LEGAL AND INSTITUTIONAL FRAMEWORKS GOVERNING OIL AND GAS IN NIGERIA

BY

CHUKWUEMEKA EZUGO FRANKLIN

GOU/U21/LAW/338

A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, UGWU-OMU NIKE, ENUGU IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL. B) GODFREY OKOYE UNIVERSITY

JULY 2026

DECLARATION

I, CHUKWUEMEKA EZUGO FRANKLIN with registration number GOU/U21/LAW/338. Hereby certify that the project titled ``LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING OIL AND GAS IN NIGERIA`` was written by me, with the direct and diligent supervision of Mrs. Nwajiaku Nnenna. In partial fulfilment of the requirement for the award of Bachelor of Law (LL. B) degree. This essay has not been submitted for the award of any degree in this university or any other university.

CHUKWUEMEKA EZUGO FRANKLIN

GODFREY OKOYE UNIVERSITY
LIBRARIAN
Date________
ENUGU

CERTIFICATION

I, Chukwuemeka Ezugo Franklin, with registration number GOU/U21/LAW/338, hereby certify that this project research done by me, with the direct and diligent supervision of Mrs. Nwajiaku Nnenna, has been approved by the administrative and academic staff of the Faculty of Law, Godfrey Okoye University, Enugu. In partial fulfilment of the requirement for the award of Bachelor of Law (LL. B) Degree.

Apart from the references made and acknowledged herein within this research work, this research work is an original work and has not been presented in part or in full, for any degree of this University or any other University.

______________________	20/07/2026
Mrs. Nwajiaku Nnenna	**Date**
Project Supervisor	
______________________	21/7/26
Dr. G.O. Omeh	**Date**
Ag. Dean, Faculty of Law	
______________________	22/7/26
External Examiner	**Date**

iii

DEDICATION

I give my deepest thanks to Almighty God, the fountain of all wisdom, for His unfailing favour, mercy, protection, and guidance throughout my period of rigorous study. I am profoundly grateful to my parents and siblings, whose steadfast love and support sustained me during my years at university and especially throughout the challenges of my research journey.

ACKNOWLEDGEMENT

I owe my deepest appreciation to God for His unfailing love, grace, provision, and guidance throughout this journey. My sincere gratitude goes to Mrs. Nwajiaku Nnenna Esq., who served as my project supervisor at different stages. Her consistent feedback and valuable suggestions greatly enriched this work.

I am profoundly grateful to Professor Frank Asogwa, Dean of the Faculty of Law, whose emphasis on moral character has been a constant source of inspiration. I also extend my thanks to Professor Okere, Head of Department, and to the lecturers, Dr. Ajibo, Mrs. Nwakaego, and Rev. Munachi, for the solid academic foundation they provided. My appreciation equally goes to the writers and scholars whose works have been cited in this project.

To my friends, Inyene-Obong George, Aluis Nwabekee, Ezema Philip, Urakpa Fechi, Isolokwu Micheal, Eyinnah Oak, Ukpaka Peter, Amamchukwu Chisom, Nwaegbe Maryann, Nneji Vera, Orihoru Benita, Okaro Awele, Aniekwe Johnpaul, and John Maxwell, I am deeply thankful for your unwavering support and companionship.

Finally, I am eternally indebted to my parents and siblings, who have been my rock and source of inspiration throughout my academic career. Their patience, encouragement, and steadfast love have been my greatest motivation.

Everything is sincerely appreciated.

TABLE OF CONTENTS

ABSTRACT

The oil and gas industry remains the backbone of Nigeria's economy and constitutes the country's principal source of revenue and foreign exchange earnings. Despite its economic importance, the sector has long been characterised by regulatory uncertainty, institutional inefficiency, environmental degradation, host community unrest, corruption and inadequate governance. These challenges necessitated the enactment of the Petroleum Industry Act (PIA) 2021, which introduced comprehensive legal and institutional reforms aimed at restructuring the petroleum industry. The study adopted the doctrinal method of legal research by relying primarily on statutes, judicial authorities, textbooks, journal articles, official reports and other relevant secondary sources. The study is anchored on the Good Governance Theory, the Resource Curse Theory and the Public Interest Theory of Regulation, which collectively provide the analytical framework for evaluating the effectiveness of the Petroleum Industry Act 2021. The study finds that the Petroleum Industry Act 2021 represents the most comprehensive reform of Nigeria's petroleum legal framework since the discovery of crude oil. The Act introduced institutional restructuring, a new fiscal regime, commercialisation of the Nigerian National Petroleum Company Limited, environmental obligations and the Host Communities Development Trust. Notwithstanding these reforms, the study further finds that several shortcomings continue to undermine the effectiveness of the Act. Consequently, the objectives of transparency, accountability, sustainable development and equitable distribution of petroleum resources have not been fully realised. The study concludes that although the Petroleum Industry Act 2021 has significantly modernised Nigeria's petroleum legal regime, its effectiveness depends largely on proper implementation, institutional independence and continuous legislative review.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The oil and gas sector is the most significant sector in the Nigerian economy, contributing significant revenue, foreign currency and energy resources. Oil and gas are abundant in Nigeria, one of Africa's biggest crude oil producers and a member of the Organization of Petroleum Exporting Countries (OPEC), with most of the deposits in the Niger Delta region.[1]

The constitution of the Federal Republic of Nigeria, 1999 (as amended), has the basis of the governance of this sector, where all mineral resources are owned and controlled by the Federal Government. This constitutional base is implemented through a number of laws, including the Petroleum Industry Act (PIA) 2021.[2]

The Petroleum Industry Act is a historic reform which superseded the antiquated Petroleum Act of 1969 and updated the legal, fiscal and institutional structure of the industry.[3]

The PIA set up regulatory bodies like the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

[1] Mohsin Dahli, Shafiqul Hassan, and Umashankar Subramaniam, *Comparative Analysis of Oil and Gas Legal Frameworks in Bangladesh and Nigeria: A Pathway towards Achieving Sustainable Energy through Policy.* Sustainability, <https://doi.org/10.3390/su152115228>accessed 24 October 2025

[2] Constitution of the Federal Republic of Nigeria,1999 (as amended), Section 44(3)

[3] Adewale Ajayi, *Petroleum Industry Act (2021) – A Game Changer?* <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/petroleum-industry-act-(pia)-2021-a-game-changer.pdf> accessed 24 October 2025

and the Nigerian Content Development and Monitoring Board (NCDMB) to ensure regulatory compliance, promote effective governance and the maintenance of transparency.[4]

The Act also put in place a new fiscal structure to enhance the transparency of revenues and make them more investment friendly. This involves new royalty provisions, more transparent tax systems, gas development incentives and simplified production sharing agreements. In addition, the PIA has overhauled and streamlined the licensing processes for petroleum prospecting and production, adding more clarity and transparency to the licensing process, and eliminating unnecessary delays. One of the most significant innovations of the Act is the Host Community Development Trust Fund (HCDTF) which requires a 3% contribution by oil companies from their operating expenditure of the year for the benefit of host communities.[5] The idea behind this is to minimize conflict, encourage local development and ensure socio-economic benefits are felt directly in oil producing areas.

PIA also enhances environmental governance by introducing more stringent requirements on operators in terms of environmental remediation, reduction of gas flaring and adherence to emission limits. The Act aims to limit the pollution of the environment and enhance energy supply in the country by encouraging the use of gas in the domestic market and discouraging the use of routine gas flaring by increasing penalties. Despite these good intentions in the new law, the Nigeria oil and gas industry is still facing many problems including poor compliance to regulations, environmental pollution, gas flaring, corruption and insecurity in the oil producing

---

[4] P Udejimba, '*Oil & Gas in Nigeria: An Analysis of the Petroleum Industry Act (PIA)' 2021* <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://lawhubdev.org/wp-content/uploads/2025/07/Oil-Gas-in-Nigeria-A-Comprehensive-Analysis-of-the-Petroleum-Industry-Act-PIA-2021.pdf> accessed 24 October 2025

[5] Betty Sunny-Hart, '*Legal and Institutional Framework Of The Oil And Gas Industry In Nigeria: A Critical Overview*' [2024] (Vol. 9) (ISSN: 2645-310X)

communities.[6] Issues raised underscore the need to closely analyze the current legislation and institutional frameworks to identify their effectiveness and appropriateness to support sustainable development in the sector.

1.2 Statement of the Problem

Nigeria has rich oil and gas resources but they have failed to translate into social equity or sustainable economic progress. Although a large number of challenges remain, the Petroleum Industry Act 2021 was aimed at enhancing the operating environment of the sector and the tax collection process. Some of the most critical challenges are weak infrastructure, corrupt governments and lack of environmental regulations and anti-gas flaring laws. Oil spills and gas flaring have had a devastating effect on the Niger Delta and have resulted in a lot of ecological degradation, unemployment and health issues for the residents. The concerns of regulatory overlaps, competence gaps and the likelihood of regulatory capture have been expressed in the wake of the establishment of several new regulatory agencies like the NUPRC and the NMDPRA and the privatisation of the Nigerian National Petroleum Corporation (NNPC) Limited. Regional strains continue to exist because of disproportionate access to resources in oil rich regions and lack of representation in the political system. The aforementioned problems call for a critical review of the efficacy of Nigeria's current institutional and legal framework for promoting transparency, accountability, and equitable resource management.

---

[6] Kasirim Nwuke, '*Nigeria's Petroleum Industry Act: Addressing Old Problems, Creating New Ones*' <https://www.brookings.edu/articles/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/#:~:text=Ambiguous%20and%20imprecise%20language.,Lingering%20North/South%20disagreement.>Accessed 24 October 2025

1.3 Research Questions

1. What are the recurring issues in Nigeria's oil and gas sector impacting on its sustainable development as a nation?
2. What are the key legal and institutional framework governing the oil and gas sector in Nigeria?
3. What are the main challenges hindering the effectiveness of the legal and institutional framework in addressing governance, fiscal, and environmental challenges in the industry?

1.4 Aim and Objectives of the Study

The aim of this research is to evaluate the legal and institutional framework governing the oil and gas business in Nigeria, focusing on its effectiveness in promoting transparency, environmental sustainability, and equitable development.

The specific objectives are:

1. To identify the recurring issues in Nigeria's oil and gas sector which affect its sustainable development as a nation.
2. To expose the key legislative and institutional structures governing Nigeria's oil and gas sector.
3. To assess the legal and institutional framework and identify challenges hindering their effectiveness in addressing governance, fiscal, and environmental challenges in the industry.

1.5 Research Methodology

The research employs a doctrinal methodology and relies on both primary and secondary sources of data. Primary data includes conventions and treaties, statutes and case law. Secondary sources are lecture notes, internet research sources, journals or essays, seminar papers, textbooks, and various periodicals. For this reason, libraries were chosen as the primary research site for this study. These materials are all analyzed using content analysis.

1.6 Scope and Limitation of the Study

This study pursues the legal and institutional landscape of the oil and gas industry in Nigeria with a particular focus of the changes set by the Petroleum Industry Act 2021. It highlights the laws that govern petroleum resources (Constitution of the Federal Republic of Nigeria 1999 (as amended), Petroleum Industry Act 2021, Nigerian Oil and Gas Industry Content Development Act 2010 and other laws that have relevance to environmental protection, control of resources and revenue regulation). The study also examines the organizational structure, powers and functions of the major regulatory institutions that have been set up to regulate and monitor the sector, including the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), and the Nigerian Content Development and Monitoring Board (NCDMB) along with related agencies that also regulate and monitor the environmental sector.

Furthermore, the study addresses the upstream, midstream, and downstream sectors of the oil and gas industry, in order to gain a better understanding of the application of legal and institutional mechanisms throughout the value chain. Special emphasis is placed on the environmental and sustainability issues associated with petroleum activities such as oil spillage, gas flaring, environmental degradation and socio-economic effects of petroleum activities on the host communities particularly in the Niger Delta region. “In addition, the study takes into account the petroleum legislations history in Nigeria as an enabling backdrop for the current reforms and stretches its temporal scope from the enactment of the Petroleum Industry Act in 2021 to recent developments up to 2025. The research design that is followed is the doctrinal method using statutory provisions, judicial authorities and scholarly materials to analyse the effectiveness of the framework.

Despite its breadth, there are a few limitations to the study. As there is no primary field data, such as interviews or empirical surveys, the research is mainly based on secondary data such as textbooks, journal articles, policy documents, and official publications. This might reduce the amount of practical details of regulatory enforcement and institutional performance that can be captured. In addition, current and comprehensive information on environmental compliance, gas flaring activities and enforcement by regulating agencies are not easily accessible, and may not be published or updated regularly. Another limitation is the general and generic nature of the oil and gas industry because the scope of the study does not allow for the comprehensive coverage of all aspects of petroleum operations. In addition, the Petroleum Industry Act was only recently enacted, and there is not much judicial interpretation and evaluation of the provisions of the act. Although these are the limitations, the study is based on credible and authoritative sources that will provide a thorough and balanced analysis of the subject matter.

1.7 Significance of the Study

This study is not only important, but it has several significant implications. First, it adds to the rising volume of legal literature on natural resource governance in Nigeria by detailing the legal and institutional framework that governs the oil and gas industry. While the Petroleum Industry Act (PIA) 2021 is a groundbreaking reform, its impact will rely on how well it is integrated into the existing framework of laws and institutions. The present research will thus provide an analytical evaluation which will help to identify the areas of similarity, inconsistencies, and implementation gaps in the existing framework.

Secondly, the study is practically relevant to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), and Nigerian Content Development and Monitoring Board (NCDMB). The study exposes structural and enforcement deficiencies, which can spur legislative changes, policy revisions and institutional development to ensure transparency, accountability and sustainability in forestry.

Thirdly, the research will benefit host communities and civil society groups who are promoting environmental justice and equitable benefits sharing in the Niger Delta area. The study reviews the PIA's Host Community Development Trust provisions and other environmental protections, to enhance the understanding of the rights and responsibilities of stakeholders under the law. Lastly, the study's findings are of academic interest to law and energy policy students and researchers. It provides a holistic approach to understanding the relationship between law, institutions and sustainable development in resource-intensive economies. Overall, this work not only fills a gap in the existing research but it also offers a practical blue-print for reform of the ever-shifting governance regime of Nigeria's oil and gas sector to align with international good practices.

1.8 Literature Review

There is a long history of analysing law and institutions in Nigeria's oil and gas sector as it is a major source of government revenue and foreign exchange earnings, and it represents an extreme example of the resource-curse affecting the Niger Delta. The literature points to a move from regulatory measures of colonial times to an incoherent pre-2021 system where the major changes of the Petroleum Industry Act (PIA) 2021 are a standout. This review highlights key academic works on the history of the concept, key policy documents, institutional structures and important debates relating to federalism, local content, environmental protection, transparency and implementation challenges. This exposes enduring deficiencies, especially in enforcement and alignment with global energy changes, which the current extensive essay aims to rectify by a rigorous evaluation of the framework's effectiveness. The framework in the constitutional structure in Nigeria is continually being laid out in academic publications. The amended 1999 Constitution gives the Federal Government sole ownership, control and administration of petroleum resources in trust for all Nigerians in Section 44(3). This centralising provision reinforces the sector's federal supremacy, and has further fueled ongoing debates about fiscal federalism and resource management. While Section 162(2) specifies a minimum 13% derivation principle for revenue sharing to oil-producing states, experts notice its actual weakening and the role it plays in the persistent inequality between the central government and coastal states.[7]

[7] Afe Babalola, *Injunctions and Enforcement of Orders* (2nd edn, Emmanuel Publishing House 2004).

The origins of the framework were traced to colonial legislation such as the Mineral Oils Ordinance of 1914 and subsequent amendments, which gave the British Crown the rights to minerals for international exploitation. Federal control was reinforced by post-independence developments, such as the Petroleum Profit Tax Act of 1959 and the landmark Petroleum Act of 1969 (which gave the Minister of Petroleum the power to grant licenses and regulations), which provided support for international oil companies (IOCs) through joint ventures and production-sharing arrangements. The state-owned enterprise for commercial activities was established by the Nigerian National Petroleum Corporation (NNPC) Act of 1977 with ancillary legislation such as the Environmental Impact Assessment (EIA) Act of 1992, the Land Use Act of 1978, the Oil Pipelines Act and the Associated Gas Re-Injection Act of 1979. According to literature before 2021, the public regulation system is characterized as disjointed, confused and ineffective, with overlapping regulatory demands, weak regulatory enforcement, low accountability and fewer institutions for regulating the environment, which led to a high prevalence of corruption and environmental degradation.[8]

Institutional research, prior to the PIA, indicated that a few key organisations were holding the power; the National Oil Spill Detection and Response Agency (NOSDRA) was responsible for environmental responses, the Nigerian Extractive Industries Transparency Initiative (NEITI) was responsible for revenue accountability; the Department of Petroleum Resources (DPR), part of the Ministry of Petroleum Resources was responsible for regulating upstream and downstream activities; and the NNPC was responsible for commercial activities. Critics cite structural problems

[8] Gaius Ezejiofor, *Protection of Human Rights under the Law* (Butterworths 1964).

which affect the performance of the sector, including the NNPC's dual (and conflicting) role as a commercial and regulatory body, bureaucracy and regulatory capture.[9]

The most notable reform has been PIA 2021, which has taken more than 20 years to become law. Important statutes, including the Petroleum Act 1969, NNPC Act and Petroleum Profits Tax Act are repealed or transitioned, with existing licenses having transitional status. It is called a "single omnibus law" because it brings together governance, administration, regulatory, fiscal and host-community provisions. It introduces two new regulators: the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) and the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) for the downstream sector (replacing the DPR) with explicit duties to license, compliance, health-safety-environment standards and data management, and the commercialisation of the NNPC as a profit-making entity controlled by the government (NNPC Limited), and introduces the hydrocarbon tax (with an accompanying Companies Income Tax) and the requirement of the Host Community Development Trusts funded by 3% of the operators' yearly operating expenditure. It also encourages decommissioning funds, frontier exploration and integration of local content.[10]

There are also additional laws that have captured public interest for their legal thrusts for value addition, knowledge sharing and engagements within their communities, such as the Nigerian Oil and Gas Industry Content Development Act (NOGICD) 2010 which operates through the Nigerian Content Development and Monitoring Board. These objectives are supported by the PIA. Most people believe that regulations and policies relating to environmental issues in accordance with

[9] Fabian Ajogwu (ed), *The Petroleum Industry Bill: Legal and Regulatory Issues* (Centre for Commercial Law Development 2012).
[10] Ernest E Smith, John S Dzienkowski, Owen L Anderson and others, *Cases and Materials on Oil and Gas Law* (7th edn, West Academic Publishing 2020).

the EIA Act 1992 and other newer policies such as gas flaring and cleanup are good for the environment. But researchers say that they are connected to bigger problems with sustainability.[11]

There are permanent conflicts in the themed literature. Regarding federalism and resource control, research questions the efficiency of the derivation principle and advocates for more subnational ownership and co-management, while imagining and theorizing a 'constitutional centralism' as an obstacle to equitable development in producing regions. In the field of federalism and resource control, research explores the limits of the derivation principle and the need for more subnational ownership and co-management, as well as imagining and theorizing a 'constitutional centralism' as a constraint on equitable development in producing regions. Local content analyses support the positive effects of the NOGICD Act on capacity development and point to areas for improvement including lacking thresholds and indigenous organization resistance. Environmental governance scholarship on gas flaring reveals that although the law prohibits gas flaring, it is not being enforced and the reasons for this are due to weak institutions and political interference.[12] Governance and corruption are the major themes, with studies related to NEITI and corruption and broader analyses revealing issues of leakages of revenues, poor transparency in contracting and institutional weaknesses, which the PIA aims to address in its call for transparency, but initial declarations suggest that these changes are not going to be significant.[13]

Optimism is tempered by post-enactment critiques resulting from evaluations in the years 2023-2026. Academics agree that the PIA has a positive effect since it provides a voice to host communities, explains rules and regulations and helps NNPC Ltd. have a commercial focus. If it

[11] Jacqueline Lang Weaver, *Unitization of Oil and Gas Fields in Texas* (LexisNexis 2014).
[12] Patrick H Martin and Bruce M Kramer, *Williams & Meyers Oil and Gas Law* (LexisNexis Loose-leaf).
[13] John S Lowe, *Oil and Gas Law in a Nutshell* (7th edn, West Academic Publishing 2019).

is implemented, it could offer a "gold standard" approach to resource management." They do, however, also note that there are still some ambiguous phrases (such as "host community" and "frontier basin"), implementation delays (such as slow license conversions and gaps in the ability of new authorities), regional conflicts over income distributions, and insufficient provisions.[14] Issues that frequently arise include weak institutional design, lax enforcement, and the potential for political appointments or regulatory takeover. Stronger environmental safeguards, the incorporation of renewable energy sources, and specific modifications to co-ownership are what some people desire.[15]

[14] Kasirim Nwuke, 'Nigeria's Petroleum Industry Act: Addressing old problems, creating new ones', *Brookings* 2021 <https://www.brookings.edu/articles/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/> accessed 25 October 2025

[15] D Oladeji and O Olujobi, 'An examination of the Petroleum Industry Act 2021: prospects, challenges, and the way forward', *Colab* 2023 <https://colab.ws/articles/10.12688%2Ff1000research.132539.1> accessed 25 October 2025

CHAPTER TWO

CONCEPTUAL AND THEOREITICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Petroleum

A thick, dark-coloured viscous liquid formed by the breakdown of organic matter in sediments inside some rocks (occasionally oozing out on to the surface of the ground), which is extracted from the rocks and refined to make fuels, especially petrol, paraffin and diesel, and other substances; mineral oil.[16] It is also described as "an oily, flammable bituminous liquid, which may be virtually colourless or black, found in many locations in the upper layers of the earth, is a complex mixture of hydrocarbons plus small quantities of other materials, and is produced for use as gasoline, naphtha or other products, by means of a variety of refining processes."[17] Under the legal and institutional framework in Nigeria, petroleum means petroleum in all its natural liquid, gaseous and solid states, including natural gas and crude oil, located beneath the earth's surface. The Nigerian Constitution expressly defines petroleum as meaning "mineral oil (or any other hydrocarbon) or natural gas in its natural state in strata" and thus brings it under the purview of the State. It is important because it is the foundation for government ownership, control and regulation of oil and gas resources in Nigeria. The legal definition of petroleum is the foundation for a constitutional rule that places ownership of all mineral resources in the Federal Government, which supports the introduction of legal and institutional frameworks for the exploration, exploitation and management of those resources.[18] In an academic way, petroleum is defined as a

[16] Terence Daintith, *Discretion in the Administration of Offshore Oil and Gas* (Oxford University Press 1984).
[17] Zhiguo Gao, *Environmental Regulation of Oil and Gas* (Kluwer Law International 1998).
[18] Barry Barton, Catherine Redgwell, Anita Rønne and Donald Zillman (eds), *Energy Security: Managing Risk in a Dynamic Legal and Regulatory Environment* (Oxford University Press 2004).

complex mixture of hydrocarbons that is one of the main sources of energy and raw materials used in industry and which, because of its economic significance and effects on the environment, requires extensive legal regulation. As a result, in the Nigerian context of the oil and gas industry, petroleum is not only a natural resource but also a legal asset, under the regulation and institutional control of a wide range of institutions.

2.1.2 Legal Framework

A legal framework is one set of laws, regulations and legal principles that regulate and govern the activities in a specific sector. A legal framework is the form and arrangement of laws and regulations concerning the rights and responsibilities of individuals and institutions in a specific area.[19] The legal instrument in the context of the oil and gas industry in Nigeria includes the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Petroleum Industry Act 2021 and other relevant statutes that are the foundation for the ownership, control, exploration and management of the petroleum resources.[20] "This framework sets out the rights and obligations of stakeholders, defines regulatory standards and offers a way for enforcement and dispute resolution in the sector. It also reinforces the legitimacy of regulatory institutions and guarantees the responsible management of petroleum resources in terms of the national goals of economic development, environmental protection and sustainable resource management. A legal framework is more than just a set of laws; it is the system of laws, institutions, principles and enforcement mechanisms that govern activities in a specific sector. It encompasses primary legislation, but also subsidiary legislation, administrative guidance, judicial interpretations and institutional procedures that all have a role in the actual application of the law. In this way, a legal system can be viewed

---

[19] Donald N Zillman, Alastair R Lucas and George Pring (eds), *Human Rights in Natural Resource Development* (Oxford University Press 2002).
[20] Owen L Anderson, *Oil and Gas Law and Taxation* (West Academic Publishing 2016).

as the norms (rules and standards) and the mechanisms of operation (procedures and enforcement) for regulating behaviour.[21]

The legal framework with regard to oil and gas in Nigeria is made up of constitutional provisions, statutory enactments, regulatory instruments and judicial interpretations all of which are in place to regulate the ownership, control, exploration and exploitation of the petroleum resources in Nigeria. In *Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors*[22], it sets the legal framework for state ownership of petroleum, lays out operator rights and obligations, outlines licensing and revenue collection procedures and standards for environmental protection and host community relations. Importantly, however, for this framework to be effective, laws are not enough, but must also be enforced by competent institutions and enforcement mechanisms. Consequently, legal instruments in Nigeria's oil and gas sector are seen as a coherent system that ties law, governance and institutional performance with regards to the economic, environmental and social goals.[23]

2.1.3 Institutional Framework

Institutional framework is defined as the legal and organizational system of a sector, which controls activities in the sector and provides for law and policy application and enforcement.[24] Institutional framework can be seen as an institutional system and/or the institutional organisation that is created to control activities in a specific sector. Institutions are defined as an established organisation or foundation, particularly a public service organization, and a framework as a basic

---

[21] Peter D Cameron, *International Energy Investment Law: The Pursuit of Stability* (Oxford University Press 2010).
[22] *Attorney-General of the Federation v Attorney-General of Abia State & 35 Ors* (2002) 6 NWLR (Pt 764) 542.
[23] Thomas W Wälde (ed), *The Energy Charter Treaty: An East-West Gateway for Investment and Trade* (Kluwer Law International 1996).
[24] Richard J Heede, 'Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers' (2014) 122 *Climatic Change* 229.

structure underlying a system. In the context of the oil and gas industry in Nigeria, it means the system of law-established regulatory institutions and agencies that are responsible for the supervision of all petroleum activities and the enforcement of relevant laws.[25]

In the oil and gas industry, an institutional framework means the set of governmental and regulatory institutions set up to oversee oil and gas operations, issue licenses, ensure compliance, and enforce environmental and operational standards that are consistent with national laws and policies.[26] The institutional framework in Nigeria for the petroleum industry comprises of statutory organizations established under the Petroleum Industry Act 2021 to regulate both the upstream and midstream petroleum activities, as well as the downstream petroleum activities and ensure compliance with legal requirements, and to facilitate efficient and sustainable management of petroleum resources.[27] Structural meaning is not the only definition of institutional framework: it also refers to the process of enforcement and compliance by which regulatory bodies make sure that legal and environmental requirements are followed.[28] It also acts as a mechanism to enhance transparency and accountability in resource governance, specifically, resource revenue management and public oversight.[29] Environmentally, it is those agencies involved with the prevention or remediation of ecological injury caused by petroleum activities. The framework also illustrates a synchronized institutional system with a clear division of roles and integration between

[25] John Barry, 'Environmental Governance and Sustainable Development' (2003) 12 *Environmental Politics* 1.
[26] Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice* (2nd edn, Oxford University Press 2012).
[27] Neil Gunningham and Darren Sinclair, *Leaders and Laggards: Next-Generation Environmental Regulation* (Greenleaf Publishing 2002).
[28] Paul Stevens, *The Economics of Petroleum* (Oxford Institute for Energy Studies 2003).
[29] Ibid.

institutions.[30] The effectiveness of an institutional framework depends on the ability and independence of the institutions to fulfill their regulatory roles.[31]

2.1.4 Governance and Regulation

Governance has been defined as "the action or manner of governing a state, organization, or people." The term governance, in the context of oil and gas, refers to the way the oil and gas resources are governed via laws, policies and institutions to ensure accountability, transparency and good administration.[32] Governance is the name given to the processes, systems and institutions that are used to make decisions and to exercise control over the country's resources and affairs. Governance in the oil and gas industry is the development and application of policies, laws and regulatory frameworks to effectively manage oil and gas resources.[33] Governance in the extractive industry is the way by which institutions, laws and policies direct the exploration and exploitation of natural resources to guarantee accountability, transparency and sustainable development. Oil and gas governance is the process of legal, institutional and administrative mechanisms by which oil and gas resources are governed, regulated and monitored to meet national goals and environmental limits.[34]

Regulation is the process or action of controlling or restricting by rule or order; a rule or order laid down by authority. In the oil and gas sector, regulation is a form of legal control and supervision over petroleum operations and related activities carried by governmental authorities.[35]

---

[30] SA Adebisi and K N Ezebuiro, 'Analysis of the Petroleum Industry Act and its Impact on the Nigerian Oil and Gas Sector' (2023) 6(3) *Gusau International Journal of Management and Social Sciences* 293.
[31] O A Amucheazi, 'Natural Resource Governance and Economic Development in Nigeria' (2019) Nigerian Journal of Legislative Studies.
[32] E U Kalu, 'Corporate Responsibility in Nigeria's Oil and Gas Industry' (2021) Nigerian Journal of Business Law.
[33] Ibid.
[34] H A Sani, *Natural Resources Law and Policy in Nigeria* (ABU Press 2016) 218.
[35] Ibid.

This is seen in the case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*[36] where it was stated that oil and gas regulation includes the development and maintenance of legal and administrative frameworks that regulate petroleum exploration, production, transport, refining and compliance with environmental standards.[37] Regulation is the continuous, deliberate management of activities of public agencies that are deemed important to society and/or economy. In the oil and gas industry, regulation guarantees the safety of operations, protection of the environment, and efficient use of resources.[38] The regulation of oil and gas sector in Nigeria is the statutory control of petroleum operations, compliance and efficient and sustainable development of the petroleum resources by oil and gas regulatory institutions established under the Petroleum Industry Act 2021.

The Petroleum Industry Act 2021 (PIA) has provided a much needed regulatory overhaul in Nigeria's petroleum industry that will increase the efficiency and good governance of the sector. These are autonomous bodies that have been authorized to regulate petroleum operations in the different sectors by ensuring compliance with operational standards, environmental obligations and fiscal regulations. The Act is also intended to increase transparency, encourage investment, and assure sustainable development in the sector. Moreover, the regulation of the oil and gas sector goes beyond economic regulation to environmental governance. The National Oil Spill Detection and Response Agency (NODEA) and the Federal Ministry of Environment (FMoE) are some of the regulatory bodies responsible for enforcing the environmental standards and mitigating the negative impacts of oil exploration activities like oil spillage and gas flaring. However, the

[36] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019) 5 NWLR (Pt 1666) 518.
[37] Petroleum Industry Act 2021, s 1.
[38] Michael Likosky, *Nigeria's Extractive Industries and Transparency Reform* (Routledge 2010) 114.

regulatory mechanisms are not effective, as there are challenges with enforcement, overlapping institutions, corruption, and a lack of technical capacity in Nigeria's oil and gas industry.[39]

2.2 Theoretical Framework

2.2.1 Good Governance Theory

This study is based on the basic theory of Good Governance Theory. The idea of theory has developed in the late 1980s and early 1990s with the work of international development institutions like the World Bank and the United Nations Development Programme (UNDP). It was created in response to the many natural and economic resource rich developing countries that suffered from constant failures in governance. The theory is that sustainable development not only requires the availability of resources, but also of efficient legal and institutional frameworks based on transparency, accountability, participation, the rule of law and efficient public administration.[40]

Good governance is based on the understanding that governments are accountable to the people in their use of public resources and in delivering public good. According to the World Bank, good governance encompasses the manner in which power is exercised in the management of a country's economic and social resources for development.[41] Similarly, the United Nations Development Programme identifies participation, transparency, accountability, responsiveness, equity, effectiveness and adherence to the rule of law as the essential characteristics of good governance.[42] These principles are intended to ensure that public institutions perform their functions efficiently and in the public interest.

---

[39] Joseph E Abugu, 'Regulatory Reform and Institutional Capacity in Nigeria's Petroleum Sector' (2022) 13 *Nigerian Current Law Review* 87.
[40] World Bank, *Governance and Development* (World Bank 1992) 1.
[41] ibid 3.
[42] United Nations Development Programme, *Governance for Sustainable Human Development* (UNDP Policy Document 1997) 2.

The Petroleum Sector is relevant because of the focus on good governance in the management of natural resources. Environmental degradation, weak institutions, regulatory failures and corruption are common in countries with a high level of natural resource wealth. Therefore, the theory promotes the creation of robust legal structures that can control the exploitation of natural resources, curb abuse of power and guarantee beneficial effects from the use of these resources are shared fairly among the citizens.[43]

One of the fundamental principles of the theory is transparency. Transparency has to be characterized by open government and information visibility on the management of public resources. In the petroleum sector, transparency helps to inspire public trust in the sector by making petroleum licences, contracts, revenues and regulatory decisions open to the public's view. The principle of transparency is closely linked with the concept of accountability, which means public officials and regulatory institutions should be held responsible for their decisions and actions. Accountability is an effective tool to curb corruption and enhance integrity in public administration.[44]

Another principle of the Good Governance Theory is the rule of law. The theory implies the government's activities must be strictly within the confines of a set of rules rather than at the discretion of the government. Therefore, the role of the regulatory institutions must be independent and execute the petroleum law fairly without undue political interference." A well-functioning petroleum sector is better regulated, and investor confidence is reinforced by institutional independence.[45]

---

[43] Richard M Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge 1993) 11.

[44] Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008' (World Bank Policy Research Working Paper No 4978, 2009) 5.

[45] Tom Bingham, *The Rule of Law* (Allen Lane 2010) 37.

The promulgation of the Petroleum Industry Act 2021 shows Nigeria's attempt to include the principles of good governance in the management of the oil and gas industry. The Act establishes a comprehensive legal framework for petroleum operations, creates specialised regulatory institutions, commercialises the Nigerian National Petroleum Company Limited and introduces the Host Communities Development Trust to promote sustainable community development.[46] The Act also seeks to improve transparency and accountability by separating commercial petroleum operations from regulatory functions and providing a clearer governance structure for the industry.[47]

Even with these changes, there are doubts about the effectiveness of the Petroleum Industry Act in attaining the goals of good governance. Some of the provisions of the Act remain discretionary powers for the Minister of Petroleum Resources which have raised questions on regulatory independence. Further, concerns have been raised about the effectiveness of the Host Communities Development Framework and the environmental protection measures provided in the Act. These concerns indicate that the Act is a welcome development over the previous legal regime, but more reforms are required to ensure greater transparency, accountability and environmental sustainability in Nigeria's petroleum sector.[48]

The Good Governance Theory is thus appropriate for this study as it provides analytical framework to evaluate the extent to which legal and institutional arrangements set up by the Petroleum Industry Act 2021 are able to foster transparency, accountability, institutional efficiency and equitable management of Nigeria's petroleum resources. It also serves as a yardstick for assessing

---

[46] Petroleum Industry Act 2021, ss 4-29, 53, 64 and 216-257.
[47] Momodu Kassim-Momodu, 'Exercise of Ministerial Powers under Nigeria's Petroleum Industry Act' (2023) 41 *Journal of Energy and Natural Resources Law* 105, 108.
[48] Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 329.

the weaknesses and limitations found in the Act's implementation and assessing the success or failure in the goal of reforming the petroleum sector.[49]

2.2.2 Resource Curse Theory

This is one of the dominant theories that tries to explain this paradox: Countries with abundant natural resources, especially oil, tend to have slow economic growth, weak institutions, political instability and widespread poverty. Richard Auty, in 1993, popularized the theory in his writing on mineral economies, which suggested that the presence of large natural resource reserves does not ensure economic development. Rather, countries with strong natural resource revenues are often plagued by poor governance, corruption, rent-seeking, environmental degradation and institutional inefficiency.[50]

The theory contradicts the notion that 'natural resources are a boon to the nation'. It believes that relying too heavily on the production of petroleum and other extractive resources can undermine the effectiveness of state institutions, increase the potential for political manipulation of resources and create a lack of accountability of government. Rather than investing resource revenues in economic diversification and social development, governments become overly dependent on petroleum income while neglecting other productive sectors of the economy.[51]

One of the most noted cases of the Resource Curse Theory is Nigeria. Petroleum, which has been known to be discovered in commercial quantities in 1956, has become the mainstay of the Nigerian economy, earning a large proportion of Nigeria's revenue and foreign exchange earnings. This remarkable wealth has, however, not spared the nation from environmental degradation, poverty,

---

[49] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 231.
[50] Richard M Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge 1993) 1.
[51] Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States* (University of California Press 1997) 15.

insecurity, corruption, and poor infrastructure, especially in the oil-producing communities in the Niger Delta.[52] These problems have confirmed that resource abundance does not necessarily imply sustainable development in the absence of effective legal and institutional frameworks.

One of the major causes of the resource curse is weak governance. Corruption, mismanagement of public funds and inefficient use of national resources are common due to lack of transparency and accountability in the management of petroleum resources. Likewise, poor regulatory institutions facilitate political interference, regulatory capture and poor implementation of environmental standards. As a result, the returns of petroleum exploitation are not widely shared among citizens.[53]

The Petroleum Industry Act 2021 is Nigeria's legislative solution to some of the governance challenges listed by the Resource Curse Theory. The main objective of the Act is to address the issue of petroleum governance through institutional reforms, the creation of specialised institutions for regulating the petroleum sector and the commercialisation of the Nigerian National Petroleum Company Limited and the development of a Host Communities Development Trust for increased community participation and sustainable development.[54] The Act aims to address the institutional inefficiency and accountability issues in the petroleum sector.

Despite these reforms, there are a number of concerns about the effectiveness of the Petroleum Industry Act in mitigating the resource curse. However, the continued oil theft and pipeline vandalism, environmental pollution, and lack of regulatory oversight and unhappiness among host communities suggest that much work remains to be done in terms of governance. In addition, the

[52] Paul Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It* (Oxford University Press 2007) 38.
[53] Michael L Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press 2012) 22.
[54] Petroleum Industry Act 2021, ss 4-29, 53-64 and 216-257.

public continues to doubt the effectiveness of the Act because of issues around ministerial discretion and the need for a more adequate Host Communities Development Framework.[55]

The Resource Curse Theory is thus applicable to this research work as it addresses the failure of the government over the years which has made it necessary for the enactment of the Petroleum Industry Act 2021. It also serves as an effective tool for assessing the capacity of the legal and institutional arrangements implemented by the Act to make the oil wealth of Nigeria a source of sustainable economic and social development. It is also a useful measure for determining the capability of the legal and institutional arrangements adopted by the Act to make the oil wealth of Nigeria a source of sustainable economic and social development.

2.2.3 Public Interest Theory of Regulation

This study is also theoretically grounded in the Public Interest Theory of Regulation. It was based on the theory of Arthur Cecil Pigou, who believed that when the market does not serve the interest of society, there should be government intervention. The theory states that the major role that regulation serves is to foster the public good, to correct market failures, to prevent monopolistic behavior, and to protect consumers and the environment.[56]

The theory is based on the assumption that the regulators are serving the public or social interest, not the private or political interest. It therefore promotes the passage of legislation and the creation of independent economic regulatory bodies with the power to oversee economic activities with public consequences. Oil is such a case in which the activity of the industry has a significant impact

---

[55] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[56] Arthur C Pigou, *The Economics of Welfare* (4th edn, Macmillan 1932) 183.

on the national economy, public health and environmental sustainability, and which demands large-scale government regulation.[57]

In the oil and gas industry, the Public Interest Theory compels law-making for the regulation of the industry as petroleum is a national asset held in trust for the good of the Nigerian people. Government has a duty to ensure that petroleum exploration, production and distribution is done in accordance to current laws and regulations that are conducive for transparency, environmental protection, fair competition and equitable distribution of benefits of the resource.[58]

The Petroleum Industry Act 2021 embodies some of the tenets of the Public Interest Theory. It creates specialized regulatory bodies charged with monitoring petroleum operations, creates a wide-sweeping fiscal system and adds rules that toughen up licensing and set aside funds for the development of host communities impacted by petroleum activities. The reforms aim at balancing the business interests of the oil companies against the interests of the Nigerian State and the public.[59]

But, the research reveals that some of the provisions of the Act have come under criticism for failing to sufficiently safeguard the public interests. The huge discretionary powers that remain with the Minister of Petroleum Resources, environmental protection measures and the shortfalls in benefits under the Host Communities Development Framework have been questioned. The issues indicate that while the Act was conducive to publicly interested goals, there is need to

[57] Anthony I Ogus, *Regulation: Legal Form and Economic Theory* (Hart Publishing 2004) 29.
[58] Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice* (2nd edn, Oxford University Press 2012) 15.
[59] Petroleum Industry Act 2021, ss 4-29 and 216-257.

continue the reform process of the Act to ensure that all stakeholders of the petroleum industry are protected.[60]

Therefore, the Public Interest Theory is the most appropriate theory to be used for this study as it provides a useful framework to assess whether the legal and institutional arrangements created by the Petroleum Industry Act 2021 is effective to protect the interests of the Nigerian State, petroleum-producing communities, investors and the general public.

[60] Momodu Kassim-Momodu, 'Exercise of Ministerial Powers under Nigeria's Petroleum Industry Act' (2023) 41 *Journal of Energy and Natural Resources Law* 105, 118.

CHAPTER THREE

THE PETROLEUM INDUSTRY ACT 2021 AS THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING THE OIL AND GAS INDUSTRY IN NIGERIA

3.1 Historical Background to the Petroleum Industry Act 2021

The Petroleum Industry Act (PIA) 2021 was an outcome of efforts spanning decades to reform the Nigerian oil and gas industry. Before the Act was enacted, there existed a multi-layered and complex set of laws, regulations and administrative instructions that governed the petroleum industry. Many of these laws were passed decades prior to the era and have fallen short of what was seen as appropriate solutions to the modern challenges and realities of the petroleum industry.[61]

Over the years, several issues have been raised on the effectiveness of the legal framework of the Nigerian petroleum sector. The current system of regulation was criticised by stakeholders for the absence of transparency, overlapping institutional roles, low levels of investment, environmental degradation, low participation of host communities, and regulatory uncertainty. Another problem associated with the high level of discretionary authority of public officials was the lack of accountability and efficiency in the management of petroleum resources.[62]

The Federal Government began to take steps to restructure the petroleum industry due to the growing demand for reform and the increasing complexity of the industry. One of the key aims of the proposed changes was to bring in a new legal structure that will encourage transparency and investment and help to improve governance in the industry. The reform process was also aimed at

[61] Y Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 263.
[62] MT Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 175.

resolving longstanding tensions between the oil companies and host communities, notably in the Niger Delta region where petroleum activities had raised major socio-economic and environmental issues.[63] The first significant bid towards a comprehensive reform came in the Petroleum Industry Bill (PIB) introduced by President Olusegun Obasanjo's administration. The Bill aimed to unify the current petroleum legislation into a single framework and to include much needed institutional and fiscal improvements. Although there was general agreement that something needed to change, the Bill was strongly resisted by different groups and did not progress to become a law.[64]

The subsequent administrations went to great lengths to ensure passage of petroleum sector reforms. Several drafts of the Petroleum Industry Bill were introduced in the National Assembly from 2008 to 2020. But differences over budgetary issues, benefits for host communities, institutional reorganization and distribution of revenue stalled legislation as seen in the case of *Gbemre v. Shell Petroleum Development Company Nigeria Ltd*[65]. These delays led to uncertainty in the petroleum industry and were often mentioned as reasons which hampered investment in the industry.[66] With growing competition from other petroleum-producing jurisdictions, the need for reform became more evident in Nigeria. The investors voiced concerns about the regulatory uncertainty, project approval delays and lack of a comprehensive legal structure that can provide predictability and efficiency. In response, government officials, industry participants and civil society organisations increased demands for the adoption of a modern petroleum law that can solve these challenges.[67]

[63] D S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 137.
[64] S Ariweriokuma, *The Political Economy of Oil and Gas in Africa: The Case of Nigeria* (Routledge 2009) 121.
[65] *Gbemre v Shell Petroleum Development Company Nigeria Ltd* Suit No FHC/B/CS/53/05 (Federal High Court, Benin Division, 14 November 2005).
[66] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217.
[67] EE Smith, JS Dzienkowski, OL Anderson and JS Lowe, *International Petroleum Transactions* (3rd edn, LexisNexis 2010) 1042.

The Petroleum Industry Bill (PIB) has taken years to be debated in parliament and consulted with stakeholders before finally being passed in the National Assembly in July 2021 and assented to by President Muhammadu Buhari on 16 August 2021 as the Petroleum Industry Act 2021. The Act was one of the most important legislative changes in the history of Nigeria's petroleum industry. The Act was one of the most important legislative changes in the history of the Nigerian petroleum industry.[68] The Petroleum Industry Act (PIA) brought in significant new amendments to the regulation and governance of the oil and gas sector. It created new regulatory institutions, changed the Nigerian National Petroleum Corporation to limited liability company, developed a host community development framework and introduced a new fiscal regime designed to enhance competitiveness and investment. The Act also aimed to foster transparency, accountability and sustainable development in the petroleum industry.[69] The evolution of the Petroleum Industry Act over time is a testament to the governments' commitment to fixing structural issues in the petroleum industry and creating a new petroleum governance framework. The Act therefore marks a huge step towards the progressive transformation of the oil and gas industry in Nigeria and is the basis of the existing legal and institutional structures for petroleum activities in Nigeria.[70]

3.2 Objectives of the Petroleum Industry Act 2021

It is important to highlight that the Petroleum Industry Act 2021, being an Act that will create a comprehensive legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry. The Act is a result of long-standing concerns about inefficiency, lack of transparency, regulatory uncertainty and inadequate stakeholder participation in the oil and gas sector. The goals

[68] Petroleum Industry Act 2021.
[69] Petroleum Industry Act 2021, s 1.
[70] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.

of the Act are explicitly defined in section 1 and serve as the building blocks for the different sections of the legislation.[71]

The main goal of the Act is to establish efficient and effective petroleum industry governing institutions that have clearly defined roles and responsibilities. Before the PIA, regulatory activities were often duplicated and administratively overlapped, causing delays and uncertainties. The Act aims to overcome these concerns by creating special institutions for regulating various parts of the oil value chain.[72] Another critical goal of the Act is to foster good governance, transparency and accountability in the administration of the petroleum resources. Numerous concerns have been expressed over the past many years about how petroleum revenues are being managed, the processes of petroleum licensing and petroleum regulatory decision-making as in the case of *Seismograph Service (Nigeria) Ltd v. Eyuafe*[73]. In line with this, the Act incorporates elements that will enhance the accountability of institutions and the management of petroleum resources in a way that promotes national development goals.[74]

The Act also aims to foster investment in the petroleum industry through providing a predictable and competitive business climate. There have been instances of reduced investments in the Nigerian petroleum sector, which may be attributed to regulatory uncertainty and fiscal stability concerns. The Act provides for a new fiscal framework to manage the problems faced by the government in generating revenue while simultaneously promoting and ensuring the investment climate.[75] Another goal of the Act is to encourage sustainable development of host communities

---

[71] Petroleum Industry Act 2021, s 1.
[72] Petroleum Industry Act 2021, ss 4-18 and 29-54.
[73] *Seismograph Service (Nigeria) Ltd v Eyuafe* (1976) 9–10 SC 135.
[74] DS Olawuyi and O Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 326.
[75] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 224.

impacted by petroleum operations. The benefits that have been obtained from petroleum activities that have been carried out within the area of the host community are not shared optimally and have been expressed by the community as dissatisfaction. Such worries have frequently led to conflict between communities, government agencies and oil companies. The Act aims to solve this issue by creating the Host Communities Development Trust Fund to encourage peaceful co-existence and promote community development.[76]

Another key goal of the Act is environmental sustainability. Some environmental problems linked to petroleum operations are oil spills, gas flaring, land degradation and water pollution. The Act therefore includes provisions to ensure that petroleum operations are carried out according to internationally recognised environmental standards and best practices. These provisions are meant to facilitate protection of the environment and sustainable resource use as seen in the case of *Shell Petroleum Development Company of Nigeria Ltd v. Farah*[77]. The Act also aims to improve the development and use of gas for domestic purposes. Nigeria has large natural gas reserves in Africa, but considerable parts of the reserves are yet to be tapped. The PIA is implementing measures to promote gas development, increase energy security and expand use of gas for industrial development.[78]

Furthermore, the Act is directed towards creating a commercially viable and profit-making national oil company that can enter into the international petroleum market with confidence. To achieve this goal, the Act restructured the Nigerian National Petroleum Corporation (NNPC) into the Nigerian National Petroleum Company Limited as a limited liability company under the Companies and Allied Matters Act. The reform was meant to boost efficiency, profitability and

[76] Petroleum Industry Act 2021, ss 234-257.
[77] *Shell Petroleum Development Company of Nigeria Ltd v Farah* (1995) 3 NWLR (Pt 382) 148.
[78] Petroleum Industry Act 2021, ss 108, 109 and 125.

corporate governance within the national oil company.[79] The Supreme Court in *Shell Petroleum Development Company of Nigeria Ltd v. Abel Isaiah*[80] also attested to this.

The Act also aims at maximising the usage of the petroleum resources for future generations. The provisions of the legislation aim to allow efficient management of the resources and promote economic growth and national development. In this goal, the Act affirms the strategic value of petroleum resources to the economic growth and sustainability of Nigeria.[81] "The goals outlined in the Petroleum Industry Act 2021 highlight the wide range of changes that have been brought about by the legislation. They serve as the blueprints for the different institutional, administrative, financial and development mechanisms created by the Act. These goals are also useful indicators of the Act's success, and can be used to determine whether the Act has met the challenges that led to its creation.[82]

3.3 Institutional Framework under the Petroleum Industry Act 2021

The restructuring of the institutional framework of the Nigerian petroleum industry is one of the most notable reform measures contained in the Petroleum Industry Act 2021. Before the Act came into effect, questions have been raised on the overlap in functions, lack of accountability in the institutions responsible for petroleum administration and bureaucracy of administration. The Act aimed to resolve these concerns by providing for the creation of specialized institutions with specific functions.[83] This was seen in *Shell Petroleum Development Company of Nigeria Ltd v. Tiebo VII*[84]. The institutional structure as set out in the Act is meant to encourage efficiency,

---

[79] Petroleum Industry Act 2021, ss 53-64.
[80] *Shell Petroleum Development Company of Nigeria Ltd v Abel Isaiah* (2001) 11 NWLR (Pt 723) 168.
[81] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 276.
[82] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[83] Petroleum Industry Act 2021, s 1.
[84] *Shell Petroleum Development Company of Nigeria Ltd v Tiebo VII* (2005) 9 NWLR (Pt 931) 439.

transparency and accountability in the regulation of petroleum operations. Under the Act, important institutions established or transformed are the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) and the Nigerian National Petroleum Company Limited (NNPCL).[85]

3.3.1 Nigerian Upstream Petroleum Regulatory Commission (NUPRC)

The Nigerian Upstream Petroleum Regulatory Commission was established under section 4 of the Petroleum Industry Act as the principal regulatory institution for upstream petroleum operations in Nigeria.[86] The Commission is responsible for regulating activities relating to petroleum exploration, prospecting and production.

Among its functions are the implementation of government policies concerning upstream petroleum operations, administration of petroleum licences and leases, monitoring of petroleum production, collection of royalties and rents and enforcement of applicable regulatory standards.[87] The Commission is also empowered to ensure that petroleum operations are conducted in accordance with the provisions of the Act and relevant environmental requirements. The Commission's formation is part of the Act's goal of enhancing the regulatory oversight and efficiency of the upstream petroleum sector.[88]

3.3.2 Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

The Nigerian Midstream and Downstream Petroleum Regulatory Authority is the regulator for midstream and downstream petroleum operations as provided for by the Petroleum Industry Act.[89]

---

[85] Petroleum Industry Act 2021, ss 4-64.
[86] Petroleum Industry Act 2021, s 4.
[87] Petroleum Industry Act 2021, ss 6 and 7.
[88] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 282.
[89] Petroleum Industry Act 2021, s 29.

The Authority will regulate petroleum processing, transportation, storage, distribution, marketing and retail activities. The Authority also has key roles in developing gas infrastructure and supporting policies to boost domestic gas use in the petroleum market.[90]

The establishment of the NMDPRA is part of the institutional changes a part of the Act aimed at the specialised regulation of the various parts of the petroleum industry.[91]

3.3.3 Nigerian National Petroleum Company Limited (NNPCL)

The other significant institutional innovation of the Petroleum Industry Act is the change from Nigerian National Petroleum Corporation into Nigerian National Petroleum Company Limited, which is incorporated under the Companies and Allied Matters Act.[92] The purpose of this transformation was to create a commercially viable and efficient, profitable national oil company that could function without government interference.[93] The company is allowed to conduct petroleum exploration, production, refining, transportation and marketing operations in and outside Nigeria. The Nigerian National Petroleum Company Limited is to be a commercial organisation and not a statutory corporation as the Nigerian National Petroleum Corporation was.[94] The Petroleum Industry Act 2021 institutional framework is in keeping with the legislators' goal of improving the efficiency and accountability of the petroleum governance system. The Act aims to improve the performance of the Nigerian petroleum industry, boost investment and increase the

[90] Petroleum Industry Act 2021, ss 32 and 33.
[91] DS Olawuyi and O Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 328.
[92] Petroleum Industry Act 2021, s 53.
[93] Petroleum Industry Act 2021, ss 53-64.
[94] Soala Ariweriokuma, *The Political Economy of Oil and Gas in Africa: The Case of Nigeria* (Routledge 2009) 143.

efficacy of the regulatory regime by establishing specialised regulatory institutions and commercialising the national oil company.[95]

3.4 Governance Framework under the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 (PIA) provides a detailed framework of governance that aims at regulating the administration and management of petroleum resources in Nigeria. The governance provisions of the Act aim to provide a transparent institutional framework, accountability in decision making processes and effective oversight of petroleum operations in the upstream, midstream and downstream segments of the petroleum industry.[96] The Act has created a governance structure that is based on separation of functions. The earlier petroleum regulatory regime was beset by fears of a "centralization of regulatory, commercial and policy powers by a few institutions". To tackle this, the Act distinguished between policy makers and the role of regulation and commercial operation and assigned them to different entities.[97]

The very centrepiece of the governance structure is the recognition and specification of the Minister of Petroleum Resources as the political head for formulating, determining and monitoring the government policy in the petroleum industry. The Supreme Court in *Niger Delta Development Commission v. Nigeria LNG Ltd*[98] also stressed this point. The Minister has supervisory authority over the implementation of petroleum policies and performs a number of functions conferred under

---

[95] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[96] Petroleum Industry Act 2021, ss 1-64.
[97] Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 327.
[98] *Niger Delta Development Commission v Nigeria LNG Ltd* (2010) 19 NWLR (Pt 1226) 1.

the Act.[99] The Minister also has powers regarding the granting and revocation of petroleum licences and petroleum leases, on the recommendation of suitable regulatory institutions.[100]

The petroleum governance structure also involves the establishment of independent regulatory bodies, which oversee petroleum activities. Upstream petroleum activities are regulated by the Nigerian Upstream Petroleum Regulatory Commission, whilst the midstream and downstream activities are regulated by the Nigerian Midstream and Downstream Petroleum Regulatory Authority. These institutions have authority to regulate, take action for compliance to statutory requirements and ensure the orderly development of petroleum resources.[101]

The Act also provides mechanisms which are intended to enhance transparency and accountability in the management of petroleum resources. Proper records of licences, permits and petroleum operations must be kept by regulatory institutions as seen in *Nigerian National Petroleum Corporation v. Famfa Oil Ltd*[102]. The Act also requires the disclosure of relevant information about the regulatory activities to allow public access to information and increase confidence in the regulatory process.[103]

Another important component of the governance is the fostering of commercial orientation in the petroleum industry. The Act incorporates the Nigerian National Petroleum Company Limited (NNPC) pursuant to the Companies and Allied Matters Act to differentiate the commercial petroleum activities from regulatory activities. This system aims to achieve the commercialization of the national oil company and the distribution of regulatory and enforcement duties to regulatory

[99] Petroleum Industry Act 2021, s 3.
[100] Petroleum Industry Act 2021, ss 71, 73 and 74.
[101] Petroleum Industry Act 2021, ss 4-18 and 29-54.
[102] *Nigerian National Petroleum Corporation v Famfa Oil Ltd* (2012) 17 NWLR (Pt 1328) 148.
[103] Petroleum Industry Act 2021, ss 216 and 217.

bodies.[104] The governance structure also includes principles to help to manage resources effectively. The Act gives the regulatory institutions authority to control petroleum operations, to ensure compliance with approved work programmes and to ensure the correct development of petroleum resources. The powers are aimed at enabling the sustainable and efficient utilization of Nigeria's petroleum resources for the betterment of the country.[105] In addition, the Act stipulates the cooperation and coordination between relevant institutions in petroleum governance. This is important to coordinate to ensure uniformity in regulatory decisions and implementation of the Act's provisions. The government structure aims to foster stability, predictability and efficiency in the petroleum industry in these arrangements.[106]

The governance framework created by the Petroleum Industry Act 2021 is therefore a significant part of the legal and institutional framework of the Nigerian oil and gas industry. The Act sets out institutional responsibilities, promotes transparency and institutional separation between regulatory and commercial responsibilities, and establishes a framework designed to promote sustainable sectoral development and effective petroleum governance.[107]

3.5 Administration of Petroleum Resources as per Petroleum Industry Act 2021

The Petroleum Industry Act 2021 provides a comprehensive framework for the management of the petroleum resources in Nigeria. The Act lays down specific rules for the acquisition, management and exercise of rights on petroleum exploration, prospecting, development and production. The Act aims at the orderly and efficient management of petroleum resources and at

[104] Petroleum Industry Act 2021, ss 53-64; Companies and Allied Matters Act 2020.
[105] Petroleum Industry Act 2021, ss 6, 7 and 32.
[106] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 286.
[107] Muhammed Tawfiq Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 183.

optimal use of resources and sustainable development through these provisions.[108] The Nigerian Upstream Petroleum Regulatory Commission has been primarily charged by the Act with the administration of the petroleum resources. The Commission manages the allocation and regulation of petroleum rights in the upstream sector, and ensures compliance with statutory requirements that apply to petroleum activities.[109]

The on-going recognition of state ownership of petroleum resources is an essential part of administering petroleum resources under the Act. The Petroleum Industry Act provides that "ownership and control of all petroleum resources shall be vested in the Federal Government of Nigeria",[110] which means that any individual or corporate entity conducts any petroleum activity without first obtaining the relevant licences or leases granted under the Act. This is witnessed in *Attorney-General of Lagos State v. Attorney-General of the Federation*[111]. There are several different types of petroleum titles under the Act under which petroleum operations take place. These include Petroleum Exploration Licences (PEL), Petroleum Prospecting Licences (PPL) and Petroleum Mining Leases (PML), each of which has its own set of rights and obligations, and is intended to govern different phases of petroleum activities.[112]

A Petroleum Exploration Licence is a licence issued to a person to carry out petroleum exploration activities within a given area, but not exclusive to that person. The primary purpose of the licence is for initial exploration for the purpose of determining whether petroleum resources exist, and what their extent may be. A Petroleum Exploration Licence is not a licence to produce or

[108] Petroleum Industry Act 2021, ss 65-112.
[109] Petroleum Industry Act 2021, ss 6 and 7.
[110] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 44(3); Petroleum Industry Act 2021, s 1.
[111] *Attorney-General of Lagos State v Attorney-General of the Federation* (2014) 9 NWLR (Pt 1412) 217.
[112] Petroleum Industry Act 2021, ss 70-80.

commercially exploit petroleum resources found during the exploration under the licence.[113] Under the Act the main title for prospecting operations is the Petroleum Prospecting Licence. It provides licence-holder with exclusive rights to conduct petroleum prospecting operations in the licence area. These activities include exploration, appraisal and development operations necessary for determining the commercial viability of petroleum discoveries. The licence also allows the holder to remove and dispose of petroleum created during the prospecting operations as is provided by the Act.[114] If the commercial quantities of petroleum are found, the holder of a Petroleum Prospecting Licence can apply for a Petroleum Mining Lease. A Petroleum Mining Lease is a lease that confers exclusive rights to develop, produce and dispose petroleum resources in the lease area. The lease permits commercial production and allows for construction of facilities necessary for petroleum development and production.[115]

The Act also provides for rules relating to the application, issuance, renewal, surrender and assignment of petroleum licences and leases. The following procedures are designed to guarantee transparency and accountability on the allocation of the petroleum rights. The Nigerian Upstream Petroleum Regulatory Commission evaluates applications for petroleum titles, which must meet statutory criteria for technical competence, financial capacity and operational capacity.[116]

The Act also places a number of duties on the person with a petroleum licence and leases. These entail, for instance, compliance with approved work programmes, payments of applicable rents and royalties, submission of operational reports and compliance with the relevant environmental and safety standards. Such obligations are aimed at promoting responsible development of

[113] Petroleum Industry Act 2021, ss 71 and 72.
[114] Petroleum Industry Act 2021, ss 77-80.
[115] Petroleum Industry Act 2021, ss 81-89.
[116] Petroleum Industry Act 2021, ss 73, 74, 77 and 81.

resources and proper regulatory control.[117] There are also provisions in the Act on transfer and assignment of petroleum interests. Petroleum licences and petroleum leases can be transferred with the approval of the regulatory body. This requirement will allow regulatory institutions to track transfers of ownership and preserve the ownership of qualified entities that are able to carry out their statutory obligations.[118] In addition, the administration of petroleum resources in the Act includes provisions for tracking petroleum activities and compliance with approved development plans. The regulatory authorities have the power to inspect operations and to review the operational activity and verify the production information to protect the adequate management of petroleum resources.[119]

The Petroleum Industry Act 2021 (PIA), therefore, establishes a framework for the acquisition and exercise of petroleum rights in Nigeria. The Act aims at ensuring efficient management of the resources and the sustainable development of Nigeria's petroleum resources through the creation of a licensing and leasing system, regulatory bodies and compliance standards.[120]

3.6 Host Communities Development Framework under the Petroleum Industry Act 2021

The Petroleum Industry Act 2021, one of the most outstanding innovations, is the Host Communities Development Framework. The framework was designed to help achieve sustainable development in host communities and to build harmonious relationships between petroleum companies and communities impacted by petroleum operations. The inclusion of host community provisions in the Act reflects the recognition of the important role played by host communities in

[117] Petroleum Industry Act 2021, ss 92-100.
[118] Petroleum Industry Act 2021, ss 95 and 96.
[119] Petroleum Industry Act 2021, ss 6, 7 and 102.
[120] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 295.

the petroleum industry and the need to ensure that they derive benefits from petroleum activities conducted within their areas.[121]

In many cases, host communities in the petroleum-producing areas have complained about environmental degradation, poor infrastructure, and lack of access to economic opportunities and resources from petroleum before the enactment of the Petroleum Industry Act. Such issues frequently led to conflicts among communities, between petroleum operators and the government. To support the overall reform process implemented in an effort to enhance stability, inclusiveness and sustainable development in oil-producing regions, the Host Communities Development Framework was introduced.[122]

The framework is contained in Chapter Three of the Petroleum Industry Act and will create Host Communities Development Trusts in respect of petroleum host communities, which are to be used as institutional vehicles by which projects and programmes for the welfare and advancement of petroleum host communities could be carried out.[123] It mandates the creation of a Host Communities Development Trust for every settlor, for the benefit of its host communities under the Act as seen in *Elf Petroleum Nigeria Ltd v. Umah*[124]. The Trust is a statutory obligation on petroleum operators where the provisions of the Act apply, namely the holders of a petroleum prospecting licence, petroleum mining lease or any licence relating to designated midstream and downstream petroleum operations.[125]

The governance system of the Trust demonstrates the structure of the Trust, comprising various organs which are responsible for administration and management of trust resources. These include

[121] Petroleum Industry Act 2021, ss 234-257.
[122] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 156.
[123] Petroleum Industry Act 2021, s 235.
[124] *Elf Petroleum Nigeria Ltd v Umah* (2018) 10 NWLR (Pt 1628) 428.
[125] Petroleum Industry Act 2021, ss 235 and 318.

the Board of Trustees, Management Committee and Host Community Advisory Committee.[126] The Board of Trustees is responsible for the general oversight of the affairs of the Trust and the observance of the objectives set out in the Act. The Management Committee manages projects and programmes that have been approved for implementation, and the Host Community Advisory Committee connects the project with host communities.

Settlors are also required to make annual payments to the Trust Fund under the Act. The annual contribution is to be based on three per cent of the actual operating costs of the settlor in the previous financial year relating to the petroleum operations and the money contributed is to be used for economic and social development projects within the host communities.[127] The aims of the Host Communities Development Trust are set out in the Act. The framework is thus structured to promote community involvement in petroleum development and to promote local ownership of development initiatives, including the promotion of sustainable prosperity within host communities, the provision of direct social and economic benefits from petroleum operations and support for infrastructure development, peaceful coexistence between communities and petroleum operators and promoting the protection of petroleum facilities.[128]

The Act also sets down guidelines on how to use and manage trust funds. Projects funded by the Trust can feature educational facilities, health services, water supplies, roads, electricity schemes and other schemes deemed to be beneficial to host communities, the implementation of which is expected to help improve living standards and socio-economic development in areas of petroleum production.[129] The Act also sets out provisions for the preparation of "Host Community

[126] Petroleum Industry Act 2021, ss 242-245.
[127] Petroleum Industry Act 2021, s 240(2).
[128] Petroleum Industry Act 2021, s 239.
[129] Petroleum Industry Act 2021, ss 240-247.

Development Plans". The Act aims to facilitate community development through these plans, which are instruments of strategic nature and are used to identify development priorities and to ensure that any project funded by the Trust will be in line with the needs and aspirations of the beneficiary communities.[130] Protection of petroleum infrastructure is also a key component of the Host Communities Development Framework. The Act encourages host communities to participate in safeguarding petroleum facilities and supporting the uninterrupted conduct of petroleum operations. This goal is part of a larger one, which is to foster stability and minimize disruptions in the petroleum industry.[131]

The Petroleum Industry Act 2021 (PIA 2021) thus, has created a framework for Host Communities in Nigeria, known as the Host Communities Development Framework (HCDF 2021). The Act aims to ensure that community development is promoted, stakeholders are engaged, and the relationship between petroleum operators and host communities is strengthened, through the establishment of Host Communities Development Trusts and the creation of specific funding mechanisms.[132]

3.7 Fiscal Framework under the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 (PIA) is a comprehensive fiscal framework to govern the generation, assessment and collection of revenue from petroleum activities in the Nigerian context. The fiscal provisions of the Act are an important element of the reform process and are designed to create a clear, efficient and competitive fiscal environment that balances the interests of the government, investors and other parties involved in the petroleum sector.[133] Before the

[130] Petroleum Industry Act 2021, ss 246 and 247.
[131] Petroleum Industry Act 2021, s 257.
[132] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 301.
[133] Petroleum Industry Act 2021, ss 258-304.

introduction of the Petroleum Industry Act, the fiscal policy in respect of petroleum operations was scattered across the various laws and regulations. Multiple fiscal laws added complexity to the petroleum sector, and led to uncertainty about which tax and royalty regime petroleum operators should follow. It is in this regard that the Act aimed to provide a single fiscal regime for petroleum activities operating in Nigeria.[134] One of the main goals of the fiscal regime is to ensure the Federal Government is fairly compensated for petroleum use and investment climate is favourable. This can be seen in the *Shell Petroleum Development Company of Nigeria Ltd v. Chief G.B.A. Tiebo.*[135] The Act acknowledges that petroleum resources are assets of the nation and aims to set up a mechanism for the generation of revenue for the benefit of economic development and sustainable development.[136]

One of the key components of the fiscal framework is the implementation of Hydrocarbon Tax. The Act introduces Hydrocarbon Tax for the profits of companies involved in activities upstream from the petroleum production, including crude oil production. The introduction of Hydrocarbon Tax is one of the major fiscal reforms featured in the legislation for the upstream petroleum sector and will affect holders of Petroleum Mining Leases and Petroleum Prospecting Licences undertaking upstream petroleum activities as defined under the Act.[137] Petroleum companies are also subject to Companies Income Tax under Companies Income Tax Act in addition to Hydrocarbon Tax. Both taxes play an essential role in the fiscal framework set by the Act and offer a mechanism for revenue from petroleum activities.[138] The Act also includes provisions for the

---

[134] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 225.
[135] *Shell Petroleum Development Company of Nigeria Ltd v Chief G.B.A. Tiebo* (2005) 9 NWLR (Pt 931) 439.
[136] Petroleum Industry Act 2021, s 1.
[137] Petroleum Industry Act 2021, ss 260-267.
[138] Petroleum Industry Act 2021, s 302; Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria 2004.

name renting of petroleum licences and leases. Royalties are payments made to the government for consideration of petroleum extraction and production. The Act establishes the royalty system in order to provide the government with a return from the use of national petroleum resources.[139] The fiscal framework also includes rents and fees to be paid by the holders of petroleum titles. The receipt of any rents and fees payable is part of the government's legal obligations under the Act upon granting, renewing and administering petroleum licences and leases and is therefore considered to be an additional source of government revenue.[140] Another key part of the fiscal framework is the one concerning gas development incentives. Recognising the strategic importance of natural gas to economic development and energy security, the Act introduces fiscal measures intended to encourage investment in gas exploration, production, processing and utilisation.[141] These measures seek to support the government's objective of promoting gas as a transition fuel and enhancing domestic energy supply. The Act also creates the process for assessing, collecting and administering petroleum-related taxes and royalties. The purpose of the Act is to facilitate efficient and responsible administration of petroleum revenues.[142]

Moreover, the fiscal structure includes measures to foster transparency of revenue generation and collection. Petroleum operators must keep accurate records of their operations and provide information needed to determine the amount of taxes that are due and payable and the royalty obligations that arise from their operations.[143] These requirements enable good regulation and the administration of the industry's fiscal responsibilities. The fiscal framework set out in the Petroleum Industry Act 2021 therefore offers a full system for tax, royalties, rents and other

[139] Petroleum Industry Act 2021, ss 267-275.
[140] Petroleum Industry Act 2021, ss 93, 94 and 275.
[141] Petroleum Industry Act 2021, ss 108, 109 and 125.
[142] Petroleum Industry Act 2021, ss 276-296.
[143] Petroleum Industry Act 2021, ss 281 and 282.

financial obligations of petroleum operations. The provisions of the Act aim at promoting investment and ensuring the efficient management of petroleum revenues, and to ensure long-term development of the petroleum industry in Nigeria.[144]

3.8. Environmental Sustainability Provisions in the Petroleum Industry Act 2021

An important provision of the Petroleum Industry Act, 2021, is environmental protection. The Act acknowledges the importance of carrying out petroleum operations in a way that will minimise harmful environmental effects and encourage sustainable development. The long record of environmental issues and effects of the petroleum exploration and production industry in Nigeria and the Niger Delta in particular, provided the basis for the inclusion of a number of provisions in the Act to improve environmental management in the petroleum industry.[145] The environmental sustainability provisions of the Act aim to ensure that petroleum operators operate within the confines of environmental standards and recognised industry practices. The Act imposes a duty on the licence and lease holders to implement measures to prevent, manage and remediate environmental effects from petroleum operations.[146]

The Act has one of its significant environmental commitments in respect of environmental management planning. As part of any petroleum operators' activity, they must develop and adopt environmental management plans. The Act aims to encourage proactive, environmental protection and responsible resource development by these plans, which are designed to identify potential

---

[144] Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 332.
[145] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 164.
[146] Petroleum Industry Act 2021, ss 102 and 103.

environmental risks created by petroleum operations and to determine measures to address potential risks.[147]

The Act also provides for environmental remediation and restoration. Petroleum licence and lease holders must rehabilitate areas where petroleum activities have impacted in order to restore them to approved standards. This duty is based on the principle that the petroleum operator is responsible for mitigating environmental effects from its activities.[148] One of the other key aspects of the Act is the creation of environmental remediation funds. The Act requires petroleum operators to provide financial resources for environmental management, rehabilitation and restoration. These funds are used to provide sufficient resources to address environmental liabilities that may occur in the course of petroleum activities.[149] The Act also provides for decommissioning and abandonment of petroleum installations. The purpose of the provisions is to ensure that abandoned facilities are not a hazard to public safety or the environment.[150]

The Act also obligates petroleum operators to abide by any environmental laws, regulations and standards that are applicable and issued by competent authorities. Compliance requirements cover aspects of pollution control, waste disposal, environmental monitoring and environment associated with petroleum activities.[151] These provisions reflect the Act's aim to embed environmental issues within petroleum operations.

The use of gas is also incorporated into the environmental sustainability strategy set out in the Act. There is a regulation in the law to promote the commercial use of natural gas and prohibit activities that cause environmental degradation. The Act aims to facilitate optimal use of resources and foster

[147] Petroleum Industry Act 2021, s 102.
[148] Petroleum Industry Act 2021, s 103.
[149] Petroleum Industry Act 2021, ss 102(4) and 103.
[150] Petroleum Industry Act 2021, ss 232 and 233.
[151] Petroleum Industry Act 2021, ss 101-103.

the development of cleaner energy in the petroleum industry through these provisions.[152] Additionally, the Act gives regulatory powers to oversee environmental compliance and to enforce relevant environmental requirements. The regulatory institutions have the power to inspect, review environmental reports and ensure compliance with the environmental standard approved.[153] These are regulatory powers that help to achieve the environmental goals of the Act. The environmental sustainability provisions of the Petroleum Industry Act 2021 thus provide a structure for incorporating environmental protection into petroleum operations. The Act aims to encourage responsible petroleum development and the sustainable management of Nigeria's petroleum resources, with respect to environmental management, remediation, restoration, decommissioning and regulatory oversight.[154]

3.9 Midstream and Downstream Petroleum Operations under the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 is a new law on petroleum industry midstream and downstream operations in Nigeria. Before the Act came into force, the relevant sections of the law and the regulations were spread throughout various legislative and regulatory texts. The Act brings these together in a single text and establishes a more systematic order for the regulation of the activities involved in the processing, transport, storage, distribution, refining and marketing of petroleum.[155]

The midstream sector typically includes operations associated with the processing, transportation and storage of petroleum and natural gas between production and ultimate delivery to consumers. The Act makes comprehensive provisions for both sectors, focusing on ensuring efficiency,

[152] Petroleum Industry Act 2021, ss 108, 109 and 125.
[153] Petroleum Industry Act 2021, ss 6, 7, 32 and 33.
[154] AJ Bradbrook and RL Ottinger, *Energy Law and Sustainable Development* (Cambridge University Press 2005) 227.
[155] Petroleum Industry Act 2021, ss 113-233.

investment and energy security.[156] One of the key provisions of the Act is the licensing and permitting for midstream and downstream petroleum activities. The licensing regime provides that all persons wishing to carry out activities in the petroleum industry (including petroleum processing, gas transportation, refining, bulk storage, distribution and marketing) must have the appropriate licence or permit issued by the relevant petroleum regulatory authority.[157]

The Act also establishes the mechanisms for developing the pipeline, gas and oil facilities required for proper functioning of the industry. These facilities include pipelines, processing plants, storage facilities, transportation systems and refining installations. The act aims to facilitate investment in these facilities to enhance the efficiency and reliability of petroleum supply in Nigeria.[158] The Act has set the framework for gas development. The bill encourages investment in infrastructure and projects for natural gas, and encourages the use of natural gas for commercial purposes. The goal is to improve domestic gas supply, promote industrial development, and help ensure energy security for the country.[159]

The Act further includes provisions about access to petroleum infrastructure by third parties and open access. These provisions are designed to allow for competition, to promote operational efficiency and optimal use of existing facilities in the petroleum industry.[160] The Act also sets the standards for technical operations, health and safety requirements and operational performance. Midstream and downstream operators must meet requirements that ensure the safe and efficient operation of petroleum activities.[161] The bill also includes provisions that would help monitor and

---

[156] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 317.
[157] Petroleum Industry Act 2021, ss 142-170.
[158] Petroleum Industry Act 2021, ss 118-141.
[159] Petroleum Industry Act 2021, ss 125-134.
[160] Petroleum Industry Act 2021, ss 136-141.
[161] Petroleum Industry Act 2021, ss 171-190.

control the supply of and distribution of petroleum products. The Act aims to provide petroleum products and stability to the petroleum market in the country by way of these mechanisms.[162]

One of the key features of the Act is its provisions to encourage participation in the petroleum infrastructure development and investment by the private sector. The Act is designed to provide a clear regulatory structure and promote investment throughout the midstream and downstream parts of the petroleum value chain.[163] As such, the provisions for midstream and downstream petroleum operations are therefore part of the Petroleum Industry Act 2021. In addition to introducing licensing requirements, the Act creates infrastructure development frameworks, gas utilisation policies, and regulatory standards to give a complete legislative framework to the management and development of these key segments of the petroleum industry.[164]

---

[162] Petroleum Industry Act 2021, ss 205-225.
[163] DS Olawuyi and O Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 334.
[164] Petroleum Industry Act 2021, ss 113-233.

CHAPTER FOUR

CRITICAL APPRAISAL OF THE PETROLEUM INDUSTRY ACT 2021

4.1 Introduction

Nigeria's oil and gas industry has seen great progress with the passing of the Petroleum Industry Act (PIA) 2021. The Act was brought about to create a comprehensive legal, fiscal and institutional environment to tackle some of the long standing problems in the petroleum sector. Through its provisions, the Act seeks to promote transparency, accountability, investment, environmental sustainability and host community development while ensuring the efficient management of Nigeria's petroleum resources.[165]

The Petroleum Industry Act has been a subject of great interest to the government institutions, petroleum operators, host communities, civil society organisations and legal scholars since it was enacted. The Act has been widely recognised as being one of the most comprehensive reforms in the Nigerian petroleum industry since the commercialisation of crude oil.[166] It brought about institutional restructuring, a new fiscal regime, a host community development framework and a new governance framework in the petroleum industry.

Even with these reform, the Petroleum Industry Act has stirred much discussion about its effectiveness in resolving the issues that led to the creation of the act. Some stakeholders have seen this Act as a significant move towards enhancing petroleum governance, while others have noted potential lacunae in the Act's implementation, environmental protection, host community

[165] Petroleum Industry Act 2021, s 1.
[166] DS Olawuyi and O Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321.

engagement, and regulatory administration.[167] Questions have also been raised about the degree to which the Act has been successful in balancing the interests of government, investors, and petroleum-producing communities. Thus an assessment of the Petroleum Industry Act is needed to find out whether the goals of the act is being achieved, and if the provisions of the act are relevant to the current needs of the Nigerian oil and gas industry. The ability to deliver a "kick" in the sector is not only a function of the quality of the legislation itself, but is also critical to the success of any legal instrument to achieve practical results in the sector.[168] The chapter critically reviews the Petroleum Industry Act 2021, its successes, loopholes, implementation issues and criticisms. The chapter also explores the views of the stakeholders on the functioning of the Act and probable future reforms to enhance petroleum governance in Nigeria.

4.2 Achievements of the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 (PIA) is one of the most important reform laws in the history of the petroleum industry in Nigeria. After a number of years of a legislative process and consultations with various stakeholders, the Act was passed to tie up all the loose ends in the governance, administration and regulation of the oil and gas industry. The Act has had significant successes in a number of aspects of petroleum governance and industry regulation since its enactment.[169] The Act has done much to integrate the legal aspects of the petroleum industry. Before the PIA, the regulation of petroleum operations was complicated by the presence of a large number of laws and regulations. This has led to greater certainty in the administration of petroleum

[167] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 331.
[168] MT Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 214.
[169] Petroleum Industry Act 2021, s 1.

operations, including harmonisation of various aspects of petroleum regulation in a single legislative framework.[170]

Restructuring of the institutions of the petroleum sector is another major achievement. The Act established the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) as specialised regulatory agencies with separate responsibilities in regulating various segments of the petroleum value chain.[171] This institutional reconfiguration has enhanced the allocation of regulatory powers and improved sectoral governance. Another significant success of the Act is the establishment of the Nigerian National Petroleum Company Limited (NNPCL) from the Nigerian National Petroleum Corporation (NNPC). The Act introduced a commercial framework with the incorporation of the national oil company as a limited liability company under the Companies and Allied Matters Act, which is expected to enhance operational performance, corporate governance and accountability of the national oil company.[172] The Act has also helped to build investor confidence in the petroleum sector. The Act has introduced a comprehensive fiscal and regulatory framework, which has helped to provide increased predictability of the regulatory framework for investors, and to minimise uncertainty around licensing and taxation and the legal framework of petroleum operations.[173]

Another success of the Act is the outcome of the Host Communities Development Trust framework. For the first time, a statutory mechanism was created to facilitate direct participation

[170] Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 325.
[171] Petroleum Industry Act 2021, ss 4-54.
[172] Petroleum Industry Act 2021, ss 53-64.
[173] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 229.

of host communities in the benefits derived from petroleum operations.[174] The framework provides a structured approach to community development and seeks to strengthen relations between petroleum operators and host communities. The Act has also encouraged development of the natural gas industry in Nigeria. Through various provisions encouraging gas exploration, processing, transportation and utilisation, the legislation supports the diversification of the petroleum industry beyond crude oil production.[175] This development is consistent with national objectives aimed at increasing domestic gas utilisation and enhancing energy security. The Act also contained provisions to enhance environmental management in the petroleum industry. Environmental sustainability in petroleum operations is reflected in requirements for environmental remediation, decommissioning obligations and environmental management planning.[176]

The Petroleum Industry Act has further enhanced the overall governance structure of the petroleum industry. By defining institutional responsibilities, promoting transparency and introducing modern regulatory mechanisms, the Act has established a more structured framework for petroleum administration.[177] This has enhanced regulatory oversight and improved the management of petroleum resources. The success of the Petroleum Industry Act 2021 is reflective of its importance as a key reform enabler in the Nigerian oil and gas industry. The Act has made significant changes to the regulatory and institutional framework for petroleum activities and it

[174] Petroleum Industry Act 2021, ss 234-257.
[175] Petroleum Industry Act 2021, ss 108-141.
[176] Petroleum Industry Act 2021, ss 102, 103, 232 and 233.
[177] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 337.

has set the groundwork for better governance, investments and development of the petroleum sector.[178]

4.3 Loopholes in the Petroleum Industry Act 2021

Many aspects of the Petroleum Industry Act 2021 have been critiqued by scholars, industry players and representatives from the host community, notwithstanding the numerous changes made to the Act by the Petroleum Industry Act 2021. Although the Act aims to create a comprehensive legal and institutional architecture for the Nigerian petroleum industry, there are some shortcomings and ambiguities in the law which have led to concerns that it may not be able to achieve all its goals. These loopholes are evident in areas relating to governance, host community development, fiscal administration and environmental protection.[179]

4.3.1 Loopholes in the Governance Framework

The Minister of Petroleum Resources retains a lot of powers in the Petroleum Industry Act, one of the major concerns about the governance structure set up under the Petroleum Industry Act. In spite of the establishment of specialised institutions like the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority, there are a number of important decisions on the petroleum sector which are subjected to ministerial approval.[180]

The Minister has wide powers relating to the issuing of petroleum licences and leases and their renewal and revocation.[181] These powers are supposed to enable the Minister to implement the

---

[178] O Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[179] DS Olawuyi and O Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 333.
[180] Petroleum Industry Act 2021, ss 3, 71 and 73.
[181] Petroleum Industry Act 2021, ss 71-74.

policy and monitor government activity, but some questions have been raised about the centralisation of decision-making power in one office. The discretion of regulators may lead to uncertainty in regulatory decision-making and impact upon the independence of the sector regulators.[182] The connection between the regulatory agencies and the Ministry of Petroleum Resources is another loophole. The Act aims to make institutions independent, but there remain areas where it allows significant influence over regulatory processes from the Minister. This has led to discussion about the degree of autonomy these newly created institutions will be able to achieve from political interference.[183]

Furthermore, the Act is silent about detailed procedures for the resolution of possible conflicts that can occur between the regulatory agencies and other government bodies involved in petroleum administration. If institutions are not clearly defined, or their responsibilities overlap, there may be problems with dispute resolution.[184] Additionally, the Act encourages transparency and accountability, but some observers have suggested that it does not provide adequate public involvement in the governance of petroleum. Some regulatory decisions are not always open to stakeholder involvement, especially those relating to local communities and environmental management.[185] The governance structure provided for by the Act is certainly an improvement on previous arrangements. However, the focus of powers and the issues of institutional independence and lack of stakeholder involvement remain a topic for discussion over the effectiveness of the governance structure established by the legislation.[186]

---

[182] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 344.
[183] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 172.
[184] MT Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 226.
[185] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[186] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 231.

4.3.2 Loopholes in the Host Community Development Framework

The Host Communities Development Framework under Chapter Three of the Petroleum Industry Act 2021 was a framework to encourage sustainable development and peaceful relationship between petroleum operators and host communities. The design and implementation structure of the framework has been considered as one of the major innovations of the Act but some loopholes have been identified in the design and implementation of the framework. These worries have sparked significant debate by local populations, civil society organizations and legal experts.[187]

One of the most controversial aspects of the framework is the provision requiring settlors to contribute only three percent of their actual annual operating expenditure to the Host Communities Development Trust Fund.[188] Many stakeholders have argued that the contribution is inadequate when compared to the environmental, social and economic impacts experienced by host communities as a result of petroleum operations. Before the Act came into effect, there were a number of community groups who called for a much higher percentage. For this reason, the three percent contribution has been considered by some commentators to be inadequate for offsetting the decades of underdevelopment and environmental damage that has occurred in the petroleum producing regions.[189] The other loophole concerns the number of people who donate using the basis. The amount available for community development will vary over the years because the petroleum companies' operating expenditure can differ widely with each operational decision.[190]

[187] Petroleum Industry Act 2021, ss 234-257.
[188] Petroleum Industry Act 2021, s 240(2).
[189] Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 335.
[190] Petroleum Industry Act 2021, s 240(2).

This arrangement has led to questions about predictability and sufficiency of funding for host communities.[191]

The Act also imposes significant duties on petroleum operators in the establishment and operation of the Host Communities Development Trust. The representatives in the advisory structures do not have a direct role in the governance process, but significant parts of it still depend on the settlors, which may limit the extent of community ownership and participation in the vision of the framework.[192] Some scholars argue that this is the case, and that such aspects may influence the power of the communities to influence decision making on development priorities.[193]

An additional worry relates to the definition of "host community" in the Act. In practice, conflicts may occur when more than one community asserts a right to benefits from specific petroleum operations.[194] The legislation does not specify the requirements for determining which communities are eligible to be beneficiaries within the framework. The Act does not offer specific instructions to resolve every potential dispute about community eligibility and benefit distribution. The framework also has been criticized for tying payments for community benefits to protection of petroleum facilities. Section 257 of the Act provides that where petroleum facilities are damaged through acts of vandalism, sabotage or civil unrest attributable to members of a host community, the cost of repairs may be deducted from funds allocated to that community.[195] Critics argue that this provision may result in collective consequences for entire communities even where responsibility for the damage cannot be attributed to the majority of community members.[196]

---

191 Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 348.
192 Petroleum Industry Act 2021, ss 242-245.
193 Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 176.
194 Petroleum Industry Act 2021, s 318.
195 Petroleum Industry Act 2021, s 257.
196 Muhammed Tawfiq Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 231.

Furthermore, the Act does not offer a thorough approach to cleanup of past forms of environmental harm that many petroleum-producing communities have experienced before the law's implementation. The framework is aimed at future development projects, but does have limited provisions regarding compensation or remediation for environmental damage that took place prior to the creation of the Trusts.[197]

Another loophole is related to the dispute resolution procedures provided under the framework. While the Act sets out frameworks for community involvement, it contains little guidance on how disputes may be handled in relation to the implementation of projects or the fund's management or between host communities and settlors. Without specific dispute resolution mechanisms, there may be issues in effectively managing the Trusts.[198] The Host Communities Development Framework is definitely a big step towards integrating community considerations into petroleum governance. However, issues of funding sufficiency, community engagement, benefit-sharing, infrastructure protection, and dispute resolution remain to be addressed in questions about the ability of the system to achieve its goals fully.[199]

4.3.3 Loopholes in the Fiscal Framework

The fiscal framework introduced under Petroleum Industry Act 2021 was an attempt to find a balance between government revenue generation and encouraging investment in the petroleum industry. The Act aimed to create a more competitive and predictable tax and royalty regime through the introduction of new taxation and royalty provisions. Even with these goals in mind,

---

[197] Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 337.
[198] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[199] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 233.

there are a number of gaps in the fiscal framework that have been identified and raised concern by industry representatives, economists and lawyers.[200] One of the main issues is the complexity of the fiscal regime established by the Act. However, the multiplicity of petroleum taxes, including Hydrocarbon Tax, Companies Income Tax, royalties and other statutory payments, has led to a complex fiscal framework for petroleum operators, which some stakeholders find challenging to administer and understand.[201]

There's another loophole in the Act because it treats operations for crude oil differently than operations for natural gas. There have been concerns that the fiscal terms in the Act are not sufficiently reflective of the financial realities of gas projects, where there is a high initial investment and long development time to profitability.[202] Additionally, there is worry about the fiscal framework's stability. Investors tend to like certain fiscal environments where they can plan and decide on investments for long periods of time. Investors' confidence has been named as a potential weak point in the PIA due to the lack of specific assurances of fiscal stability.[203] Another problem is the royalty arrangement provided for by the Act. The royalty structure combines production-based royalties with price-based royalties in certain circumstances.[204] While this approach seeks to enhance government revenue during periods of high oil prices, some industry stakeholders contend that it may increase operational costs and reduce the competitiveness of

[200] Petroleum Industry Act 2021, ss 258-304.
[201] Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217, 235.
[202] DS Olawuyi and O Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 338.
[203] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 352.
[204] Petroleum Industry Act 2021, ss 267-275.

Nigerian petroleum projects when compared with those in other petroleum-producing jurisdictions.[205]

There are also concerns related to the administration and collection of petroleum revenues. Accurate production measurement, transparent reporting systems and efficient revenue collection mechanisms are important for effective implementation of the fiscal framework. The success of the revenue targets of the Act will rely heavily on the effectiveness of the quality control institutions, some scholars argue that the Act does not provide for an exhaustive treatment of all practical problems surrounding the tracking of production volumes and the elimination of revenue leakages.[206]

Another loophole has to do with how smaller and marginal petroleum operators are treated. The scope of the fiscal duties under the Act is very wide. This has been a concern of some observers regarding the framework's allowance for smaller operators that may have less financial and technical resources than larger, multinational operators, especially as it relates to encouraging indigenous participation in the petroleum industry.[207] The Act has also been faulted for failing to offer increased clarity in the interpretation of some aspects of the fiscal administration such as deductible expenditures, tax computation and some operating costs. Ambiguities in these aspects can lead to conflicts between petroleum operators and regulators about the determination of fiscal responsibilities.[208] The fiscal structure provided for in the Petroleum Industry Act has definitely been an attempt to modernise petroleum revenue administration in Nigeria. However, issues

---

[205] Soala Ariweriokuma, *The Political Economy of Oil and Gas in Africa: The Case of Nigeria* (Routledge 2009) 162.

[206] MT Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 237.

[207] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.

[208] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 181.

around complexity, fiscal security, royalties, revenues, and investment levels highlight some areas that remain subject to both academic and industry interest.[209]

4.3.4 Gaps in the Environmental Framework

The Petroleum Industry Act, 2021 had provisions under its environmental protection section to address many of the problems that faced the environment. Despite these efforts, a number of scholars and stakeholders have argued that the environmental framework established under the Act contains significant loopholes which may limit its effectiveness in addressing the environmental challenges associated with petroleum operations in Nigeria.[210] A major risk that has been often noted is the lack of specific requirements for oil spill prevention and response. The Act places general environmental duties on the petroleum operators, but it does not go so far as to clearly define the procedures, standards and timelines for the response to oil spill incidents.[211] Many commentators have suggested that the Act needs to be more detailed to enhance environmental protection and accountability, particularly in view of the history of oil pollution in the Niger Delta region. There is another concern here with regard to gas flaring. The Act encourages the commercial development of natural gas resources and promotes gas utilisation, but does not completely prohibit gas flaring; gas flaring is permitted under certain conditions, as subject to regulatory approval and applicable penalties.[212] However, environmental groups have said this does not sufficiently reflect current international efforts to cut down on the amount of greenhouse gases emitted or to fight climate change.[213] There is another loophole because of the environmental

---

209 Adedayo Ayoade, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 237.
210 Petroleum Industry Act 2021, ss 101-103, 232 and 233.
211 Petroleum Industry Act 2021, ss 101-103.
212 Petroleum Industry Act 2021, ss 108, 109 and 125.
213 Damilola S Olawuyi and Oludolapo Oni, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321, 340.

remediation plan that was set up under the Act. Lack of detailed benchmarks in the statute may lead to uncertainty about the level of remediation needed in the impacted areas.[214]

Another critical objection to the Act is its lack of attention to past environmental harm done by years of petroleum activities. Many environmental problems in petroleum-producing areas date back to before the PIA was adopted. The primary concern thus is that the Act addresses mostly the environmental responsibilities of ongoing operations and has few specific provisions that address legacy pollution issues.[215] The other area of concern is community involvement in environmental decision making. The Act does acknowledge the role of host communities in the petroleum industry, but lacks very robust mechanisms for direct community involvement in environmental monitoring, environmental impact assessment, or remediation processes.[216] Enhanced community participation could enhance transparency and environmental accountability. There have also been concerns about the effectiveness of the enforcement provisions of the Act. But the ability to do environmental protection is also dependent on the ability of regulatory institutions to oversee the players and enforce penalties if needed. The Act has been criticised as failing to adequately reflect the practical issues arising from the enforcement of the regulations such as limited resources and institutional capacity.[217]

In addition, the environmental aspects of the Act have been attacked for failing to include in a direct manner some of the current environmental principles which have become relevant in recent international petroleum regulation. The legislation pays limited attention to principles like climate responsibility, environmental justice and intergenerational equity, although these are becoming

[214] Petroleum Industry Act 2021, s 103.
[215] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 186.
[216] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (2nd edn, Malthouse Press 2018) 357.
[217] Muhammed Tawfiq Ladan, *Materials and Cases on Energy and Environmental Law* (Ahmadu Bello University Press 2014) 242.

increasingly relevant in global energy governance.[218] There is also an ongoing debate about the correlation between environmental protection and production of petroleum. This view of the balance of emphasis in the Act has fueled concerns about the lack of environmental protection in the broader context of the legislation.[219]

Although the Petroleum Industry Act introduced important environmental reforms, the issues relating to oil spill management, gas flaring, environmental remediation, legacy pollution, community participation and regulatory enforcement demonstrate that significant concerns remain regarding the adequacy of the environmental framework established under the Act. The concerns are still in high demand in the debates on the effectiveness of the law in Nigeria's petroleum industry in addressing environmental issues.[220]

4.4 Implementation Issues with the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 was a significant measure to reform the Nigerian petroleum industry. However, the effective implementation is a key factor in attaining the goals of the Act. A series of practical issues have surfaced since the Act came into force, that impact the objectives of the Act and the effective implementation of its provisions.[221]

A key implementation obstacle is the shift from the former regulatory setting to the system which has been created under the Act. There was a significant need for administrative change, as new regulatory institutions were established, and old institutions reorganized. Transitional challenges

[218] Adrian J Bradbrook and Richard L Ottinger, *Energy Law and Sustainable Development* (Cambridge University Press 2005) 235.
[219] Soala Ariweriokuma, *The Political Economy of Oil and Gas in Africa: The Case of Nigeria* (Routledge 2009) 169.
[220] Oludolapo Oni, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence* 1.
[221] Petroleum Industry Act 2021, s 1.

that impacted operations of the regulatory agencies during the initial implementation period arose from transfers of responsibilities, personnel and assets from the previous agencies.[222]

The problem of institutional capacity is another big problem. Highly qualified manpower, technical facilities and efficient administration are the prerequisites of effective regulation of the petroleum industry. The success of the PIA will depend on the capacity of these institutions to carry out their statutory duties effectively and regularly.[223] Another key implementation challenge is funding. There is a need for significant amount of cash to run the regulatory institutions, environmental programmes, and host community development projects. Some of the provisions of the Act may be difficult to implement due to delay in funding, budget constraints and administrative inefficiency.[224]

Oil theft and oil pipeline vandalism poses another challenge on the successful implementation of the Act. Nigeria still loses a lot due to illegal petroleum activities. The industry's failure to prevent oil theft poses regulatory enforcement challenges in achieving the aim of the Act.[225]

Ensuring good relations with host communities remains a key challenge for implementation. Disagreements about community representation, project selection and benefit sharing have continued to emerge in some places and can have an impact on the viability of the development projects envisioned by the Act.[226] The uncertainty about the interpretation of some of the provisions of the Act has also posed challenges in its implementation. Some aspects of the PIA have not been fully understood by petroleum operators and legal counsel, and may be subject to

---

[222] Michael Likosky, *Nigeria's Extractive Industries and Transparency Reform* (Routledge 2010) 114.
[223] JE Abugu, 'Regulatory Reform and Institutional Capacity in Nigeria's Petroleum Sector' (2022) 13 *Nigerian Current Law Review* 87.
[224] H A Sani, *Natural Resources Law and Policy in Nigeria* (ABU Press 2016) 203.
[225] A A Ikein, *The Challenge of Oil Theft and Pipeline Vandalism in the Niger Delta* (University of Benin Press 2018) 59.
[226] G G Darah, *The Niger Delta and the Struggle for Resource Control* (Malthouse Press 2010) 141.

different interpretations by regulators, who are recent entrants to the legislation. These uncertainties could impact adherence and pose challenges for implementation of the law.[227] Another difficulty concerns environmental management/enforcement. To implement environmental obligations, ongoing monitoring, technical knowledge and adequate enforcement procedures are needed. Environmental problems can be large and heavy for regulatory institutions tasked with overseeing the environment in petroleum-producing areas.[228]

Further, external challenges exist for the implementation of the Act due to fluctuations in global oil prices and changes in the international energy market. Seismic shifts in the global energy transition, a growing focus on renewables and evolving petroleum investment patterns can affect the impacts of some policy goals behind the law.[229]

Notwithstanding these difficulties, the Petroleum Industry Act 2021 is the main legislation regulating petroleum activities in Nigeria. Addressing implementation obstacles through institutional strengthening, improved regulatory coordination and enhanced stakeholder engagement will be important in ensuring the successful achievement of the objectives of the Act.[230]

4.5 Criticisms of the Petroleum Industry Act 2021

The Petroleum Industry Act (PIA) of 2021 has sparked considerable discussion among stakeholders in and outside Nigeria's petroleum industry." The Act has received acclaim for its much-needed changes and improvements, but it has also faced criticism from host communities

[227] John Hatchard, *Combating Corruption and Enhancing Governance in Africa* (Edward Elgar 2014) 188.
[228] M A Ajomo, 'Environmental Regulation and Enforcement in Nigeria' (2017) 9 *Journal of African Law and Practice* 44.
[229] Khan Saeed, *Energy Transition and Petroleum Governance in Developing States* (Palgrave Macmillan 2021) 126.
[230] NS Okogbule, *Contemporary Issues in Nigerian Energy Law* (NIALS Press 2020) 214.

and environmental groups, as well as from industry stakeholders and legal experts. These criticisms focus on the perceived inability of certain provisions of the Act to adequately address longstanding concerns relating to resource control, environmental protection, community participation and regulatory governance.[231]

4.5.1 Criticisms by Host Communities

Host communities in the Niger Delta have been one of the biggest critics of the Petroleum Industry Act. There is a growing number of community groups that are not happy with the requirement for petroleum companies to set aside three per cent of their annual operating expenditure for the Host Communities Development Trust Fund.[232]

The percentage is not seen as a proper indicator of the environmental and socio-economic impacts that host communities have suffered over decades of petroleum production, according to critics. Stakeholders have argued that a higher percentage would have brought increased developmental dividends to many petroleum-producing communities, as they have suffered from significant environmental degradation, loss of traditional livelihoods and infrastructural inadequacies.[233] Another objection is related to the community trust funds which may be deducted in the event of damage being caused to petroleum facilities by acts of vandalism or sabotage. Community members have expressed concerns that the provision is unfairly placing collective responsibility on any community for the actions of a few people or outside groups.[234] Host communities have also voiced their criticism of the low level of direct involvement provided for beneficiaries in the administration of the Trusts. While advisory structures are in place, many stakeholders think that

[231] Nlerum S Okogbule, *Contemporary Issues in Nigerian Energy Law* (NIALS Press 2020) 221.
[232] Petroleum Industry Act 2021, s 240(2).
[233] G G Darah, *The Niger Delta and the Struggle for Resource Control* (Malthouse Press 2010) 147.
[234] Petroleum Industry Act 2021, s 257.

communities need more control over decision-making processes regarding project selection, implementation and fund management.[235]

4.5.2 Criticisms by Environmental Advocates

Environmental groups and civil society also have raised questions about environmental parts of the Act. One of the major criticisms is the lack of more significant measures taken to eradicate gas flaring. The Act promotes the use of gas and imposes sanctions on some flaring operations, but environmental campaigners say that the conditions are not strong enough to really cut gas flaring.[236] The Act has also been criticized by environmental groups for lack of overall solutions to the issue of historical environmental pollution in petroleum-producing areas. Much of the Niger Delta region is still facing the consequences of previous oil spills and ecological damage before the law was put on the books. Critics argue that the Act lacks sufficient mechanisms to compensate for these “legacy” environmental problems.[237] Another criticism is that there is not enough involvement of the local community in the process of environmental monitoring and compliance. More community engagement would add transparency, accountability and better environmental protection, environmental advocates say.[238]

4.5.3 Criticisms by Industry Stakeholders

Some within the industry have attacked parts of the fiscal and regulatory regime created by the Act. Some of the petroleum operators have voiced concerns over the fiscal burden that the

[235] AA Ikein, *The Oil Industry, the Nigerian State and the Niger Delta* (Benin Social Science Series 2009) 204.
[236] Khan Saeed, *Energy Transition and Petroleum Governance in Developing States* (Palgrave Macmillan 2021) 131.
[237] Michael Likosky, *Nigeria's Extractive Industries and Transparency Reform* (Routledge 2010) 122.
[238] M A Ajomo, 'Environmental Regulation and Enforcement in Nigeria' (2017) 9 *Journal of African Law and Practice* 49.

combination of Hydrocarbon Tax, Companies Income Tax, Royalties and other statutory payments create for the Nigerian petroleum projects as compared with possibilities in other jurisdictions.[239]

There have also been concerns from industry about regulatory uncertainty stemming from the interpretation and implementation of some provisions of the Act. However, due to its relatively new nature, there are areas of the PIA that still need administrative interpretation and judicial engagement.[240] This has raised concerns about fluctuations in investment predictability and long-term planning. Other charges concern the speed of the implementation of some of the reforms provided for by the Act. Stakeholders have raised concerns that regulatory delays, policy development and institutional restructuring could impact the timely achievement of the benefits anticipated from the legislation.[241]

4.5.5 Criticism by the Legal Community

The Petroleum Industry Act has also attracted far-reaching academic interest by the legal community. A criticism of the government is that there is a clumping of powers in the hands of the Minister of Petroleum. Others contend that the scope of regulatory autonomy could be detrimental to the autonomy of regulatory institutions and to the transparency of petroleum governance.[242]

One criticism has to do with the vague language of some of the statutes. The Lawyers have commented that certain provisions of the Act might raise multiple questions of interpretation, especially regarding regulatory knowledge, fiscal responsibility and administrative processes. This

[239] H A Sani, *Natural Resources Law and Policy in Nigeria* (ABU Press 2016) 211.
[240] JE Abugu, 'Regulatory Reform and Institutional Capacity in Nigeria's Petroleum Sector' (2022) 13 *Nigerian Current Law Review* 94.
[241] John Hatchard, *Combating Corruption and Enhancing Governance in Africa* (Edward Elgar 2014) 193.
[242] A A Ijalaye, *Essays on Nigerian Petroleum Law and Policy* (University of Lagos Press 2015) 166.

ambiguity can cause legal uncertainty and make it more likely for disagreements to occur between stakeholders.[243] It has also been suggested that the Act represents a significant reform but does not fully eradicate the conflicts between petroleum developments and environmental sustainability, which have endured over the years. This stance holds that the law remains oriented towards the extraction and monetisation of resources and only pays limited regard to environmental justice issues.[244] Notwithstanding these criticisms, there is a general recognition by many commentators that the Petroleum Industry Act (PIA) is still one of the important instruments for reforming Nigeria's petroleum industry. Most of the criticisms raised by different interest groups are represented in terms of complaints about certain provisions and implementation mechanisms and not in terms of opposition to the overall purpose of the law.[245]

4.6 Prospects for Reform under the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 is an important milestone in the evolution of the Nigeria petroleum law and policy. However, the constantly changing dynamics of the petroleum industry, coupled with the changing environment and expectations of the stakeholders require a constant evaluation and adjustments of the legal framework of the petroleum industry. The long-term impact of the Act will be closely linked to the responsiveness of policy-makers, regulators and stakeholders in responding to emerging issues and enhancing where identified gaps exist.[246]

With regard to the Host Communities Development Framework, one area that needs to be addressed for future reform is the gap in education from the perspective of the host community. Future legislative review should consider changes that would increase the benefit of the trust funds

---

[243] Nlerum S Okogbule, *Contemporary Issues in Nigerian Energy Law* (NIALS Press 2020) 225.
[244] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 191.
[245] Akin Ibidapo-Obe, 'Legal Reform and Sustainable Development in Nigeria's Petroleum Sector' (2021) 15 *Nigerian Journal of Public Law* 78.
[246] ibid.

to host communities while ensuring greater transparency, and enhancing stakeholder confidence in the framework through greater community involvement in administration and management of the trust funds.[247]

Another focus to be addressed is environmental protection. With the ever-changing world's environmental standards, there is growing pressure on petroleum-producing states to implement more stringent environmental protection measures. Future reforms can thus target further improvements in the oil spill protection, environmental remediation, oil and gas emission reductions and greenhouse gas emission standards.[248] These reforms would bring Nigeria's petroleum regulatory regime closer to the emerging global environmental standards and sustainable development goals.

Another issue that can be addressed for reform is the issue of regulatory independence. While the Petroleum Industry Act put in place dedicated regulatory bodies, there are concerns about the extent of the influence of ministers in the governance structures. In the future, amendments could be thought through to improve the institutional autonomy, keeping up the control of the government.[249] Strengthening regulatory independence may contribute to greater transparency, accountability and investor confidence. Another possibility that holds promise is fiscal reform. The competitiveness of petroleum investment regimes will remain to impact global investment decisions. Regular review of the fiscal framework in Nigeria may be required to maintain the country's investment appeal and to protect revenue interests as global energy markets change.[250]

---

[247] Petroleum Industry Act 2021, s 240(2).
[248] Khan Saeed, *Energy Transition and Petroleum Governance in Developing States* (Palgrave Macmillan 2021) 137.
[249] A A Ijalaye, *Essays on Nigerian Petroleum Law and Policy* (University of Lagos Press 2015) 172.
[250] Ibid.

This could include the need to review tax structures, royalty arrangements and investment incentives to meet varying market conditions.

Development of effective dispute resolution mechanisms is further opportunities for future reform. There are often conflicts between regulators, operators, host communities and other stakeholders in the petroleum sector. Improving alternative dispute resolution processes in the petroleum industry can help to speed up the resolution of conflicts and limit the strain on existing judicial processes.[251] The ongoing evolution of technology in the petroleum industry strengthens the need for ongoing adaptation of the law. Changes in digital monitoring systems and petroleum production technologies and environmental management tools may necessitate changes to the regulatory framework. Future changes should therefore make the legal framework adaptable to technological changes in petroleum operations.[252] The global shift towards cleaner energy resources also has numerous implications for Nigeria's petroleum industry. The importance of petroleum resources to the national economy is continuing but international focus on renewable energy and carbon reduction policies can affect future petroleum policies. Therefore, reforms can be geared towards developing natural gas, encouraging cleaner production methods, and encouraging a phased transition to a more sustainable energy system.[253]

In addition, further enhancing transparency and accountability processes is a key goal for reform. Further amendments may include further measures to increase transparency for information, introduce greater oversight of petroleum revenues and greater stakeholder involvement in decision making. These would help in establishing good governance in the petroleum industry.[254]

[251] JE Abugu, 'Regulatory Reform and Institutional Capacity in Nigeria's Petroleum Sector' (2022) 13 *Nigerian Current Law Review* 98.
[252] Michael Likosky, *Nigeria's Extractive Industries and Transparency Reform* (Routledge 2010) 128.
[253] Damilola S Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 196.
[254] John Hatchard, *Combating Corruption and Enhancing Governance in Africa* (Edward Elgar 2014) 198.

Therefore, the opportunities for reform under the Petroleum Industry Act (PIA) are based on a commitment to ongoing improvement and evolution in the light of experience, of concerns by stakeholders and developments in the international energy world. The Act gives the petroleum sector a wide spectrum of rules and regulations governing its operations and activities, but continuous review and revision are necessary to ensure the rules and regulations remain relevant to the demands of the petroleum industry and the goals of national development.[255]

[255] Akin Ibidapo-Obe, 'Legal Reform and Sustainable Development in Nigeria's Petroleum Sector' (2021) 15 *Nigerian Journal of Public Law* 83.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This study explored the legal and institutional framework of the oil and gas industry in Nigeria and the Petroleum Industry Act 2021 in particular. Firstly, it looked into the reoccurring problems in Nigeria's oil and gas industry that impedes sustainable national development. The study revealed that despite the critical role of the petroleum industry in Nigeria's economy, it is still beset with several challenges. They are related to environmental damage caused by oil spills and gas flaring, underdeveloped host communities, oil stealing, pipeline vandalism, corruption, regulatory uncertainty and weak implementation of petroleum laws. It has also been revealed that these problems have adversely impacted on the generation of revenue, environmental sustainability, investor confidence and socio-economic development in petroleum producing regions. The research also revealed that successive governments have taken several measures to tackle the challenges but many of the issues remained before the enactment of Petroleum Industry Act 2021.

Secondly, the study brought to the fore the important legislative and institutional framework of the Nigerian oil and gas sector. The Petroleum Industry Act 2021 was discovered to be the main law at the moment that governs petroleum activities in Nigeria. The Act superseded a number of existing petroleum laws and provided a comprehensive legal basis for the administration, regulation and development of the petroleum industry. The study revealed that the Act was an introduction of some significant changes in the petroleum governance, notably the creation of the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority. It was also discovered that the Act changed the name of the Nigerian National Petroleum Corporation to the Nigerian National Petroleum Company Limited with the stated goal to achieve commercial efficiency, transparency and profitability. The study also revealed the presence of a Host Communities Development Framework in the Act aimed at creating a peaceful relationship between the petroleum operators and host communities and offer a legislative tool for community development. Moreover the Act put in place a fiscal regime aimed at increasing investment, boosting government revenues and providing stability in the petroleum industry.

Thirdly, the study evaluated these legal and institutional framework created by the Petroleum Industry Act 2021 and some legal and institutional challenges in the effectiveness of the framework in promoting good governance, fiscal and environmental issues in the petroleum industry. The findings were that although the reforms have been introduced through the Act, there are some loopholes in the provisions of the Act. The study revealed that the Minister of Petroleum Resources still has very large discretionary powers and this concerns issues of regulatory independence and transparency. It was also discovered that the Host Communities Development Framework has come under criticism for the three percent operating expenditure requirement for petroleum companies to give to host community trusts. The study also revealed that the fact that community development funds can be deducted where petroleum facilities are vandalized has been criticized for imposing collective responsibility on host communities.

The study also revealed that the environmental framework provided by the Act is inadequate when it comes to addressing historical environmental degradation and legacy pollution in petroleum producing areas. The Act promotes the use of gas but gas flaring is not fully banned. Thus, environmental activists and legal experts have raised doubts about its efficacy of environmental sustainability. The research also revealed that there are still issues pertaining to the implementation of the Act that are hindering its effectiveness. These encompass issues of oil theft, pipeline vandalism, low institutional capacity, lack of resources, and uncertainty surrounding the regulatory regime and enforcement mechanisms.

Lastly, the study determined that while the Petroleum Industry Act 2021 is the most comprehensive petroleum reform law in the history of Nigeria, it has not achieved its goals of transparency, environmental protection, and equitable development without other changes to the petroleum law and implementing the provisions of the Act.

5.2 Recommendations

The results of this study show that while the Petroleum Industry Act 2021 has made substantial changes to the Nigerian oil and gas industry, some deficiencies in the legislation and institutional framework remain that affect the effectiveness of the framework. Therefore, it is recommended that the following be done:

i. Strengthening Regulatory Independence

The study revealed that the Minister of Petroleum Resources still has a lot of discretionary powers under the Petroleum Industry Act 2021. This has been a concern on the independence and transparency side of things in the petroleum industry. Hence, the National Assembly must examine and repeal parts of the Act that grant too much discretion to the Minister in petroleum licensing and administration of petroleum leases and regulatory approval. Increased independence and flexibility of the regulatory bodies created under the Act to improve transparency, accountability and investor confidence.

ii. Review of the Host Communities Development Framework

The study identified that the 3 percent petroleum companies are required to pay to the Host Communities Development Trust has led to a lot of criticism in the host communities. Thus, the Federal Government should consider changing the percentage of reserves that is set aside for host communities under section 240 of the Petroleum Industry Act. An upward review would attract more resources for community development projects and assist in resolving longstanding grievances related to petroleum exploration and production activities.

iii. Amendment of the Collective Liability Provision

The study revealed that the allowance for deductions from host community trust funds in the event of vandalism of petroleum facilities has drawn a good deal of opposition. This is due to the fact that the provision does place collective consequences on entire communities for acts that may have been committed by a few individuals. Thus, section 257 of the Petroleum Industry Act must be repealed so that no host community can be held responsible for the acts of vandalism by individuals and not the whole community.

iv. Strengthening Environmental Protection Measures

The environmental provisions of the Petroleum Industry Act are not adequate to adequately address the historical environmental degradation and legacy pollution of petroleum-producing communities. Thus, the Federal Government ought to have an extensive environmental restoration plan, exclusively designed for petroleum polluted communities, which have suffered for decades. Such a programme should ensure that there are clear mechanisms for environmental remediation, ecological restoration and long-term monitoring of affected areas.

v. Progressive Elimination of Gas Flaring

The study revealed that while the Act facilitates gas utilisation, it does not end gas flaring altogether, but rather it allows for it. Stricter actions should be taken to progressively phase-out routine gas flaring as the issue of environmental sustainability and climate protection becomes more important. Existing penalties should be enforced, and investments made in the gas gathering, processing and utilisation infrastructure encouraged by regulatory authorities.

vi. Strengthening Institutional Capacity

The study discovered that Insular capacity is still an issue in the implementation of the Petroleum Industry Act. Government should therefore allocate sufficient funds, technical resources, professional training to the Nigerian Upstream Petroleum Regulatory Commission and Nigerian Midstream and Downstream Petroleum Regulatory Authority. This would boost the efficiency of the regulations and facilitate the enforcement of the provisions of the Act.

vii. Combating Oil Theft and Pipeline Vandalism

The study revealed oil theft and pipeline vandalism are still huge challenges to proper petroleum governance in Nigeria. Thus, government should beef up surveillance systems, enhance intelligence gathering and promote co-ordination among security agencies, the petroleum operators and host communities. Implementing modern technology to monitor pipelines and protect assets should also be a priority.

viii. Enhancing Community Participation

The research revealed that some Host Communities Development Trusts' administration is beyond the control of host communities. As such, there needs to be a step-up in the involvement of communities in the governance and management of the trusts. This would enhance transparency, accountability and community ownership of development projects.

ix. Clarification of Ambiguous Provisions

The study identified some of the provisions of the Petroleum Industry Act that have the potential to give conflicting interpretations to stakeholders. Hence, detailed guidelines and regulations need to be issued by the regulating authorities to ensure uniformity in implementation of the Act in the petroleum industry and to clarify the areas of uncertainty.

x. Periodic Review of the Petroleum Industry Act

Last but not least, the study revealed that the petroleum industry is continually changing as a result of technological advancement, environmental issues and evolving global energy policies. The National Assembly therefore should put in place a mechanism of periodic review of the Petroleum Industry Act to keep the Act relevant to the challenges and international best practices in the petroleum sector.

5.3 Conclusion

This project investigated the legal framework and institutional arrangements of the oil and gas industry in Nigeria focusing mainly on the Petroleum Industry Act 2021 (PIA). The study has come to a conclusion that the passing of the Petroleum Industry Act was a major milestone in the petroleum sector in Nigeria. The Act brought in a wide range of changes to boost governance and improve the efficiency of regulation, while also encouraging investment and tackling concerns from host communities.

The study also confirmed that the Act is a consolidated legal structure for petroleum administration by establishing specialised regulatory institutions, restructuring of the national oil company and establishing a new fiscal regime and regime of host community development. The changes have been instrumental in modernizing the petroleum governance system in Nigeria.

Despite these successes, the study identified some problems that remain to impact the effectiveness of the legal and institutional framework set up by the Act. These encompass over-ambitious ministerial discretion, insufficient benefits for the host communities, environmental issues, oil theft, pipeline vandalism, and poor institutional capacity and implementation challenges. The research also revealed that some of the provisions of the Act have received criticism from the host communities, environmental groups, industry stakeholders and legal scholars.

The study thus recommends that the Petroleum Industry Act (PIA) 2021 is the most comprehensive legislation to reform the petroleum sector in recent times, but effective implementation, strengthening of institutions and periodic legislative review are essential for the successful implementation of the Act. The identified loopholes and implementation challenges when addressed will improve the effectiveness of the Act in ensuring transparency, environmental sustainability and equitable development in the oil and gas industry in Nigeria.

BIBLIOGRAPHY

Books

Auty RM, Sustaining Development in Mineral Economies: The Resource Curse Thesis (Routledge 1993).

Baldwin R, Cave M and Lodge M, Understanding Regulation: Theory, Strategy and Practice (2nd edn, Oxford University Press 2012).

Bingham T, The Rule of Law (Allen Lane 2010).

Brown Weiss E, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity (United Nations University Press 1989).

Collier P, The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It (Oxford University Press 2007).

Karl TL, The Paradox of Plenty: Oil Booms and Petro-States (University of California Press 1997).

Ogus AI, Regulation: Legal Form and Economic Theory (Hart Publishing 2004).

Pigou AC, The Economics of Welfare (4th edn, Macmillan 1932).

Prosser T, The Regulatory Enterprise (Oxford University Press 2010).

Ross ML, The Oil Curse: How Petroleum Wealth Shapes the Development of Nations (Princeton University Press 2012).

Sands P and Peel J, Principles of International Environmental Law (4th edn, Cambridge University Press 2018).

Schwartz L, Administrative Law (3rd edn, Little, Brown and Company 1991).

Smith E, Daintith T and others, International Petroleum Transactions (3rd edn, Rocky Mountain Mineral Law Foundation 2010).

Yergin D, The Prize: The Epic Quest for Oil, Money and Power (Simon & Schuster 2008).

Journal Articles

Adebisi SA and Ezebuiro KN, 'Analysis of the Petroleum Industry Act and Its Impact on the Nigerian Oil and Gas Sector' (2023) 6(3) *Gusau International Journal of Management and Social Sciences* 293.

Ayoade A, 'Nigeria's Petroleum Industry Bill: Addressing Old Problems Through New Legislation' (2019) 37 *Journal of Energy and Natural Resources Law* 217.

Imoisi SE, Aidonojie PA and Edetalehn OI, 'Legal Issues and Innovations Introduced by the Petroleum Industry Act 2021 in the Nigerian Oil Industry' (2023) 10(2) *Journal of Commercial and Property Law* 1.

Kassim-Momodu M, 'Exercise of Ministerial Powers under Nigeria's Petroleum Industry Act' (2023) 41 *Journal of Energy and Natural Resources Law* 105.

Masi DO, 'Mainstreaming UNCLOS Principles into the Petroleum Industry Act 2021: Rethinking Abandonment and Decommissioning Governance in the Nigerian Petroleum Industry' (2025) *Nnamdi Azikiwe University Journal of Private and Property Law*.

Nwapi C, 'The Nigerian Petroleum Industry Act 2021: An Appraisal of the Legal Framework for Petroleum Governance' (2022) *African Journal of International and Comparative Law*.

Olawuyi DS and Oni O, 'The Petroleum Industry Act 2021 and the Future of Energy Governance in Nigeria' (2022) 40 *Journal of Energy and Natural Resources Law* 321.

Oni O, 'The Petroleum Industry Act 2021: Implications for Nigeria's Energy Sector' (2022) 18 *Oil, Gas and Energy Law Intelligence*.

Olawuyi DS, 'Extractive Industries, Sustainable Development and the Petroleum Industry Act' (2022) *Journal of World Energy Law and Business*.

Ugochukwu B, 'Legal and Institutional Reforms under the Petroleum Industry Act 2021' (2023) *Nigerian Bar Journal*.

Reports

United Nations Development Programme, *Governance for Sustainable Human Development* (UNDP 1997).

United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011).

World Bank, *Governance and Development* (World Bank 1992).

World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987).