten laws namely, Associated Gas Re-injection Act, Hydrocarbon Oil Refineries Act, Motor Spirit Act, NNPC (Project) Act; NNPC Act; Petroleum Equalisation Act; PPPRA Act; PPTA Act; Deep Offshore and Inland Basin PSC Act; amended the Pre-Shipment Inspection of Oil Exports Act, while saving certain laws until termination or expiration of the relevant oil prospecting licenses and mining leases including the Petroleum Act, PPTA, Oil Pipelines Act, Deep Offshore and Inland Basin PSC Act and innovated the Host Community Development Trust as part of the Petroleum Industry Act 2021 in its chapter three thereof.

¹⁴ The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).

¹⁵ A. A. Inyang and M.E. Bassey, 'Imperial Treaties and the Origins of British Colonial Rule in Southern Nigeria, 1860-1890', *Mediterranean Journal of Social Sciences* (2014) 5; Ken Swindle, 'The Commercial Development of the North and Government Relations, 1900-1906', *Paideuma* (1994) 40, 149-162.

¹⁶ Ibid, n 15.

¹⁷ The 1885 Treaty and Charter between the Local Leaders and Chiefs of Lagos and the National African Company Limited ceded their territories including, resources to the National African Company (NAC) in exchange for the protection and defence of the native chiefs and their communities from external aggression.

said National African Company (Limited), bind themselves not to interfere with any of the native laws or customs of the country, consistently with the maintenance of order and good government [and] agree to pay native owners of land a reasonable amount for any portion they may acquire. The said National African Company (Limited) bind themselves to protect the said King and Chiefs from the attacks of any neighbouring tribe.¹⁸ We also understand that the said National African Company (Limited) have full power to mine, farm and build in any portion of our territory. We bind ourselves not to have any intercourse with any strangers or foreigners except through the said National African Company (Limited), and we give the said National African Company (Limited) full power to exclude all other strangers and foreigners from their territory at the discretion.¹⁹

The search for oil in Nigeria officially started in 1903 when, Nigeria Properties (Limited) and the Nigeria & West African Development Syndicate (Limited)²⁰ metamorphosed into the Nigerian Bitumen Corporation²¹ commenced exploration²² for bitumen, coal and oil.²³ Oil search became their focus from 1908 and the concessions granted to it covered a territory of 400 sqm² in the Agbabu-Mulekangbo area in the Lekki Lagoon region of Southern Nigeria.²⁴ There was vast deposit of bitumen as well as the possibility of petroleum²⁵ but the Nigeria Bitumen Corporation could not set up a commercial oil operation. Its Chairman Bergheim lobbied the Colonial Office and the Southern Nigeria Government for the proclamation of the Southern Nigerian Mining Regulation (Oil) Ordinance of 1907.²⁶

By the general British oil policy, exploration concession in the British Empire was granted only to companies registered in Britain or its colonies.²⁷ The 1907 Ordinance made the search for oil in Nigeria, a British monopoly difficult as section 15 of the Ordinance²⁸ specified that the

¹⁸ The 1885 Treaty and Charter between the Local Leaders and Chiefs of Lagos, *ibid*, n 17.

¹⁹ Inyang and Bassey, n 15.

²⁰ The Nigerian Bitumen Corporation was founded in 1905 to acquire and work the exploration concessions of Nigeria Properties (Limited) and the Nigeria & West African Development Syndicate (Limited), the concession was expanded in 1906 when company bought the concession of the Northern Nigeria Syndicate located adjacent to the Nigerian Bitumen in Lekki Lagoon area. This is contrary to the views promoted by Njeze, Frynas and other authors.

²¹ P. Steynl, 'Oil Exploration in Colonial Nigeria C. 1903-1958', (2009) 37(2) *The Journal of Imperial and Commonwealth History*, 249-274.

²² Between 1908 and 1912 Nigeria Bitumen drilled about 15 wells in their Lekki Lagoon, Oil was struck at well No. 5.

²³ Steynl, n21.

²⁴ A. C. Bernard, 'Geological Investigations' (1903-4, and 1904- 5) and A.H. Harrison (1904-5), They reported on their findings noting that Notwithstanding the shallow depth at which the deposits occur and the tropical heat of the territory, the bituminous deposits so far located are in a plastic condition; this seems to show that there is still a flow of liquid from the original source, and gives the expectation that oil exists in considerable quantity.

²⁵ The Nigerian Bitumen Corporation was not a German Company or entity but indeed a British Oil Company with a listing on the West African Market of the Stock Exchange in London, see Steyn, (n 21) 249-274.

²⁶ Southern Nigerian Mining Regulation (Oil) Ordinance of 1907 was drafted by Frederick Butler and Charles Stachey, clerk of the Nigeria Department in the Colonial Office and an unnamed government Legal adviser; Nigeria Bitumen Corporation – The Governor, Southern Nigeria, Dec 1906 (letter), CSE 8/1/41 – CSO 318/06, NNAE; Carland, The Colonial Office and Nigeria, 189-90.

²⁷ McBeth, British Oil Policy 1919-1939, 1.

²⁸ Southern Nigerian Mining Regulation (Oil) Ordinance of 1907 further specified that all the directorates of these companies must be British subjects.

directors of these companies must be British subjects.²⁹ This principle was retained in the 1914 Mineral Ordinance and its 1925, 1950 and 1958 amendments applicable in the amalgamated Nigeria. The exploration efforts of the Nigerian Bitumen Corporation in the Araromi area of Ijebu Ode in Ogun State and Okitipupa in Ondo State of Nigeria³⁰ turned out to be vain activities³¹ as oil was not found in commercial quantities. However, due to lack of sustainable capital, the Nigeria Bitumen Corporation ceased all operations in Nigeria by the end of 1913 and the company was liquidated in 1914;³² the operation was terminated and the licence revoked.³³ Subsequently, the licence was granted to D'Arcy Exploration Company and Whitehall Petroleum Corporation whose efforts were unsuccessful too due to non-discovery of oil in commercial quantity.³⁴ The Licence was consequently returned to the grantor in 1923.³⁵ D'arcy revived its oil exploration interest in the 1930's.

In December 1936, Shell D'arcy was granted an exclusive exploration licence covering the whole Nigeria³⁶ and the name AngloSaxon/D'arcy changed to Shell Overseas Company Limited.³⁷ From 1952, onwards Shell exploration license of the concessionary area was reduced in Southern Nigeria to an area of 56,000 square meters. The concession was further reduced to 13,800 square meters,³⁸ though the Second World War interrupted its activities, however it was resumed in 1947. The concerted efforts of over N30 million investment, led to the first commercial discovery of oil in 1956 at Oloibiri in the Ogbia, Bayelsa State of Nigeria. This discovery, launched the Nigerian Oil industry in 1961, and led to the extension of the concessionary rights, to the newcomers.³⁹

The actual oil production and export from the Oloibiri field commenced in 1958 at an initial production rate of 5,100 barrels of crude oil per day, which doubled the following year, and rose

²⁹ Speed, ed., *Laws of the Colony of Southern Nigeria*, 1367.

³⁰ B.G. Nwabueze, 'Discovery and Development of Nigeria's Oil and Gas Sector', *Globe Chamber of Commerce and Industry, World Economic and Investment Forum*, Arden University, London, October 18, 2024.

³¹ Steynl, n 21.

³² *The Times*, 16 Oct 1911, 11 Dec 1912, 9; 24 June 1913; Confidential letter from the Petroleum Department, 12 Nov 1936, BP 44063, BPA; Carland, *The Colonial Office and Nigeria*, 193-6.

³³ Njeze, 'Oil Concessions and Land Acquisition in Nigeria', 166; Frynas, *Oil in Nigeria*, 9

³⁴ Steynl, n 21.

³⁵ J.G. Frynas, 'Oil in Nigeria: Conflict and Litigation Between Oil Companies and Village Communities', Munster: Lit. Verlag 2000.

³⁶ C. Udosen, A-I. S. Etok and I.N. George, 'Fifty Years of Oil Exploration in Nigeria: The Paradox of Plenty', (2009) 8(2) *Global Journal of Social Sciences*, 37-47, cf with F.W. Richards – F.W. Farrel, Ministry of Fuel and Power, Petroleum Division, 21 Aug 1946 (letter), BP 60555, BPA; Governor of Nigeria – A. Creech-Jones, Secretary of State for the Colonies, 22 Oct 1948, CO 852/982/4, NA.

³⁷ The forerunner of Shell Petroleum Development Company of Nigeria.

³⁸ Shell D'Arcy Petroleum Development Company of Nigeria Ltd. – Oil exploration licences, ONDIST 12/1/1782 – OP 2662/2, NNAE. 44.

³⁹ A total of nine foreign oil companies were actively engaged in oil exploration in Nigeria. See Petroleum Industry in Nigeria. <https://en.wikipedia.org> last visited 10/6/2025 at 2:59 AM. Elf started operations in Nigeria in 1962 (As Safrap) and discovered Obagi field and Ubata gas field in 1963; Gulf's Terminal at Escravos was commissioned and Gulf's first production occurred in 1965; Nigeria Agip Oil Company started operations in Nigeria 1963, found its first oil at Ebocha; Phillips Oil Company started operations in Bendel State Nigeria in 1965; First Refinery in Port Harcourt of 60,000 bpd capacity commissioned by Shell-BP 1966; Elf started production in Rivers State with 12,000 b/d 1967; Phillips drilled its first well (Dry) at Osari and made its first oil discovery at Gilli-Gilli in 1968; In 1970 Mobil started production from 4 wells at Idoho Field. Agip started production Department of Petroleum Resources Inspectorate started. In 1971 Shell's Forcados Terminal Commissioned; Mobil's terminal at Qua Iboe commissioned in 1973; First Participation Agreement; Federal Government acquires 35% shares in the Oil Companies Ashland started PSC with then NNOC (NNPC now NNPC Ltd) Pan Ocean Corporation drilled its first discovery well at Ogharefe in 1974; Gulf (later Chevron) issued exploration licence in 1961.

to 2.0 million barrels per day in 1972, reaching the peak at 2.4 million barrels per day in 1979 as more players came into the oil scene.⁴⁰ The Nigerian oil and gas industry has experienced series of industrial reforms from 1969⁴¹ to the present Petroleum Industry Act 2021, evidencing transformation of the legal, institutional, regulatory and fiscal framework of this critical industry to enhance industrial performance and overall effective delivery of the industry's policy.

4. Legal Framework of Oil and Gas Industry in Nigeria

4.1 Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) is the most basic Nigerian law that gives validity to other laws in Nigeria,⁴² such that any law that is inconsistent with the provisions of the Constitution is void to the extent of its inconsistency.⁴³ The Constitution stipulates that the resources of Nigeria will be explored and exploited to promote the welfare and national prosperity of the people of Nigeria and the exploitation of the resources that is not purposed for the good of the people shall be prevented.⁴⁴ However, section 6(6) (c) of the Constitution renders the above mentioned provisions non justiciable⁴⁵ and unenforceable.⁴⁶

Nevertheless, a similar provision in India was held enforceable⁴⁷ as fundamental human right, in *UPSE Board v Harri Shankar*,⁴⁸ the court remarked that though courts cannot enforce the observance of the principles, but are bound to evolve, affirm and adjust principles of interpretation which will further and not hinder the directive principles. For instance, holding that the 'right to education is an integral part of the right to life'.⁴⁹ The Nigerian Constitution is key in the governance and administration of the Nigerian oil and gas industry, it vests the exclusive ownership and control of oil and gas resources in Nigeria in the Federal Government of Nigeria.⁵⁰ By virtue of section 44(3) of the Constitution,⁵¹ the Nigerian Federal government controls and manages the oil and gas resources in trust for Nigerian and for the benefits of the citizens.⁵²

⁴⁰ *ibid*, n 39

⁴¹ Pioneer post-independence petroleum industry legislation 1969 Petroleum Act now repealed by the Petroleum Industry Act 2021 by virtue of section 310 of the Petroleum Industry Act 2021 and partly saved by section 311 of the PIA 2021.

⁴² Section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended; *Eleso v Government of Ogun State* (1990) 2 NWLR (Pt. 133) 420; *Ifegwu v FRN* (2001) 13 NWLR (Pt. 729) 103, authorities demonstrating that the Constitution of the Federal Republic of Nigeria 1999 is supreme and every citizen is bound by it.

⁴³ Section 1(3) of the Constitution, *ibid*, n 42; *Erumuche v Amadi* (2016) All FWLR (Pt. 842) 1743 on the voidability of any provision of any law inconsistent with the Constitution of the Federal Republic of Nigeria 1999 as amended.

⁴⁴ Section 16(2)(b) and (c) of the Constitution, *ibid*.

⁴⁵ Rights that the court of competent jurisdiction can hear any cause of action to determine and make necessary pronouncement on the right of the parties therein, see *Oyewunmi v Osunbade* (2001) FWLR (Pt. 82) 1919 and *Laedjobi v Oguntayo* (2001) FWLR (Pt. 45) 780.

⁴⁶ The entire provisions of Chapter 2 of the Constitution of the Federal Republic of Nigeria 1999 as amended is rendered non justiciable and unenforceable as citizens right and equally the right of citizens to query if the authority is carrying out the Fundamental objectives and Directives Principles of State policy.

⁴⁷ *Bombay v Balsara* (1951) All Indian Report SC 316; *Golak v Nath Punjas* (1968) All Indian Law Report 1643 SC

⁴⁸ (1951) All Indian Law Report 474 SC, the contrary was the case in Nigeria in the case of *Arch Bishop Okogie & 2 Ors v AG Lagos State* (1981) 2 NCLR 377 and *Awolowo & Ors v Minister of Internal Affairs & Ors* (1962) LLR 177 when the Fundamental right of the citizen was in conflict with the provisions of the Fundamental Objective and Directive Principles of State Policy.

⁴⁹ *Moluni Jani v State of Karanataka* (1992) 1856 SC and *Nafui Rabui v State* (1980) 8-11 SC 130.

⁵⁰ Section 44(3) of the Constitution, *ibid*.

⁵¹ *ibid*, n 42.

⁵² *Ibid*.

Equally, the Constitution,⁵³ provides the original framework of the concept of prompt compensation though the provision has been criticised as expropriatory⁵⁴ as it takes away propriety of what naturally belongs to the people and must be construed *fortissime contra preferentes*.⁵⁵

4.2 Petroleum Industry Act 2021

The Petroleum Industry Act 2021 contains five chapters, 319 Sections and, eight Schedules dealing with Rights of Preemption,⁵⁶ Incorporated Joint Ventures,⁵⁷ Domestic Base Price and Pricing Framework,⁵⁸ Pricing Formula for Gas Based Industries,⁵⁹ Capital Allowances,⁶⁰ Production Allowances and Cost Price Ratio Limit,⁶¹ Petroleum Fees, Rents and Royalty⁶² and Creation of the Ministry of Petroleum Incorporated.⁶³ The Petroleum Industry Act 2021 is the extant law and most basic and principal legislation regulating and governing the management and administration of the oil and gas industry in Nigeria.

The Act was enacted to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry,⁶⁴ the development of host communities and other related matters.⁶⁵ It repealed the *hitherto* Petroleum Act 1969 which governed the management and administration of the oil and gas industry in Nigeria for a period of 56 years without achieving takeover, succession and transfer of technology which was targeted to be achieved within 10 years of its inauguration.

The extant Act repealed *hitherto* laws and regulations that governed the Nigerian oil and gas industry.⁶⁶ The PIA 2021 vests the property and ownership of petroleum within Nigeria's territorial waters, continental shelf and exclusive economic zone in the government of the Federation of Nigeria.⁶⁷ It created two formidable regulatory bodies⁶⁸ and incorporated a commercial and profit focused NNPC Ltd⁶⁹ and retained the position of the Minister of petroleum with the powers to formulate, monitor and administer government policy in the petroleum

⁵³ Section 44(1)(a) and (b) of the Constitution, *ibid*, n 42.

⁵⁴ *AG Bendel State v Aideyan* (2003) FWLR (Pt. 187) 886; *Bello v Diocesan Synod of Lagos* (1973) 3 SC 103.

⁵⁵ Strictly against the one inputting in its favour.

⁵⁶ Paragraphs 1, 2 and 3 Rights of Pre-emption, first schedule of the PIA made pursuant to section 3(3) of the PIA 2021.

⁵⁷ Paragraphs 1(a) to (c) Principles of Negotiating Incorporated Joint Venture second schedule of the PIA made pursuant to sections 54(7) and 65(1) of the PIA 2021.

⁵⁸ Paragraph 1(a) to (d) Domestic Base Price and Pricing Framework third schedule of the PIA made pursuant to sections 167(1) and 318 of the PIA 2021.

⁵⁹ Section 168(1) and (4), and the Fourth Schedule of the PIA 2021.

⁶⁰ Section 263(1)(d), 266(1)(a), 270, 271(2)(b) and (c), 277(1)(c), 280(1)(b) and 302(10)(a) of the PIA 2021, and the Fifth Schedule of the PIA 2021.

⁶¹ Paragraphs 1(1), (2)(a) to (c) Production Allowances and Cost Price Ration Limit, sixth schedule made pursuant to sections 254(q), 266(1)(b) and (2), 277(1)(d) and 280(1)(c) of the PIA 2021.

⁶² Paragraphs 1(a) to (j), (2), 3(1) to (2) Petroleum Fees, Rents and Royalty, seventh schedule made pursuant to sections 268(3), 303(1), 306 and 318 of the PIA 2021.

⁶³ Section 53(3) of the PIA 2021 and paragraphs 1 to 4 of the Eight Schedule of the PIA 2021.

⁶⁴ Preamble to the PIA 2021 enacted by the National Assembly of the Federal Republic of Nigeria, August 16, 2021.

⁶⁵ Section 234 and 235, *ibid*, and the Nigeria Upstream Petroleum Host Community Development Trust Regulation (NUPHCDTR) 2022.

⁶⁶ Section 310 and 311 of the PIA 2021.

⁶⁷ Section 1, Chapter 1 part 1, *ibid*.

⁶⁸ Section 4 and 29, *ibid*.

⁶⁹ Section 53, *ibid*.

industry. Among others,⁷⁰ it imposed levy up to 1% on the whole price of petroleum products sold in the country, 0.5% each for the Authority Fund and Midstream Gas Infrastructure Fund.⁷¹ It equally established the host communities development trust⁷² aimed at fostering sustainable prosperity, direct social and economic benefits and enhanced harmonious co-existence between licensees and the host communities⁷³ through the settlor's mandatory contribution of 3% of its actual annual operating expenditure of the preceding financial year in the Upstream petroleum operation affecting the host communities to the Host Communities Development Trust Fund.⁷⁴ The Act also provides for the petroleum industry fiscal framework, as a key and crucial tool in the management and administration of the oil and gas industry's revenue.⁷⁵ By this Act, the FIRS collects hydrocarbon Tax of 15% - 30% on profit from crude oil production,⁷⁶ Companies Income Tax at 30%,⁷⁷ the payment of royalties at the rate of 15% for onshore areas,⁷⁸ 12.5% for shallow water⁷⁹ and 7.5% for deep offshore,⁸⁰ frontier basins⁸¹ and 2.5%-5% for natural gas.⁸² Every aspect of the Act is relevant for the governance and regulation of the oil and gas Industry in Nigeria.

4.3 Nigerian Oil and Gas Industry Content Development Act 2010

The Nigerian Content Act 2010, enacted to provide for the development of Nigerian content in the Nigerian oil and gas industry, the Nigerian content plan,⁸³ supervision, coordination, monitoring and implementation of Nigerian content. The Act has 107 sections and a Schedule. It made valuable provision to ensure that all regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry considers the Nigerian content as a crucial component in their project execution.⁸⁴

Section 2 of the Nigerian Content Act⁸⁵ is legal basis for the compulsory requirement of the Nigerian Content compelling any company or entity doing business in the Nigerian oil and gas industry to compulsorily utilize Nigerian human,⁸⁶ material and services resources⁸⁷ in all activities involved in the search, production, storage, transportation and haulage of hydro carbon products in the sector in Nigeria to ensure value addition in the Nigerian economy through a planned process provided in the Act.⁸⁸ Section 10 (1) (a) of the Act is a laudable provision for compelling any company intending to participate in the oil and gas sector industry in Nigeria to

⁷⁰ Section 3, *ibid.*

⁷¹ Sections 47 and 52, *ibid.*

⁷² Sections 234 and 235, Chapter 3, *ibid.*

⁷³ Sections 234 and 235, *ibid.*

⁷⁴ Section 240(2), *ibid.*

⁷⁵ Chapter 4, sections 258 and 259, *ibid.*

⁷⁶ Sections 259 and 267(a)(b), *ibid.*

⁷⁷ *Ibid.*

⁷⁸ Paragraph 10(a) of the fifth schedule made pursuant to sections 268(3), 303(1), 306 and 318 of the PIA 2021.

⁷⁹ Paragraph 10(b), *ibid.*

⁸⁰ Paragraph 10(c), *ibid.*

⁸¹ Paragraph 10(d), *ibid.*

⁸² Paragraph 10(6), *ibid.*

⁸³ Section 2 of the NOGICDA 2010.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ NOGICDA 2010.

⁸⁷ Sections 3(1), 10(1)(b), 28(1)(2), 29 and 30, *ibid.*

⁸⁸ Sections 3(2) and 12, *ibid.*

submit its content plan that assures first consideration of Nigerian's in-country goods and services.⁸⁹

This commendable provision necessitates value addition to our made-in-Nigeria good and services which has boosted utility and participation of Nigerians, but implausible before the enactment of the Act.⁹⁰ In that regard, Nigerian services and made in Nigeria goods are given first and foremost priority considerations and preference over services and goods of other nationalities.⁹¹ The Act was intended to enable Nigerian participation and involvement in the value chain of the Nigerian Oil and Gas Industry. It desires to build and utilize indigenous capacity, product and services, avert the dominance of expatriates in the industry as well as generate revenue from multinationals who still engage expatriates for whatever reasons.⁹²

4.4 Immigration Regulations 2017

The Minister of Interior in exercise of his function pursuant to section 112(1) of the Immigration Act 2015 made this regulation to provide a legal framework to determine and enable the entry into and departure from Nigeria.⁹³ The processing and issuance of business permit, residence permit, visit permit, transit permit, temporary work permit, visa on arrival, entry for residence or employment of foreign nationals in Nigeria,⁹⁴ enforcement of the provisions of the Nigerian Content Act 2010 regarding engagement quota of foreign expatriates,⁹⁵ the enforcement of the Expatriate Employment levy⁹⁶ which purpose is to enhance local employment, promote transfer of skill as well as impose contribution on employers who employ expatriate workers as a fiscal measure to address certain socio-economic considerations within the country.⁹⁷

By section 35 of the Act⁹⁸ all operators and companies in the Nigerian oil and gas industry shall employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company.⁹⁹ The relevance of this Act¹⁰⁰ is to ensure full utilization and steady growth of indigenous companies engaged in exploration, seismic data processing, engineering designs, reservoir studies, manufacturing and fabrication of equipment and other facilities as well as provisions of other support services for the Nigerian oil and gas industry.¹⁰¹ This if effectively implemented will result in technology transfer and takeover of the sector by Nigerian and end the dominance of expatriates in this critical sector of the country.¹⁰² The Act includes the use of made in Nigeria services; the utilization of the Nigerian insurance broker

⁸⁹ Section 10(1)(a) and 12, *ibid*.

⁹⁰ NOGCIDA 2010 and under the Petroleum Act 1969.

⁹¹ Section 7, 10(1)(a) and 12 of the NOGCIDA 2010.

⁹² Sections 30, 32 and 33, *ibid*.

⁹³ Reg. 1(a) Immigration Regulations 2017.

⁹⁴ Section 112(1) Immigration Act 2015 and Regs. 4, 5, 6, 7, 8, 11 and 12 of the Immigration Regulations 2017.

⁹⁵ Sections 32 and 33 of the NOGCIDA 2010.

⁹⁶ Handbook on Expatriate Quota Administration 2022, issued by the Ministry of Interior of the Federal Republic of Nigeria.

⁹⁷ Paragraphs 2.3 and 3(ii)(iii)(viii) and (xi) Handbook on Expatriate Quota Administration 2022.

⁹⁸ NOGCIDA 2010.

⁹⁹ Section 35 of the NOGCIDA 2010.

¹⁰⁰ Sections 2, 3, 10, 12, 15, 28, 29, 30, 31(1), 32, 33(1), 41(1)(a) to (d)(2), 43 to 45, 50, 51, 52 and 53, *ibid*.

¹⁰¹ See the Schedule made pursuant to sections 3(2), 11(1), (2), (3), 34 and 70(d), *ibid*.

¹⁰² Construction, Information Technology and Communication (ICT), Agriculture, Manufacturing, Oil and Gas, Telecommunication Services, Banking and Finance, Maritime and Shipping and Healthcare, these industries are liable to the Expatriate Employment Levy launched by the President Bola Ahmed Tinubu on February 27, 2024 whether private or public if they utilize foreign workforce or rely on expatriate labour.

under the provisions of the Insurance Act,¹⁰³ Nigerian contractors,¹⁰⁴ Nigerian Indigenous companies,¹⁰⁵ made in Nigeria goods¹⁰⁶ as means of adding value in the economy. The operators can only place their insurable risks outside Nigeria with a written consent from the National Insurance Commission where Nigeria local capacity has been fully exhausted.¹⁰⁷ By virtue of section 51 of the Act,¹⁰⁸ the operators and other investors in any operations, business or transaction in Nigerian oil and gas industry is required to retain the services of Nigerian Legal Practitioner or a firm of Legal Practitioners located in Nigeria.¹⁰⁹ The use of Nigeria professionals, service institutions translates to earnings, more earnings, skills acquisition, experiences, transfer of technology, employment and better well-being.

4.5 National Office of Technology Acquisition and Promotion Act 1979 Cap N62 LFN 2004

Technology acquisition is essential and ultimate if Nigeria is to succeed its expatriate counterpart in the oil and Gas industry because the industry requires high technical know-how, innovations and skill. NOTAP is a key and active player in transfer of technology through the activities of science and technology in national, regional and international policy cooperation, research development and advocacy initiatives. The National Office for Technology Acquisition and Promotion (NOTAP) was established originally by Decree No. 70 of 1979. NOTAP is an Agency of the Federal Ministry of Science and Technology (FMST), Nigeria established in response to its need to facilitate the emergence of a strong technology innovation system reflective of the desire to evolve a strong Science and Technology based economy.

Precisely, NOTAP thoroughly trails the influx of technology into Nigeria and strategies for its modification to suit domestic usage. It harmonizes Nigeria's ingenuity for technology transfer; evaluation and registration of technology transfer agreements; promotion of innovation, patenting and intellectual property; technology advisory and support services; commercialization of R & D results. This manifestly shows how relevant the NOTAP Act¹¹⁰ is to the Nigerian oil and gas industry, in terms of transfer of technology being one of its cardinal objectives. Turning the table of dominance in the oil and gas sector cannot be achieved without effective succession and takeover from the expatriates except there are able hands to place the tools on.

The Transfer of Technology in Nigeria is governed by the Act.¹¹¹ The principal function of NOTAP pursuant to the Act¹¹² is to monitor the transfer of foreign technology to Nigeria. The Act¹¹³ makes it mandatory to register all contracts or agreements for the transfer of foreign technology entered into by any person in Nigeria with NOTAP as well as registration of every contract or agreement entered into by any person in Nigeria with another person outside Nigeria within 60 days from the execution or conclusion of the contract. The Act¹¹⁴ provides that every

¹⁰³ Section 49 and 50, *ibid.*

¹⁰⁴ Sections 3(1)(2), 14, 15, 16 and 42, *ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Section 10(1)(a) and 12, *ibid.*

¹⁰⁷ Section 49 and 5, *ibid.*

¹⁰⁸ NOGCIDA 2010.

¹⁰⁹ Section 51, *ibid.*

¹¹⁰ Cap N62 LFN 2004.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

contract is registerable if its purpose or intent is, in the opinion of NOTAP, wholly or partially in connection with the supply of technical expertise.

4.6 Environmental Impact Assessment (EIA) Act 1992 Cap E12 LFN 2004

The Environmental Impact Assessment Act 1992 is a bedrock on the Nigeria's environmental protection legal framework requiring both public and private projects likely to have significant impact on the environment to undergo environmental impact assessment before approval for execution.¹¹⁵ The EIA requires that every oil and gas production project must undergo a mandatory impact assessment on the environment where the project is to be carried to assess the likely negative effect of the project irrespective of the intending benefits of the project to the inhabitants, the country, state, community or industry which may be the immediate beneficiary of the project so as to assuage the hardship before commencing the project.¹¹⁶ The laudable objectives of the Act¹¹⁷ includes but not limited to decisions by any person, entity, corporate body, government at the federal, state, local to embark on any project that will impact the environment.¹¹⁸

4.7 Companies Income Tax Act (CITA), Cap C21 LFN 2004

By virtue of section 302(1) of PIA 2021, all entities such as upstream, midstream, downstream petroleum operations, including concessionaires, licensees, leases, contractors or subcontractors, partnerships, company wound up in the name of the liquidator or receiver are liable to income tax under the Companies Income Tax Act.¹¹⁹ The taxes are payable to the FIRS and the commission.¹²⁰ The FIRS and the commission shall be responsible for the assessment and collection of hydrocarbon tax,¹²¹ Company income tax¹²² and education tax. The CITA is significant in the management and administration of the fiscal framework of the Nigerian oil and Gas industry.¹²³

4.8 The Nigerian Maritime Zone Bill 2023

The Nigerian Maritime Zone Bill 2023 is a single and comprehensive law that provides for the Nigerian maritime zones.¹²⁴ The Nigerian Maritime Zone Bill 2023 reaffirmed the vesting rights

¹¹⁵ Section 2(1) to (4) of the EIA 1992, Cap E12 LFN 2004.

¹¹⁶ Section 2(1) to (4), *ibid*.

¹¹⁷ Section 1(a) to (c) of the EIA Act, *ibid*

¹¹⁸ The Act enhances the development of procedures to facilitate exchange of information, decision making process, notification and consultation among entities and individuals involved in proposed activities which may be trans-state, across boundaries, neighbouring communities, towns and villages with potential environmental effects, the Act seeks to advance a mitigating procedure and measures to assuage potential and like resultant effects on the environment arising from the construction of the proposed project, it equally aims to minimise injury, harm, hurt and environmental threats to lives and other elements of the environment, the Act enhances the fostering of the implementation of consistent remedial policies across the proposed environmental boundaries of the state, local or federal lands, sea, which aligns with existing and applicable laws and decision making processes and procedures.

¹¹⁹ Cap C21 LFN 2004.

¹²⁰ Sections 24(2)(b),(d)(e), 4, 7(w), 259(a)(i)(ii),(b)(i)(ii) of the PIA 2021.

¹²¹ *Ibid*.

¹²² Section 259(a)(ii), *ibid*.

¹²³ Section 9 Company Income Tax Act Cap C21 LFN 2004.

¹²⁴ Internal waters, territorial sea (reduced from 30 nautical miles to 12 nautical miles through the adoption of the Territorial Waters Amendment Decree 1978), Contiguous zone of 24 nautical miles, 200 nautical miles exclusive economic zone and the Continental Shelf. A Bill for an Act to repeal the Exclusive Economic Zone Act Cap E17 LFN 2004 and the Territorial Water Act Cap T5 LFN 2004 and enact the Nigerian Maritime Zones Act to provide

and control of Mineral resources including oil and gas resources by the Federal Government of Nigeria. The Federal Government of Nigeria holds ownership of the mineral resources in the territorial waters, continental shelf, and exclusive economic zone, with the contiguous zone subject to specific regulations.¹²⁵ Specifically, the Federal Government has sovereign and exclusive rights to explore and exploit natural resources in the seabed, subsoil, and superjacent waters of the exclusive economic zone.¹²⁶ Nigeria has in accordance with the UNCLOS 1982, established five maritime zones namely; internal waters,¹²⁷ territorial sea¹²⁸ Contiguous zone of 24 nautical miles,¹²⁹ 200 nautical miles exclusive economic zone¹³⁰ and the Continental Shelf.¹³¹

Territorial Sea Zone consists of the water within a distance of 12 nautical miles from the baseline as delineated by the provisions of this Bill.¹³² The Federal Government exercises sovereignty over the territorial sea, including the seabed and subsoil, meaning it has ownership of oil and gas resources found therein, the Supreme Court emphasised that the low water mark of the seaward boundary is the base point for measuring the offshore seabed.¹³³

By the Act, the continental shelf of Nigeria to comprise of the seabed and subsoil of the submarine area that extend beyond Nigerian territorial sea adjacent to Nigeria's coast, with resources considered under Federal Government control.¹³⁴ Nigeria has sovereign and exclusive right over the continental shelf for the purpose of exploring and exploiting the minerals and other non-living natural resources of the seabed and subsoil of the continental shelf.¹³⁵ Recently, Nigeria received report from the High Powered Committee on the Extended Continental Shelf Project (HPPC) on May 15, 2024 on the quest for extension of territories to increase oil and gas resources, though not new, but has been a source of political engagement¹³⁶ and litigation in many jurisdictions like Canada, United States of America and Australia.¹³⁷

The Act explicitly vests sovereign and exclusive rights for resource exploration and exploitation in the Federal Government within the EEZ, which extends up to 200 nautical miles from the coast.¹³⁸ In essence, the Nigerian Maritime Zone Bill consolidates the Federal Government's ownership and control of mineral resources within these maritime zones.¹³⁹

for the Maritime Zones of Nigeria and other related matters, 2021, passed the third reading and passed by the Senate in 16th November 2021.

¹²⁵ Sections 3, 5, 7 and 13 of the Nigerian Maritime Zone Bill 2023.

¹²⁶ Section 7, *ibid*.

¹²⁷ Section 2, *ibid*.

¹²⁸ Section 3, *ibid*.

¹²⁹ Section 5, *ibid*.

¹³⁰ Section 7, *ibid*.

¹³¹ Section 13, *ibid*.

¹³² Section 3, n 122

¹³³ *AG Federation v AG Abia State & 35 Ors* No. 2 (2002) FWLR (Pt.102) SC 1.

¹³⁴ Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999; see also *AG Federation v AG Abia State & 35 Ors*. (Supra)

¹³⁵ Sections 13 to 15, *ibid*, n 122.

¹³⁶ S. A. Ogba, 'Nigerian Offshore Seabed: The Challenges of Ownership and Resource Control', (2014) 2(1), *American Journal of Humanities and Social Sciences*, 13-18.

¹³⁷ See *A.G B.C v A.G Canada* (1914) A.C. 153; *A.G U.S.A v A.G California* 332 U.S. 804(1947) and *A.G U.S.A v A.G Texas* 339 U.S. 707(1950); *A.G New South Wales v Common Wealth* (1975) HCA 58; 135 CLR 337; 50 ALJR 218; 8 ALR 1.

¹³⁸ Section 7, *ibid*, n 122.

¹³⁹ Sections 8, 9, 10 and 1, *ibid*.

4.9 The Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007

The NEITI is an Act to provide the framework for transparency and accountability in the operations and activities in the Nigerian oil and gas industry by imposing reporting and disclosure obligations on all oil and gas companies upon request by NEITI of revenue due to or paid to the federal government.¹⁴⁰ It also has the responsibility to evaluate without prejudice to any relevant contractual obligations and sovereign obligation, the practices of all extractive industries, companies and the government respectively regarding acquisition of acreage, budgeting, contracting, material procurement and production cost profile in order to ensure due process, transparency and accountability.¹⁴¹ It equally ensures transparency and accountability in the management of the investment of the Federal Government in all the extractive industries.¹⁴²

4.10 Land Use Act 1978

By virtue of section 14 of the Act¹⁴³ and subject to the terms and conditions of contract awarded under section 8 of the Act,¹⁴⁴ the exclusive rights of the occupier is subject to the right of the Federal Government to extract minerals, which of course include black gold from the occupier's land.¹⁴⁵ *A fortiori*, it vests ownership of such mineral or natural resources on the Federal Government though the land is exclusively owned by the occupier.¹⁴⁶ That is why oil prospecting companies and/or bodies are only substantially obliged to pay damages and/or compensation for *surface rights*.¹⁴⁷ It does not recognize the rights of those communities below the surface. In other words, where there are minerals and other resources underneath the ground, these rights are not recognized.¹⁴⁸ The Land Use Act 1978 is an existing federal enactment¹⁴⁹ by virtue of the provisions of the constitution¹⁵⁰ and *a fortiori* subordinate to the Constitution.

4.11 Department of Petroleum Resources (DPR) Guidelines and Regulations

The DPR Guidelines and Regulations form an integral part of the body of laws regulating the oil and gas industry in Nigeria. By virtue of the provisions of section 311 of the PIA 2021, the DPR Guidelines and Regulations continue to have effect as existing law in the oil and gas industry as far as they do not conflict with the provisions of the PIA 2021 until repealed, revoked or replaced

¹⁴⁰ Section 3(a) NIIT 2007.

¹⁴¹ Section 3(b), *ibid*.

¹⁴² Section 3(c), *ibid*.

¹⁴³ Land Use Act 1978.

¹⁴⁴ *Ibid*.

¹⁴⁵ Section 14 LUA 1978.

¹⁴⁶ Sections 1 and 14 LUA 1978; Section 44(3) of the CFRN 1999 and Section 1 of the PIA 2021.

¹⁴⁷ Compensation for the usufruct right of use of the land as defined under section 18 thereof, to include, any building and any other attached to the earth or permanently fastened to anything so attached, but does not include minerals. Compensation does not recognize the rights of those communities below the surface. In other words, where there are minerals and other resources underneath the ground, these are not recognized; see also section 44(1)(a) of the CFRN 1999 as amended.

¹⁴⁸ Sections 1 and 14 LUA 1978.

¹⁴⁹ See *Nkwocha v Government of Anambra State & Ors* (1984)1 SCNLR 634 where the Supreme Court by a majority of six to one, held that although the Land Use Act 1978 became entrenched into the 1979 (now 1999) constitution by virtue of the provisions of section 274(5) (now 315 (5)) thereof, it was not an integral part of the Constitution, but an existing federal enactment.

¹⁵⁰ Section 274(1)(a) and (5)(d) of the 1979 Constitution and section 315 (5) (d) of the CFRN 1999.

by the PIA 2021 or any subsidiary legislation made under the PIA 2021. There are several DPR Guidelines and Regulation regulating the various the oil and gas industry value chain.¹⁵¹

4.12 Oil in Navigable Waters Act 1968

The Oil in Navigable Waters Act was enacted to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil in 1954 to 1962. Section 1(2) of the Act¹⁵² prohibits the discharge of oil from a Nigerian ship into a prohibited sea area and the discharge of oil into the Nigerian waters by any vessel, place on land or machine used for the transfer of oil from one vessel to another.¹⁵³ The Act¹⁵⁴ provides for situation where discharge of oil could be excused. Regulation 2 of the Oil in Navigable Waters Regulations¹⁵⁵ provides for specific equipment to be installed in the Nigerian ship other than tanker to prevent oil pollution. This Act¹⁵⁶ is significant in considering the legal framework of the Nigerian oil and gas industry as a necessary law to prevent pollution at sea.

4.13 Harmful Wastes (Special Criminal Provisions) Act 1988

The Harmful Wastes (Special Criminal Provisions) Act¹⁵⁷ was enacted to prohibit the discharge of harmful waste on land and territorial waters and dumping, depositing, transporting, importation and sale of any harmful waste.¹⁵⁸ This law is also significant for the management and curtailment of environmental pollution.

4.14 International Convention for the Prevention of Pollution from Ships (ICCPS), 1973 and 1978 (Ratification and Enforcement) Act

This Act ratified the ICCPS and gave it the legal effect it deserves to apply in the Nigeria legal space as law. It was established with the objective of reducing the accidental release of oil and other harmful substances from ships and eradicating pollution of the marine environment caused by the discharge of harmful substance into the environment.

4.15 National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act 2006

Section 1 of the NOSDRA Act¹⁵⁹ provides the legal framework for the management of waste discharged from oil exploration and production operations to curb the destructive effects on the environment within and outside the areas of operation. It established the agency called NOSDRA which is an agency under the Federal Ministry of Environment responsible for the coordination and implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in line with international Convention on Oil pollution preparedness, response and co-operation.¹⁶⁰

¹⁵¹ Procedure Guidelines for the design and construction of oil and gas surface production facilities, Guideline for the establishment of hydrocarbon process plant (petroleum refinery and petrochemical plant) and Guideline for approval to construct and operate petroleum product filling station.

¹⁵² Section 1(1)(2).

¹⁵³ Section 2 Oil of the Navigable Waters Act 1968.

¹⁵⁴ Section 3 (1) and (2) of the Oil in Navigable Waters Act 1968.

¹⁵⁵ Reg. 2 (1)(2) and (3) Oil in Navigable Waters Regulations 1968.

¹⁵⁶ Ibid.

¹⁵⁷ Sections 1, 2, 3 and 6 of the Harmful Wastes (Special Criminal Provisions) Act 1988.

¹⁵⁸ Ibid.

¹⁵⁹ Sections 2 and 5 of the National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act 2006.

¹⁶⁰ Sections 6 and 7 NOSDRA Act 2006.

4.16 The International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act 2006

This Act¹⁶¹ was enacted to domesticate the International Convention on Civil Liability for Oil Pollution Damage 1969 established in recognition of the risks posed by the transportation of oil in large quantities. It provides for the determination of pollution liability and compensation to parties who suffered damages resulting from the discharge of oil from ships.

4.17 International Fund for Compensation of Oil Pollution Damage 1971 (Ratification and Enforcement) Act 2006

The Act¹⁶² was established to give effect to the International Convention on the establishment of an international fund for compensation for oil pollution damage 1971 which purpose is to create a Fund to compensate contracting states that are victims of oil pollution damage.¹⁶³ It is applicable to pollution damage caused in the territory and territorial waters of Nigeria and to provide preventive measures to minimise the effects of damage caused by pollution.¹⁶⁴

4.18 Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2018

The EGASPIN¹⁶⁵ provides standards for the environmental quality control, provide a comprehensive document on pollution abatement technology and to standardize the environmental pollution abatement monitoring procedure. This is sought to be achieved by monitoring the discharges into the environment in the seven stages of operations that is exploration, drilling, and development, termination operations, hydrocarbon processing, oil transportation and marketing operations.

4.19 Gas Flaring, Venting & Methane Emission (Prevention of Waste and Pollution) Regulation 2022

The Regulation is aimed at the reduction of the environmental and social impact of gas flaring, protection of the environment, prevention of the waste of natural resources and the creation of social and economic benefits from gas.¹⁶⁶ The PIA gives the Upstream Commission, the right to take free of charge natural gas that is destined for flaring at the flare stack.¹⁶⁷

Notwithstanding the provisions of section 310 of the PIA 2021 that repealed some legislation that were hitherto relevant legal frameworks for the Nigeria Oil and gas industry; section 311 of the PIA 2021, saved the Petroleum Act 1969, the Petroleum Profit Tax 1958, the Oil Pipeline Act, Deep Offshore and Inland Basin Production Sharing Contracts Act 1999 and its amendments and any other law or Regulations that are consistent with the principles of section 92(6) of the PIA

¹⁶¹ The International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act 2006.

¹⁶² Article 1(a) to (c) of the International Fund for Compensation of Oil Pollution Damage 1971 (Ratification and Enforcement Act) 2006.

¹⁶³ Article 2(1) and (2) of the International Fund for Compensation of Oil Pollution Damage 1971 (Ratification and Enforcement) Act 2006.

¹⁶⁴ Ibid.

¹⁶⁵ The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2018.

¹⁶⁶ Reg. 1(a) to (e) of the Gas Flaring, Venting & Methane Emission (Prevention of Waste and Pollution) Regulation 2022, contains the laudable objectives of the Regulations.

¹⁶⁷ Section 105(2) of the PIA 2021; Reg. 2(1) and (2) of the Gas Flaring, Venting & Methane Emission (Prevention of Waste and Pollution) Regulation 2022.

2021 until the termination or expiration of all oil prospecting licence and oil mining leases pursuant to subsection 2(b) of section 311 of the PIA 2021 and furthermore within 24 months from the effective date, existing Lease and Licence and Permit holders engaged in activities in midstream or downstream petroleum operations prior to the effective date shall apply and the Authority shall where applicable, issue the appropriate licence or permit.

5. Challenges of the Nigerian Oil and Gas Legal Framework

The Nigerian oil and gas industry is currently regulated by a more comprehensive framework of laws, regulations, guidelines, standards and protocols. While the country has made significant progress in developing its legal framework, there are still several challenges that hinder the industry's efficiency and effectiveness.

5.1 The Nigerian Oil and Gas Legal Framework is too broad and wide

The Petroleum Industry Act 2021 is a comprehensive legislation consisting with a wide range of laws governing the oil and gas sector, including the saved part of the Petroleum Act 1969, the Nigerian National Petroleum Company Limited incorporated, and the Land Use Act 1978, the Nigerian Oil and Gas Industry Content Development Act 2010, Environmental Impact Assessment Act 1982, National Environmental Standards and Regulations Enforcement Agency Act 2007 and many more, not even considering over 100 Regulations and Guidelines, standards, protocols and requirements to ensure safe and efficient operation. There are too many laws and regulations to enforce and too many institutions and agencies to manage.

5.2 Regulatory Agencies

The present legal framework presented two new Regulatory agencies¹⁶⁸ to oversee the industry with the NNPC Ltd as a state commercial company. The NNPC oil and gas trading for the government seem to be more strategised than when everything centered around DPR and NNPC alone. The challenge remains that the new regime renamed the agencies but the same set of person, who could not purge themselves of corruption, sectionalism, favouritism and lack of accountability and transparency that affected the *hitherto* regime are still in charge.¹⁶⁹

5.3 Environmental Protection

Despite the role of the Environmental Impact Assessment Act 1982, the National Environmental Standards and Regulations Enforcement Agency Act 2007, Nigerian Oil Spill Detection and Response Agency (Establishment Act) 2006 with its agency, the various domesticated Environmental Instruments, Regulations, Safety Protocols, Guidelines and safety standards aimed at protecting and safe guarding the environment from the negative impacts of oil and gas operations, yet the environmental concerns is still prevalent in the host communities, due largely to complex and unclear legislations, too many to bear and comprehend even by the lawyers and worsened by the self-pocket-gain seeking enforcement officers and government¹⁷⁰ that is

¹⁶⁸ The Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority.

¹⁶⁹ A. Gillies, 'Reforming Corruption out of Nigerian Oil? Mapping Corruption Risks in Oil Sector Governance', U4 Brief Anti-Corruption Resource Center. (2009) <http://www.u4.o/publications/reforming-corruption-out-of-nigerian-oil-.Opportunities-mapping-corruption-risks-in-oil-sector-governance>

¹⁷⁰ O.A. Oyewunmi and O.J. Olujobi 'Transparency in Nigerian Oil and Gas Industry: Is Policy Re-Engineering the Way-Out?' ", (2016) 7(3) *International Journal of Energy Economic Policy*, 630; O.J. Olujobi and O.A. Oyewunmi, 'Annulment of Oil Licences in Nigeria's Upstream Petroleum Sector: A Legal Critique of the Cost and Benefits', (2017) 7(3) *International Journal of Energy Economics and Policy*, 364-369

insincere to the plights of its citizens, otherwise, we should not still be talking of gas flaring at this time¹⁷¹.

5.4 Inadequate Enforcement and Institutional Weaknesses

One of the greatest challenges to our laws is the inadequacy of enforcement mechanism arising from lack of will power, self-seeking motives, lack of adequate experience and training, institutional decays, regional or sectional sentiments, engaging the unqualified to man positions of utmost responsibilities that desire expertise, bureaucratic bottlenecks and corruption.¹⁷² Otherwise, there is no reason why 56 years after the inauguration of the post-independence Petroleum Act 1969 that treasured transfer of technology and succession plan,¹⁷³ Nigeria will still be having such provisions in our oil and gas laws at this time. The agency was renamed but still manned by the same set of persons that operated the *hitherto* entities, we may not expect different result.

5.5 Persistent Environmental and Social Concerns

The oil and gas industry has significant environmental impacts, including oil spills and gas flaring, which are often not adequately addressed by the bureaucracy of the existing laws.¹⁷⁴ The laws governing environmental protection and social responsibility are often inadequate and poorly enforced,¹⁷⁵ for instance, the laws and regulations pertaining to safety and environments still permits flaring of gas in our environment irrespective of the negative impact on the ecosystem, human and animals living in the environment for monetization¹⁷⁶ and a penalty¹⁷⁷. The effect of third party interference still occasioning spillage coupled with the failure of institutional maintenance of the pipeline integrity through periodic statutory contracts occasion persistent environmental concerns.

¹⁷¹ Section 104(4), 105(1) and 108 of the PIA 2021

¹⁷² O.J. Olujobi, "Nigeria's Upstream Petroleum Industry Anti-Corruption Legal Framework: The Necessity for Overhauling and Enrichment", *Journal of Money Laundering Control* Emerald Publishing Limited. <https://www.emerald.com/insight/1368-5201.htm>

¹⁷³ Regulation 26 of the Petroleum (Drilling and Production) Regulations 1969, saved by section 2(b) of section 310 of PIA 2021 Regulation 26 and Paragraph 38 provided that within 12 months of grant, holders of an Oil Prospecting Licence (OPL) and Oil Mining Lease (OML) shall submit a local content plan for the recruitment and training of Nigerians for the approval of the minister and that within 10 years of the grant of OML, 75% of the total staffs in the managerial, professional and supervisory grades and not less than 60% of the workforce in any other grade and all skilled, semi-skilled and unskilled workers in connection with the lease must be Nigerians.

¹⁷⁴ Ibid, n 172; P.E. Agbonifo, 'Institutional and Regulatory Compliance Gap in Natural Resources Governance: Empirical Evidence and Lessons from the Nigeria Oil and Gas Industry', (2024) 5(12) *International Journal of Religion*, 1006-1020; U. Outka, 'Environmental Law and Fossil Fuels: Barriers to Renewal Energy', (2012) 65(6) *Vanderbilt Law Review*, 1679; I. Amundsen, "Revenue Management, Corruption Challenges and Redistribution: International Policy Conference on Competitiveness and Diversification: Strategy Challenges in a Petroleum Rich Economy", Organised by the Ministry of Trade and Industry in Ghana and UNIDO, held in Accra, 14-15 March 2011.

¹⁷⁵ Agbonifo, *ibid*, n 174; E.D. Oruonye and Y.M. Ahmed, 'The Role of Enforcement in Environmental Protection in Nigeria', (2010) 7(1) *World Journal of Advances Research and Review*, 48-56; E. Obuah, 'Combating Corruption in a Failed State: The Nigerian Economic and Financial Crimes Commission', (2010) 12(1) *Journal for Sustainable Development in Africa*, 38-53.

¹⁷⁶ Section 104(4) and 108 of the PIA 2021, it is preposterous and unfortunate that the money generated from the gas flaring is equally intended by the Act for environmental remediation and relief of host communities impacted by the flaring where the Settlor defaulted, as provided in section 104 (4) of the PIA, if this is genuinely intended why allow the Settlor flare gas, or default pay fine and use to remediate the impacted host communities.

¹⁷⁷ Sections 105(1) of the PIA 2021.

5.6 Prevailing and Increasing Host Community Concerns

Community concerns still impend the triumph of the extant regime in the oil and gas industry because the operational activities of oil and gas exploration in the industry still have significant negative social impacts¹⁷⁸ on host communities. It is quite worrisome that the much anticipated and talked about Host Community Development Trust which was intended to foster sustainable prosperity within the host communities, provide direct social and economic benefits from petroleum operations to host communities and enhance peaceful and harmonious co-existence between the settlers and the host communities among others¹⁷⁹ does not seem to yield the expected dividend due to the bureaucratic and high handedness of the settlers in managing and administering the affairs of the HCDDT coupled with the fact that the Settlers make an uncertain annual contribution of the 3% to the applicable Host community trust fund,¹⁸⁰ the lack of transparency in determining the 3% of the settlers actual annual production expenditure, no transparency in determining what percentage of the 3% is actually paid at any given time, worsened by the very fact that the entire HCDDT of the settlor in a geopolitical zone are grouped together into one HCDDT to share the 3% which appear far too small to impact the community.¹⁸¹ This scenario is aggravated by the fact that the settlers, tacitly pursuant to the Petroleum Industry Act¹⁸² influence the host communities' needs assessment,¹⁸³ fund distribution matrix, the community development plan¹⁸⁴ and community development project. More so, due to the inadequacy of the available fund, communities are compelled to pick and choose from designated projects to match the available fund within the community fund instead of executing the priority projects of the communities.

6. Conclusion

The extant legal regime of the Nigerian oil and gas industry has been vigorously considered in this paper from the standpoint of successes, strength and weakness, so as to drive an enviable, efficient and effective industry that is peaceful, safety driven, environmental friendly, host community compassionate for hitch-free and seamless exploration and production of petroleum products. It was equally observed that the institutions and regulators should be up and doing to ensure that the available legal framework is adequate to effectively and efficiently regulate the industry because there are so many laws and regulations to obey and observe. To ensure peaceful, harmonious and optimum production, it is recommended that, there should be;

a) Regular review and update of laws

There is the need to make the existing laws and regulations regularly reviewable and updated to address newly birthed inconsistencies and contradictions, misconceptions, miss-interpretations so as to provide clarity and certainty of the rights and obligations of investors, stakeholders and even the courts. Our lawmakers should be duty bound to review the circumstances that lead to the failure of any defunct legislation so as to address the anomalies in such law rather than evolving new laws and foist same on the citizens to start afresh and study the new law instead of an

¹⁷⁸ Displacement and human rights abuses, environmental injustices, exclusion and no meaningful participation in the industry, restiveness, criminality, banditry, gangsterism, vandalism etc.

¹⁷⁹ Section 234(1)(a) to (d) of the PIA 2021.

¹⁸⁰ Section 240(2) of the PIA 2021.

¹⁸¹ Reg. 24(4) of the Nigerian Petroleum Host Communities Development Regulation 2022.

¹⁸² Section 245 of the PIA 2021.

¹⁸³ Section 251 of the PIA 2021.

¹⁸⁴ Reg. 20(1) and (2) of the Nigeria Upstream Petroleum Host Communities Development Regulations 2022.

amendment that will adjust the existing law to function effectively. Many a time, such law comes out to perform less than the *hitherto* law, leading to another quest for reform due to copy and paste attitude legislative attitude.

b) Strengthening of regulatory agencies

The regulatory agencies should be strengthened through regular routine training and retraining, transparent engagement processes and procedures, doing away completely with quota system, federal character, ethnicity, favouritism, and focus on strengthening the institutions so that it can function on its own with strict adherence to standards of operations that abhors non-performance and ensures effective enforcement of the laws and regulations.

c) Improvement of environmental and social protection standards

The laws governing environmental protection and social responsibility should be strengthened to ensure that the industry operates in a responsible and sustainable manner. There is need to improve on the environmental regulations and their enforcement mechanisms, there is also urgent need to end gas flaring, government should stop monetizing the ending of gas flaring in Nigeria by asking for fees as a waiver to continue flaring.¹⁸⁵ Where spill has devastated the host community, the remediation and recovering of the ecosystem should be speedy and instantaneous and not be politicized.

d) Increase Transparency and Accountability in the Operations

Transparency and accountability should be increased through measures such as disclosure requirements, independent audits, openness, regular and sincere reporting of decision processes.

¹⁸⁵ Section 104(4), 105(1) and 108, *ibid* n 162.