AN APPRAISAL OF UPSTREAM PETROLEUM LICENSING REGIME IN NIGERIA UNDER THE PETROLEUM INDUSTRY ACT 2021

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ABSTRACT:*The article appraised the licensing regime under the newly enacted Petroleum Industry Act (PIA) 2021. It adopted a doctrinal approach by examining or evaluating some of the relevant clauses of the PIA as they relate to licensing in the Nigerian upstream petroleum operations. The study discovered that a number of innovations have been introduced by the PIA as a form of regulating operations in the Nigerian petroleum upstream sector. Findings in the research also revealed inter alia, that the new statute has not only repealed a number of laws which hitherto regulated the upstream sector but has also rechristened the licensing regime from the old oil exploration licence, oil prospecting licence, and oil mining lease, respectively to petroleum exploration licence, petroleum prospecting licence and petroleum mining lease. Petroleum operations in the upstream sector without due authorisation is penalised by the PIA. The article concluded that the relevant clauses of the extant PIA on licensing regime are capable of engendering good governance, transparency, accountability and fostering favourable business environment for the upstream petroleum operations. Thus, it is recommended that the Nigerian government, agencies created under the PIA and other relevant stakeholders must adhere to the provisions of the Act if the worthy goals of the statute must be achieved.*

KEYWORDS: *Authority; Commission; Marginal Field; Petroleum Exploration Licence; Petroleum Mining Lease; Petroleum Prospecting Licence.*
JEL CODE: *K32*

1. BRIEF HISTORICAL BACKGROUND TO THE PETROLEUM INDUSTRY ACT (PIA) 2021

The noble idea of carrying out comprehensive reforms in the Nigerian petroleum industry was initiated by the then President Olusegun Obasanjo's administration in April 2000 when he set up the Oil and Gas Reform Implementation Committee (OGIC) to propose plans targeted at introducing necessary reforms in the Nigerian petroleum industry. The OGIC's recommendations, which birthed the National Oil and Gas Policy (NOGP) 2004, inter alia,

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identified the need to separate the commercial establishments in the sector from the regulatory and policy-making institutions[1] and the re-organisation of all extant petroleum laws and regulations as well as establishing an all-embracing regulatory legal framework for the industry.[2]

Subsequently, in 2007, late President Umar Yar'Adua's administration reconstituted the OGIC under the chairmanship of Dr. Rilwan Lukman to adopt the provisions of the NOGP to establish legal, regulatory and institutional framework for managing the oil and gas sector. The resultant report formed the basis for the first Petroleum Industry Bill (PIB) that was submitted to the National Assembly (NASS) as an Executive bill in 2008.[3] Unfortunately, the bill suffered a number of impediments before the sixth NASS and was not passed into law.[4]

In July 2012, a revised version of the PIB was again forwarded as an executive bill to the seventh NASS by former President Goodluck Ebele Jonathan[5] but it could not scale through the legislative Assembly as it was only passed by the House of Representatives.[6] During the first civilian tenure of President Muhammadu Buhari, the eighth NASS passed the bill[7] but the President withheld his requisite assent. However, in September 2020, the PIB was re-presented to the NASS by President Buhari during his second term in office leading to its passage by the NASS in July 2021[8] with the President assenting and signing it into law on 16 August 2021.

The article will therefore, carry out an appraisal of relevant clauses of the PIA with a viewing to understanding how they regulate the rights and obligations of licensees and lessees in conducting petroleum operations in the Nigerian upstream sector. Some inadequacies of the Act would be identified and necessary recommendations towards the effective implementation and administration of the Act to achieve its intended reforms in the licensing regime would also be suggested.

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[1]Okigbo, A 2012, 'Nigeria: petroleum industry bill, history, objectives, institutions, and controversies', *Nextier Advisory*, 15 January, viewed 7 January 2015,<https://www.google.com/search?q=Nigeria%3A+petroleum+industry+bill+history%2C+objectives%2C+institutions%2C+and+controversies&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-GB:official>.

[2] Amodu, T 2021, 'The politics, history of petroleum industry bill: How the north secured funding for frontier basins', *Tribune*, 5 July, viewed 6 January 2022, <https://tribuneonlineng.com/the-politics-history-of-petroleum -industry-bill>.

[3] Okigbo, A. *op.cit.*

[4] Some of the setbacks were in relation to disagreement over 10% allocated as fund for the development of host communities and the sharing of oil profits among multinational oil companies (MNOCs)- see Amodu, T 2021, 'The politics, history of petroleum industry bill: How the north secured funding for frontier basins', *Tribune*, 5 July, viewed 6 January 2022, <https://tribuneonlineng.com/the-politics-history-of-petroleum-industry-bill>.

[5]Okigbo, A. *op.cit.*

[6] Nigeria has a bicameral legislature at the federal level, comprising the Senate and the House of Representatives, both of which constitute the National Assembly. For a federal law to be properly passed, it must be passed by both legislative houses before it is presented to the President for his assent- see secs. 47 and 58 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[7] As a matter of fact, President Buhari forwarded the bill to the National Assembly as the Petroleum Industry Governance Bill (PIGB) which was passed by the Senate in May 2017 and the House of Representatives in January 2018.

[8] The Senate passed the PIB on 15 July 2021 while the House of Representatives followed suit on 16 July 2021.

2. AN OVERVIEW OF THE PETROLEUM INDUSTRY ACT 2021

The Act principally seeks to provide legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry as well as the development of host communities and the related matters.[9] It is divided into five chapters with various parts, 319 sections and 8 Schedules. Each chapter of the statute has set out aims. Chapter one of the legislation provides for governance and institutions, with its primary aim being that of ensuring good governance and accountability, creation of commercially oriented national oil petroleum company (i.e. Nigerian National Petroleum Company Limited)[10] as well as the promotion of a favourable business environment for petroleum operations and the intensification of local content practice in the Nigerian petroleum industry.[11] The chapter also creates two main regulatory bodies, namely, the Nigerian Upstream Regulatory Commission (hereinafter called, "the Commission")[12] and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (hereinafter called "the Authority").[13]

Chapter two of the Act provides for the general administration of the Nigerian petroleum operations.[14] The primary objectives of the chapter are to encourage the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people and to promote sustainable development of the industry; ensure safe, efficient transportation and distribution infrastructure and transparency and accountability in the administration of petroleum resources in the country; as well as encourage and facilitate both local and foreign investment in the petroleum industry including the creation of competitive markets for the sale and distribution of petroleum and petroleum products.[15]

Chapter three focuses on host communities' development (HCD).[16] Host communities, according to the Act relate to communities located in or appurtenant to the area of operation of a settlor (licensee or lessee), and any other community as a settlor may determine under the provisions of this chapter.[17] The foremost objectives of the chapter are inter alia, to foster sustainable prosperity within host communities; provide direct and economic benefits and enhance harmonious co-existence between licensees or lessees and the host communities.[18] Thus, a licensee or lessee or an operating company on behalf of a settlor is required to contribute 3% of its actual operating expenditure in the immediate preceding calendar year to the host communities' development trust fund

[9] See generally the recital to the Petroleum Industry Act (PIA) 2021.
[10] PIA 2021, Part V of the Chapter, secs. 53-65 thereof which makes relevant provisions regarding the NNPC Limited.
[11] *Ibid*, sec. 2.
[12] *Ibid*, Part III of the Chapter, secs. 4-28 thereof.
[13] *Ibid*, Part IV of the Chapter, secs. 29-52 thereof.
[14] *Ibid*, Parts I-VII of the Chapter, secs. 66-233 thereof.
[15] *Ibid*, sec. 66(1).
[16] *Ibid*, secs. 234-257 generally.
[17] *Ibid*, sec. 318.
[18] *Ibid*, sec. 234(1).

(HCDTF)[19] and the fund of the HCDTF is exempted from taxation.[20] A community stands to forfeit the costs of repairs in the occurrence of vandalism, sabotage and other forms of civil unrest which result in causing damage to petroleum facilities or disruption of protection activities. However, the forfeiture is inapplicable where the interruption of operation is by reason of technical or natural cause.[21]

The petroleum industry fiscal framework is set out in chapter 4 of the PIA 2021.[22] The objectives of the chapter are, inter alia, to create a progressive financial framework that promotes investment in the Nigerian petroleum industry, equipoising the gains with risk towards the enhancement of the federal government's revenues; simplifying the administration of petroleum tax as well as promoting equity and transparency in the Nigerian petroleum industry fiscal regime.[23] While the Federal Inland Revenue Service (FIRS) is charged with the obligation of assessing and collecting hydrocarbon tax, companies income tax and tertiary education tax as it relates to taxable petroleum operations;[24] the Commission takes responsibility for determining and collecting royalties, signature bonus, rents and related payments and its enforcement as well as related payments or production shares, where the model contract includes provisions associated with the production sharing contract, profit sharing or risk service provisions.[25] On the other hand, the Authority is charged with the duty of determining and collecting gas flaring penalties arising from midstream operations and its enforcement.[26]

Chapter 5 of the Act contains the miscellaneous provisions, including the repeals of some enactments[27] and saving provisions clauses of other laws until termination or expiration of the relevant licenses or leases.[28] The miscellaneous provisions of chapter 5 also contain the pre-action notice requirement[29] and the applicability of the provisions of the Public Officers Protection Act in relation to actions against the Commission or Authority and their officers.[30] The PIA enjoys some flavour of superiority over other statutes except the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010.[31]

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[19] *Ibid*, sec. 235; goals of the HCDTF are stipulated in sec.239 of the Act.
[20] *Ibid*, secs. 256 and 257(1).
[21] *Ibid*, sec. 257(2).
[22] *Ibid*, see generally sec. 258-306.
[23] *Ibid*, sec. 258(1).
[24] *Ibid*, sec. 259(a)(i)(ii).
[25] *Ibid*, sec. 259(b)(i)(ii).
[26] *Ibid*, sec. 259 (c).
[27] The PIA repeals about 10 statutes including the Associated Gas Reinjection Act Cap. A25, LFN 2004 and its Amendments; Hydrocarbon Oil Refineries Act, Cap. H5 LFN 2004; Motor Spirit (Returns) Act Cap. M20 LFN 2004; Nigerian National Petroleum Corporation (Projects) Act Cap. N124 LFN 2004; Nigerian National Petroleum Corporation Act, Cap. N123 LFN 2004; Petroleum Product Pricing Regulatory Agency (Establishment) Act (PPPRA) No. 8 of 2003; Petroleum Equalisation Fund Act, etc., *ibid*, sec. 310.
[28] Some of the saving provisions include the Petroleum Act, Cap. P10 LFN 2004; Petroleum Profit Tax Act Cap. P13 LFN 2004, Deep Offshore and Inland Basin Production Sharing Contract Act 2004 and its Amendment, Oil Pipelines Act, Cap. O7 LFN 2004, and any other statute or regulations that are consistent with the provision of sec. 92(6) of the PIA, *ibid*, sec. 311(9).
[29] PIA 2021, sec. 308.
[30] *Ibid*, sec. 307.
[31] It is worthy of note that the NOGICDA 2010 states that irrespective of any contrary provision under the Petroleum Act or any other legislation, the clauses of the NOGICDA shall remain applicable in all matters

With such supremacy, where the provisions of any other enactment are inconsistent with the provisions of the PIA, then the provisions of the latter shall prevail and the provisions of that other enactment or legislation shall, to the extent of that inconsistency, be void in relation to matters provided for in the PIA.[32]

3. REGULATORY INSTITUTIONS UNDER THE PIA

As earlier pointed out, the PIA creates two main regulatory bodies for the Nigerian petroleum industry, namely, the Nigerian Upstream Petroleum Regulatory Commission[33] and the Nigerian Midstream and Downstream Petroleum Regulatory Authority.[34] The Commission is charged with the responsibility for the technical and commercial regulation of the upstream petroleum operations, including implementation of environmental statutes and policies for the upstream operations.[35] It also carries out studies in relation to the economy, effectiveness and efficacy of the upstream petroleum industry and discharges other obligations as may be vital towards the realisation of the provisions of the Act.[36]

The Authority, on the other hand, is responsible for the technical and commercial regulation of the midstream and downstream operations in Nigeria[37] in addition to the licensing of the major players in that sector.[38] The Authority also ensures the accuracy of metering pumps and related measurement facilities in the midstream and downstream petroleum sector[39] along with the determination of the domestic base price and the applicable prices of wholesale petroleum products.[40] Both the Commission and the Authority are excused from the provisions of any legislation involving the taxation of companies or trust funds.[41]

4. UPSTREAM PETROLEUM OPERATIONS' LICENCES AND LEASES

Under the 1969 Petroleum Act, there were three kinds of licensing regime, namely, the oil exploration licence, the oil prospecting licence and the oil mining lease (Frynas, Beck & Mellahi, 2000, p. 410). The PIA also recognises basically three kinds of upstream operations, namely, petroleum exploration, petroleum prospecting and petroleum mining. Consequently, for petroleum activities in this sector, a qualified applicant[42] may be granted the petroleum exploration licence (PEL), petroleum prospecting licence (PPL)

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connected with the Nigerian content in relation to all operations or transactions performed or linked with the Nigerian oil and gas industry. Thus, the PIA provision seeks to fulfill this statutory obligation- see NOGICDA 2010, sec. 1.

[32] PIA, sec. 309.

[33] *Ibid*, sec. 4.

[34] *Ibid*, sec. 29.

[35] *Ibid*, sec. 6.

[36] *Ibid*, sec. 7(dd) and (bb).

[37] *Ibid*, sec. 29(3).

[38] *Ibid*, sec. 32(i).

[39] *Ibid*, sec. 32(dd).

[40] *Ibid*, sec. 32(rr). See generally sections 32 and 33 PIA for the functions of the Authority and the Regulations by the Authority.

[41] *Ibid*, sec. 24 (11) and sec. 47 (10) of the Petroleum Industry Act 2021.

[42] A licence or lease may be granted under the Act only to a company incorporated and legally existing under the Companies and Allied Matters Act (CAMA) 2020- see PIA 2021, sec. 70(2).

or the petroleum mining lease (PML)[43] by the Minister of Petroleum Resources (Minister) on the recommendation of the Commission through the methods recognised under the Act.[44] A company cannot operate in more than a single stream and if it intends to do so, then distinct companies must be incorporated and used for each stream of petroleum activities.[45]

The Act penalises any individual or persons in partnership except companies or partnership between companies who engages in upstream petroleum operations.[46] The offence attracts an administrative penalty of ₦10 million and further administrative penalty of ₦2million for each day the default continues and upon conviction to the payment of ₦10 million fine and an additional fine of ₦2million for each day the offence continues or 6 months imprisonment term.[47] Such a person or partnership will also be liable to hydrocarbon tax (HCT) and companies' income tax (CIT) on the benefited profits on upstream operations.[48] This part of the paper sets out, therefore, to examine inter alia, the nature, scope and extent of the licensing regime grantable by the Minister for upstream petroleum operations under the PIA.

a. Petroleum Exploration Licence (PEL)

The holder of a PEL has a non-exclusive right to conduct petroleum exploration activities within the specified area.[49] The duration of the PEL is for 3 three years and renewable for another three years on the fulfillment of required conditions.[50] PEL may extend to an area that covers PPL or PML but the holders of such licences or leases are not under any commitment to pay for results of any survey performed under the PEL.[51] However, PEL granted in relation to frontier acreages may cover a clause allowing the licensee to select, based on the outcome of his exploration work, and be granted one or more PPL before the termination of the licence containing the fiscal provisions stated in chapter 4 of the PIA.[52] The exclusive right and ownership over every acquired unprocessed and interpreted data obtained by a licence holder under a PEL is vested on the Commission. However, the licensee has a right to grant a data use licence to a third party on a written permission by the Commission on payment of fees by the third party.[53] It must be added that a grant of a PEL is not required for conducting geological, geophysical or geochemical surveys for scientific or educational reasons in relation to petroleum where it is apparent that the results of such surveys are not intended for sale or commercial reward.[54]

b. Petroleum Prospecting Licence (PPL)

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[43] *Ibid*, sec. 70.
[44] *Ibid*, sec. 3(1)(g). It must be mentioned from inception that the wide powers granted to the Minister under the Act may be exercisable either by him in person or by the Chief Executive of the Commission or Authority through a written delegation made by the Minister in that respect- *ibid*, sec. 3(1)(i).
[45] *Ibid*, sec. 302(3).
[46] *Ibid*, sec. 273(1)
[47] *Ibid*, sec. 297(1) and (2).
[48] *Ibid*, sec. 273(2).
[49] *Ibid*, sec. 71(2).
[50] *Ibid*, sec. 71(3).
[51] *Ibid*, sec. 71(4).
[52] *Ibid*, sec. 71(5). See also generally secs. 258-306 of the PIA.
[53] *Ibid*, sec. 71(6) & (7).
[54] *Ibid*, sec. 71(10).

The holder of a PPL shall, subject to the satisfaction of the duties imposed under the PIA, enjoy the rights of conducting petroleum exploration activities within the licenced area on non-exclusive basis and to an appraisal wells.[55] Default by a licensee to satisfy any term and condition stipulated in the licence which occurs as a result of *force majeure* shall not constitute a breach of the licence.[56] In such a situation, the duration of such *force majeure* shall be added to the period fixed for the implementation of the related term or condition, provided such duration is not more than a total of 3 years after which the PPL may be brought to an end by the Commission or the licensee.[57] The duration of a PPL is determined by the acreage. In relation to the onshore and shallow water acreages, the duration is an initial 3 years period and a renewable period of 3 years.[58] For deep offshore and frontier acreage, the duration is stated as not being more than 10 years consisting of an initial exploration period of 5 years and optional extension duration of 5 years.[59] The licenced area covered by a PPL has a maximum of 350 square kilometres for any onshore or shallow water acreages; 1000 square kilometres for any deep offshore acreages; and 1500 square kilometres for any frontier acreages.[60]

c. Petroleum Mining Lease (PML)

PML is granted to a qualified applicant for purposes of winning, working, carrying away and disposing of crude oil, condensates and natural gas on an exclusive basis. It also permits the lessee to drill exploration and appraisal wells on an exclusive basis and conduct petroleum exploration activities on a non-exclusive basis.[61] The lease is granted for every commercial discovery of crude oil or natural gas or both to a holder of a PPL who has fulfilled the requirements imposed on the licence or the licensee and obtained the requisite consent of the Commission for the related development plan.[62] A lessee operating a PML enjoys exclusive right to conduct upstream petroleum operations under the lease area[63] and must demonstrate serious commitment towards the development and production of the commercial discovery of crude oil or natural gas in the lease area in compliance with the development plan[64] otherwise the lease may be revoked and the title reverts to the government.[65] The duration for a PML is for a maximum period of 20 years, including the development period.[66] An onshore lease will use 5 years in the absence of a development period; while a lease in shallow water, deep offshore or frontier acreage spans for 7 years.[67]

A lessee may not later than 12 months prior to the end of the applicable lease apply in writing to the Commission for the renewal of the leased area or any part of it.[68] In

[55] *Ibid*, secs 70(1)(b) and 72(1)(a)(b).
[56] *Ibid*, sec. 72(3).
[57] *Ibid*, sec. 72(4).
[58] *Ibid*, sec. 77(1).
[59] *Ibid*, sec. 77(2).
[60] *Ibid*, sec. 77(3).
[61] *Ibid*, sec. 70(c).
[62] *Ibid*, sec. 81(1).
[63] *Ibid*, sec. 82(2).
[64] *Ibid*, sec. 82(3).
[65] *Ibid*, sec. 86(2) and (3).
[66] *Ibid*, sec. 86(1).
[67] *Ibid*, sec. 86(4).
[68] *Ibid*, sec. 87(1).

addition to the application, it is imperative that the applicant satisfies the Commission with the following requirements:

i. that the lessee has fulfilled its responsibilities regarding the development of the lease area;
ii. the lessee has completely fulfilled all payments required under the PIA or any other statute in relation to royalties, rents, taxes and fees in respect of the PML;
iii. the lessee has not defaulted in any duty or conditions imposed on the lease; and
iv. the lessee has performed all operational obligations in conformity with relevant rules and regulations.[69]
v. The Commission may also in the public interest alter, impose or introduce new lease requirements which shall be published in the official gazette of the Federal Government[70] including demanding payment of renewal bonus by the lessee.[71]

Voluntary Conversion of OPL to PPL or OML to PML

The PIA makes it optional to convert oil prospecting licence (OPL) to PPL or an oil mining lease (OML) into a PML.[72] Such voluntary conversion by way of "conversion contract" entitles the licensee or lessee to benefit from fiscal incentives stipulated under chapter 4 of the PIA.[73] The conversion contract shall also contain inter alia, termination clause of all unresolved arbitration and court cases linked to the related OPL or OML. Any stability provisions or guarantees by the defunct NNPC in respect of the OPLs or OMLs to be converted shall be null and void. Moreover incentives under the Petroleum Profit Tax Act (PPTA) are not transferrable.[74] Where an OPL is converted, the term of years included in the licence would be applicable to the converted PPL.[75] Where a licensee or lessee under the old regime fails to convert, he will cease to hold his licence upon its expiration and would in the circumstances be required to apply for the licence under the PIA.

d. Bidding Process for Granting PPL or PML

In a clear departure from the position under the Petroleum Act 1969 where grant of oil licences or leases were carried out primarily at the discretion of the Minister in charge of petroleum resources,[76] the PIA, in an attempt to encourage openness and fair competition in the running of the Nigerian petroleum industry, introduces a bidding method for grant of licences and leases,[77] provided that the winning bidder has satisfied the conditions of the bid invitation.[78] Commenting on rationale for expressly stipulating the bidding process under the PIA, an author has opined that such was possibly done in order to:

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[69] *Ibid*, sec. 87(2).
[70] *Ibid*, sec. 87(4).
[71] *Ibid*, sec. 87(3).
[72] *Ibid*, sec. 92(1).
[73] *Ibid*, sec.92(2).
[74] *Ibid*, sec. 92(3). See for instance secs. 11 and 12 of the Petroleum Profit Tax Act Cap. P13, LFN 2004.
[75] *Ibid*, sec. 92(7).
[76] Petroleum Act, Cap. P10, LFN 2004, sec. 2(1).
[77] PIA, sec. 73(1).
[78] *Ibid*, sec. 73(3).

> *...enable citizens access essential information about how the country's petroleum resources are being developed. Also, where there are deficiencies in the licensing system, stakeholders can use this information to seek for reforms to ensure more transparent and efficient licensing regimes, which in turn, will attract investment to the petroleum industry. If the bidding process stipulated in the Act is adhered to, the petroleum industry in Nigeria will experience a more turn around with the elimination of corruption through transparency and accountability in licence or lease allocation* (Atsegbua 2021, p.81).

The above opinion expressed by the said author appears to accord with the objectives of the Act towards the promotion of "transparency, good governance and accountability in the administration of the petroleum resources" and the need to "foster a business environment conducive for petroleum operations" in Nigeria.[79] It may be recalled that under the Petroleum Act 1969 dispensation, requirement for bidding process prior to the grant of licences and leases by the Minister was not statutorily required and this gave room for allegations of unethical practices surrounding the award as a result of its discretionary nature. No level playing ground was afforded to applicants to bid for oil rights under the then existing system. (Etikerentse 2004, p. 96)

The winner of a bid is determined on the basis of the following enumerated criteria:

a) a single bid parameter which is based on the fulfilment of any of the following undermentioned considerations:

i) payment of full signature bonus before the granting of the licence or lease by or on behalf of the winning bidder;

ii) a royalty interest;

iii) a profit split or profit oil split;

iv) a work programme commitment during the original exploration period; or

v) any other consideration that may be specifically required in relation to a bid round.

b) A combination of the bid factors stated above in (a) based on a point system measurable by the bidder in such a way that the bidder with the highest total number of points shall be the winning bidder.[80]

The bids received based on the above enumerated parameters shall in addition adopt an electronic bidding process which is open to the public and carried out in the presence of representatives of the Nigerian Extractive Industry Transparency Initiative (NEITI), the Federal Ministry of Finance, and the Federal Ministry of Petroleum Resources.[81] Also the Commission is enjoined by the PIA to publish its call for bids on its website and in at least two global financial newspapers as well as two national newspapers that enjoys wide coverage.[82]

e. Licensing Round Guidelines and Model Licence/Lease

The PIA stipulates that the licensing round guidelines must be accompanied with model licence or model lease[83] showing the requirements of the licensing round guidelines including clauses relating to the description of the acreage; term of the

[79] *Ibid*, sec. 2 (c) & (d).
[80] *Ibid*, sec. 74 (2)(a) & (b).
[81] *Ibid*, sec. 74 (7).
[82] *Ibid*, sec. 74 (5).
[83] For detailed accompanying items, see generally PIA 2021, sec. 75 (a)-(e).

licence or lease; minimum work programme and the minimum level of investment; details of guarantees to be given by the licensee or lessee in relation to the execution of its licence or lease commitments; details of duties in respect of relinquishment, decommissioning and abandonment; rules for settlement of disputes, including arbitration, mediation, conciliation or expert determination; relevant sanctions in case the licensee or lessee fails to observe the terms and conditions of the licence or lease; and such other clauses that the Commission may consider expedient to be incorporated into it.[84]

Similarly, a licensee or lessee is at liberty to enter into a contract with a third party for the exploration, prospecting, production or development of oil and gas except where the statute or its attendant regulations otherwise prohibits;[85] though the Commission is statutorily mandated to develop a model licence or lease stipulating some requirements for the parties.[86] Under the model contracts, a carried interest clause giving the government, through the newly created NNPC Limited, a participatory right of up to 60% in the contract or identified as a bid parameter is recognised.[87]

f. Work Commitment and Field Development Plan

The essence of submitting a work programme as stipulated under section 78 of the PIA is to ascertain that a licensee carries out petroleum prospecting activities in the licenced area vigorously and in a businesslike manner based on good global oilfield practice and as required under the Act. Where a discovery is made during the original exploration period or the renewal period, the licensee must inform the Commission accordingly within 180 days of the discovery.[88] This will culminate in the preparation and submission of an appraisal programme which must be approved by the Commission within 60 days.[89] After the conclusion of the appraisal programme, the licensee shall declare a commercial discovery or declare a significant gas discovery[90] and in addition submit to the Commission a commitment to field development plan within a space of 2 years after such discovery declaration to the Commission.[91]

Failure of the licensee to declare a commercial discovery may result in the licenced area being relinquished.[92] As a matter of fact, a licensee who neglects to conduct petroleum operations in accordance with universal best practice or interrupts production for 180 days consecutively without good reasons shown may have his licence revoked.[93] The licenced areas in respect of which the commercial discovery declaration have been made may be developed and worked upon on unitisation basis to achieve optimum

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[84] *Ibid*, sec. 76 (a)-(h).
[85] *Ibid*, sec. 84(1).
[86] *Ibid*, sec. 85(1).
[87] *Ibid*, sec.85(4). The model contracts which the newly created NNPC limited is allowed to enter into with the licensee or lessee include a production sharing contract; a profit sharing contract; a risk service contract; a concession agreement for exploration, development and production of petroleum; and any other globally recognised contract for the exploration and production of petroleum which may be a variation of the above listed forms. The licensee or lessee may be an incorporated or unincorporated joint venture- see *ibid*, sec.85(2).
[88] *Ibid*, sec.78(3).
[89] *Ibid*, sec. 78(4) and (5). Where the Commission fails to act on the appraisal programme within the stipulated period, the appraisal shall be deemed approved- sec. 78(6).
[90] *Ibid*, sec. 78(8).
[91] *Ibid*, sec. 79(1).
[92] *Ibid*, sec. 78(13).
[93] *Ibid*, sec. 96(1)(a) and (b).

recovery of petroleum from a petroleum reservoir.[94] Thus, the requirement for work commitment and field development plan from licence holders are clear indications that the Nigerian government is seriously committed to deriving investments or benefits from its upstream petroleum operations.

g. Relinquishment and Surrendering of Licence or Lease

The intendment of relinquishment clause is to guarantee that the areas that have not been appraised or retained are returned to the government. (Atsegbua, 2021) Therefore, areas relinquished are areas with no potential for petroleum discovery and the licensee or lessee is under obligation to hand them over to the Federal Government of Nigeria for a possible reallocation to another interested qualified applicant for exploration and production of petroleum.[95] For a licensee to voluntarily relinquish parcels or sub-parcels, he must comply with the requirements in the PPL and the shape of the relinquished block must be approved by the Commission to maintain acreage of shape that is feasible for award in future licensing round.[96] However, after a decade of commencing a PML, the lessee shall be relinquished of the entire parcels which do not fall within the limit of a producing field and any formation deeper than the deepest producing formation would also be relinquished thereby vesting the deep rights on the Federal Government of Nigeria.[97] Also, failure of an applicant awarded a marginal field to submit his development plan within a stipulated period will result in such a field being relinquished to the government and to be administered by the Commission.[98]

With respect to the surrendering of licence or lease, the PIA posits that regardless of the provisions on relinquishment, a licensee or lessee may surrender part or the entire licenced or leased area. For this to happen, the licensee or lessee must have discharged the statutory duties imposed under the related licence or lease in addition to giving a 3 months' prior written notice to the Commission.[99] However, any rent or fee paid before the surrendering of the applicable licence or lease shall not be refunded and this is without any prejudice to "any obligation or liability imposed by or incurred under the said licence or lease."[100]

h. Assignments, Mergers, Transfer and Acquisitions of PEL, PPL, OML

A licensee or lessee is not permitted to assign, novate or transfer the granted licence or lease or any right, power or interest arising therefrom without the prior written authorisation of the Minister. The same prohibition also applies to a shareholder of an incorporated joint venture who is not permitted to sell or transfer its shares.[101] The Minister may only grant the approval on the recommendation of the Commission if the intended transferee is a company incorporated in Nigeria; is of good reputation and standing; has sufficient technical knowledge, experience and financial capacity to enable it effectively perform all obligations of a licensee or lessee under the relevant licence or lease; and he shall adhere to the requirement under the Federal Competition and

[94] *Ibid*, sec. 80(2).
[95] I*bid*, sec. 88(1).
[96] I*bid*, sec. 88(4).
[97] I*bid*, sec. 88(5) and (6). For relinquishment upon renewal or conversion of an OML, see sec.93, *ibid*.
[98] *Ibid*, sec. 94(6) (7).
[99] I*bid*, sec. 89(1)
[100] I*bid*, sec. 89(2).
[101] I*bid*, sec. 95(1)

Consumer Protection Act 2018.[102] The approval or denial of the application must be promptly communicated to the licensee or lessee.[103] In the case of an approval, same must be duly recorded in the appropriate register by the Commission.[104]

i. Pre-emption Rights

The Minister has rights of pre-emption of petroleum and petroleum products marketed under any licence or lease in the case of a national emergency. The rights are stipulated under the First Schedule to the PIA.[105] The licensee or lessee is required to use his best endeavours to increase as far as practicable with his existing facilities, the supply and delivery of petroleum or petroleum products or both for the Federal Government to the extent required by the Minister.[106] But where the vessel conveying the petroleum or petroleum product is detained on demurrage at a port of loading, the licence or lease holder is required to pay for the demurrage except the delay was occasioned by unforeseen circumstances.[107] Any dispute arising in relation to the cause of the delay shall be resolved by common consensus reached between the Minister and the licensee or lessee failing which the matter would be settled through an arbitration mechanism.[108]

The price to be paid for the petroleum or petroleum products supplied or delivered to the Minister pursuant to the pre-emption right shall be the reasonable value at the point of delivery or in the absence of an agreed price, a fair price at the port of delivery agreeable to the parties or as determined by arbitration. To assist in reaching a fair price, the licensee or lessee may be required to furnish the Minister with some confidential information as well as relevant contract documents or charter parties.[109]

j. Revocations

Section 96 of the PIA empowers the Minister of Petroleum Resources, on the written recommendation of the Commission, to revoke a licence or lease under certain stipulated circumstances. These revocation grounds could be grouped under two basic headings:

a) *Failure of the Licence or Lease Holder to Comply with some Stipulated Conditions*[110]

i) failure to carry out petroleum activities in accordance with good global and national petroleum industry practices ;

ii) production failure for a consecutive period of 180 days without good reason(s) shown, provided that an interruption occurring as a result of *force majeure* will be a satisfactory reason;

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[102] I*bid*, sec. 95(2).

[103] I*bid*, sec. 95(9). Upon receiving the recommendation of the Commission regarding the application for assignment or transfer, the Minister is to act within 60 days of the receipt thereof. Where the Minister rejects the recommendation of the Commission, he shall provide the reason for such rejection. Where the express written consent of the Minister has not been received within 60 working days from the receipt of the recommendation, the consent would be deemed to have been granted- see I*bid*, sec. 95(4) (6) and (7).

[104] I*bid*, sec. 95(8).

[105] I*bid*, sec. 3(3).

[106] First Schedule to the PIA, paras. 1 and 2.

[107] *Ibid*, para. 3.

[108] *Ibid*, para. 4.

[109] Any arbitration referred to under the Schedule would only occur after the delivery of the petroleum or petroleum products- *ibid*, paras. 5 , 6 and 7.

[110] See generally, PIA 2021, sec. 96(1) (a)(b)(c)(d)(e)(f)(i)(k)(l)(m)(n).

iii) failure to comply with the terms and requirements of the lease or licence or the approved field development plan;

iv) failure to pay government the due rents, royalties, taxes or other payments or production shares as stipulated under the PIA;

v) failure to furnish reports or data on operations as enjoined by the Act after being advised by the Commission of such default;

vi) failure to obtain the requisite written approval of the Minister before the assignment, novation, or transfer of the licence or lease;

vii) failure to comply with the environmental duties required by relevant legislation or clauses of the related licence or lease;

viii) failure to submit and advance a field development plan and work commitment as required under sections 78 and 79 of the PIA;

ix) failure to fulfil the statutory requirement for national crude oil supply or national gas delivery obligations as stated in the PIA and any subsidiary regulation;

x) failure to comply with any expert determination, arbitration award or judgment arising dispute settlement clauses stated in the PIA or related licence or lease; and

xi) failure to meet the host communities responsibilities mandated under the Act.

b) Corrupt Practices, Abuse of Office or Judicial Intervention

i) obtainment of an interest in the lease or licence based on false representation or contrary to corrupt practices and money laundering laws;[111]

ii) licence or lease is entirely or partly owned expressly or impliedly or is controlled by a former or serving public official or a member of the government and the said person or persons had obtained the interest in the related licence or lease in a manner contravening any applicable law;[112] and

iii) the licence or lease holder has been declared by a competent court to be insolvent, bankrupt, or is liquidated except such is done as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement.[113]

Before the revocation of the licence or lease, a notice of default stating the grounds for the intended revocation would be served by the Commission on the licensee or lessee.[114] The essence of such notification is to afford the defaulting licensee or lessee an opportunity of remedying the situation within the stipulated period.[115] If after the expiration of the remediation period the default still continues, the licence or lease may be revoked[116] without affecting any liability or debt owed by the licensee or lessee in

[111] *Ibid*, sec.96(1)(g).
[112] *Ibid*, sec. 96(1)(j).
[113] *Ibid*, sec. 96(1)(h).
[114] The notice by the Commission can be served at the last known address of the licence or lease holder or directly to its legal representative in Nigeria. Alternatively, it can be published in the Federal Government Gazette or on the Commission's website. Any chosen means of communication adopted as laid down in the Act shall constitute an adequate notice to the affected licensee or lessee- *ibid*, sec. 97(4).
[115] *Ibid*, sec. 97(1).
[116] *Ibid*, sec. 97(3). The decision would be published in the Federal Government Gazette and the Commission is expected to carry out necessary alteration of its register to reflect the revocation- *Ibid*, sec. 97(6).

favour of the Commission, the government or any third party.[117] Where there are more than one participating holders, the revocation will only be in relation to the defaulting holder and would not affect the shareholder's interest or rights of the non-defaulting holder.[118]

The sincere commitment of the government to effectively exercise its revocatory powers against defaulting licensees or lessees in view of the fact that the government, through the NNPC Limited, is a controlling joint venture partner with the operating oil companies[119] is seriously doubted by Atsegbua, relying on Etikerentse (Etikerentse 2004, p. 191). According to the Atsegbua and based on Nigeria's experience under the Petroleum Act 1969,

> *The importance attached to the revocation powers of the grantor in this matter has been eroded to a great extent by the very fact that in nearly all petroleum operations in Nigeria now, the Government through NNPC has participation interests. NNPC's representatives have a say in the way the operations are carried out and they would therefore be privy to any defaults deserving of revocation. A revocation would thus affect both parties to the joint venture and the NNPC's inspectorate, being the actual organ charge with effecting any revocation, would be most reluctant to carry out a measure that would indirectly affect its alter ego* (Atsegbua 2021, p. 95; Atsegbua 1997, pp.346-48).

Thus, in view of its participatory rights, it would require a strong political determination, commitment and action for the Nigerian government to exercise its revocatory control over any defaulting licensee or lessee. Nevertheless, any revocation which fails to comply with statutory or contractual clauses would be nullified by the court.[120]

5. MARGINAL FIELDS

Aside from the grant of licences and leases above discussed, the PIA also continues with the award of marginal fields which was recognised under the Petroleum Acts 2004, though with some innovations. The phrase, "marginal field" is defined in section 94(8)(a) of the PIA to mean a field or discovery that has been pronounced as marginal field before 1st January 2021 or that had been lying unproductive for 7 years after it was discovered.[121]

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[117] *Ibid*, sec. 97(5).
[118] *Ibid*, sec. 99(1) & (2).
[119] *Ibid*, sec. 85(4).
[120] *Federal Republic of Nigeria v. Zebra Energy Ltd.* (2003) FWLR (Pt. 142) 154 at 180-181; (2002) 18 NWLR (Pt. 798) 162, where the Nigerian apex court held that "once the revocation of the licence was not done as is provided in the statute the appellants' action would be a breach of the agreement entered with the respondent." See also *Oil and Gas (Nig.) v. Ministry of Petroleum Resources*, Suit No. FHC/L/CS/481/2000 (unreported), decided by Federal High Court, Lagos, per Sanyaolu, J., cited in Oni, AG 2009, 'Expropriation and takings of mineral rights in Nigeria from an international perspective: A doctrinal and legal comparative with North America', *SSRN Electronic Journal*, viewed, 9 January 2022, <http://dx.doi.org/10.2139/ssrn.1339396> or <https://ssrn.com/abstract=1339396>.
[121] Since the PIA appears to posit that a field that has been lying unproductive for "seven years after its discovery" comes within the definition of a marginal field, what happens to a field that has been left fallow without activity for a period over the stipulated seven years- can such a field also be classified as a marginal field? The present author agrees with the submission of Atsegbua that the definition of a marginal field under

They are those non-producing oil fields that are held by international oil companies (IOCs) and are regarded as uneconomical by reason of high overhead costs needed to render them productive or economical (Omorogbe 2001, p. 170). In other instances, the IOCs also adopt the technical criteria in determining oil fields as falling within the categories of marginal fields (Olisa 1997, pp. 153-157).

The first attempt at a marginal field farm-out transaction was between NNPC/Chevron and an indigenous oil company, the Niger Delta Petroleum Resources Limited which had applied to Chevron Nigeria Ltd for a farm-out of its Ogbelle field in OML 54 (Akpambang 2008, p. 475). Most recently in June 2020, 57 marginal fields were awarded to 80 successful bidders by the defunct Department of Petroleum Resource (DPR). The fields contain an estimated 1 billion barrels of oil and about 5tcf of natural gas.[122] Though such oil fields may not be attractive to the IOCs, they are nonetheless useful and attractive to small indigenous oil companies for which such fields were initially intended for when it was first introduced during the military regime of former Gen. Ibrahim Babangida (Etikerentse 2004, pp. 97-99). The pressure for the development of marginal fields may not be unconnected with the entry by many small unintegrated oil companies, popularly known as the "independents", into the upstream petroleum operations and the government policy to encourage indigenous companies in the sector (Olisa 1997, p. 153). The award has proven profitable to local oil companies who have seized the opportunity to step out of the shadows of the IOCs to launch themselves out or develop their capacities as upstream petroleum operators; without necessarily undertaking the hazard or costs of exploration as all the oilfields declared as marginal fields were confirmed discoveries.[123] In economic terms, it has been estimated that as at March 2021, Nigeria earned about USD 600 million from marginal fields awards.[124]

The PIA prohibits the declaration of a new marginal field[125] but allows the continuance of operation of a producing marginal field under the initial royalty rate and farm-out[126] agreement, though subject to conversion to a PML with a tax regime

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the extant PIA is somewhat clumsy and should be amended to cover a field that has been left unattended to for over a period of seven. It may be recalled that by a combined reading of the provisions of para. 17(2) & (4) of the First Schd. to the Petroleum Act 2004, the Head of State (President) was empowered to cause a farm-out of a marginal field if the said field has been left unattended for a period of not less than ten after the date of its first discovery. Thus, it is suggested by the present author that the revised definition could be made to read thus: "marginal field means a field or discovery which has been declared a marginal field prior to 1st January 2021, or which has been lying fallow without activity for a period of not less than seven years after its discovery prior to the effective date." Such amendment would allow fields that have been left unattended to for over 7 years to be considered similarly as marginal fields.

[122]Adekoya, F 2021, 'Leveraging marginal fields for improved national reserves, local content', *The Guardian*, 23 June, viewed 16 January 2022, <https://guardian.ng/energy/leveraging-marginal-fields-for-improved-national-reserves-local-content/>.

[123] Ayuk, NJ 2021, 'Following Nigeria's example: Developing marginal fields is more important than ever for Africa', *The Guardian*, 13 December, viewed 16 January 2022, <https://guradian.ng/apo-press-releases/following-nigerias-example-developing-marginal-fields-is-more-important-than-ever-for-africa-by-ny-ayuk/>.

[124] *Ibid*.

[125] PIA, sec. 94(8).

[126] The Act defines a "farm-out" agreement to mean a contract between the holder of a petroleum mining lease or petroleum prospecting licence and a third party that authorises the third party to "explore, prospect, win,

recognised under secs. 267(b)[127] and 302 and other related provisions of the Act within 18 months of the coming into force of the PIA.[128] A non-producing field that has been declared as a marginal field before 1 January 2021 is to be converted to a PPL with the advantage of enjoying terms applicable to new acreage under chapter 4 of the Act.[129] Fields already transferred to the government would be offered or awarded as PPL by the Commission to new qualified applicant through a bid process.[130]

6. ENVIRONMENTAL OBLIGATIONS

In an attempt to promote the exploration and exploitation of petroleum resources in Nigeria in a more "efficient, effective and sustainable development" manner, the PIA contains clauses relating to environmental management, financial contribution towards remediation of environmental damage and gas flaring /penalties for venting of natural gas. The environmental monstrosity revealed in the UNEP report of 2011 on Ogoniland, a community in Rivers State of Nigeria, one of the host communities in Niger Delta region, illustrates substantial reasons why issues of environmental responsibilities by operating oil companies must be taken seriously. In some locations, according to the report, pollution still persisted 40 years after an occurrence of oil spill despite repeated remediation efforts. The report concluded that the environmental restoration of Ogoniland, though possible, may require up to 25-30 years (UNEP 2011, pp. 9-12).

a) Environmental Management Plan

A licensee or lessee who operates in the upstream petroleum operations is required within a stipulated period to submit to the Commission an environmental management plan regarding a project that needs environmental impact assessment. No chemical is to be utilised for upstream petroleum activities unless it is approved by the Commission.[131]

b) Financial contribution for remediation of Environmental Harm

As a precondition for granting a licence or lease and/or approval of an environmental management plan, a licensee or lessee is required to pay a prescribed financial contribution for environmental remediation or rehabilitation of environmental damage. The essence of this is majorly to ensure that where a licensee or lessee defaults in undertaking the rehabilitation or management of negative environmental impact of the affected area, the Commission, upon due written notice to the holder, can utilise the fund to rehabilitate or manage the resulting environmental harm occasioned.[132] The PIA appears to use the terms, "remediation" and "rehabilitation" in its section 103 interchangeably, though arguably the terms are distinguishable. Remediation is the procedure for removing, minimising or neutralising industrial soil and sediment pollutants that endangers human health or the productivity and integrity of the

work" and take away any petroleum found in a licence or lease area during the pendency of the licence or lease- *ibid*, sec. 94(8)(b).

[127] While sec. 267(b) provides for the chargeable tax regime, section 302 on the other hand makes provisions for general requirements of companies income tax in respect of entities engaged in petroleum activities.

[128] *Ibid*, sec. 94(1).

[129] *Ibid*, sec. 94(2).

[130] *Ibid*, secs. 94(3) and 74.

[131] *Ibid*, sec. 102 (1) and (7).

[132] *Ibid*, sec. 103(1) & (4).

ecosystem. It focuses primarily on improving an individual environment media that is affected by pollution or other forms of environmental degradation (Fagbohun 2010, pp. 61-62). On the other hand, rehabilitation has been described as a process of restoring something damaged, degraded or not functioning up to its pre-disturbance state and function (Fagbohun 2010, p. 58). Often, ecological rehabilitation contributes to the success of ecological restoration (Groom, Meffe & Carroll 2005).

However, the issue of whether a contaminated site could be restored to its pre-disturbance state was a contended issue in the Nigerian case of *Shell Petroleum Development Co. (Nigeria) Ltd. v. Farah.*[133] The gravamen of the plaintiffs/respondents' case was that the earlier restoration or rehabilitation work performed by the appellant/defendant on the impacted site was grossly inadequate which ultimately led to low crop yield. Consequently, the court rather than order for a rehabilitation of the polluted site, granted the alternative claim of ₦2, 000,000 as damages for diminution of the value of the land.

c) Prohibition of Gas Flaring and Penalties

In the process of oil production, gas flaring is a common occurrence. As a result of limited gas infrastructure in Nigeria, like in most sub-Saharan African countries, the associated gas is flared instead of being captured for utilisation (Williams 2010, p.2; Environmental Rights Action /Friends of the Earth Nigeria 2005, p. 4). This does not only amount to a waste of significant revenue and energy sources, but also results in the release of carbon dioxide and methane into the atmosphere thereby leading to depletion of the ozone layer, acid rain, global warming and climate change.[134] In monetary terms, the economic cost of gas flaring in 2018 was estimated at ₦233 billion while the cost of its environmental effect for the same year in Nigeria was placed at ₦28.76 billion.[135] Between January-May 2021, it was reported that Nigeria flared about 85.4 billion standard cubit of natural gas, amounting to an estimated fiscal loss of ₦209 billion (about 505 million USD[136]), an amount averaging the 3% funding allocation to the host communities as required under the PIA.[137]

In an attempt to address the problem associated with gas flaring, the PIA prohibits the flaring of gas[138] and mandates licensees and lessees producing natural gas to submit a natural gas flare elimination and monetisation plan to the Commission within 12 months of the coming into force of the Act.[139] However, the Act recognises some

[133] (1995) 3 NWLR (Pt. 382) 142.

[134] PWC 2019, 'Assessing the impact of gas flaring on the Nigerian economy', viewed 6 January 2022, <https://www.pwc.com/ng/en/assets/pdf/gas-flaring-impact1.pdf>.

[135] *Ibid*, p.3.

[136] This is based on an exchange rate of 1USD to an equivalent of ₦413.21 as at 9 January 2022. This is also based on the understanding that at the material time, one million British Thermal Units (BTU) was sold for $6 at the global market; 85.4 billion SCF flared by Nigeria translates into about 85 billion BTU, amounting to about $510.

[137] Jeremiah, K 2021, 'Nigeria's $510m gas flare in days higher than host-community allocation', *The Guardian*, 29 October, viewed 6 January 2021, <https://guardian.ng/business-services/nigerias-510m-gas-flare-in-days-higher-than-host-community-allocation>. It is pertinent to point out that under the extant PIA, money received by the Commission as penalties or fines for gas flaring is to be utilised for the purpose of environmental remediation and relief of the host communities of the licensee or lessee where the penalties are collected- see PIA, secs. 104(4) and 240.

[138] PIA, sec. 104.

[139] *Ibid*, sec. 108.

acceptable circumstances under which gas may be flared, namely, in case of emergency;[140] under a permit granted to a licensee or lessee to flare or vent natural gas for a specified period where it is needed for facility start-up or for strategic operational purposes, including testing;[141] or as an acceptable safety practice under established regulations.[142] The implication is that a licensee or lessee can successful rely on any of the permitted defences to justify its action for flaring gas.

The Act goes further to permit the monetisation of gas flaring in line with the penalty prescribed under the Flare Gas (Prevention of Waste and Pollution) Regulations 2018[143] where gas is flared in an unauthorised manner.[144] Licensees and lessees are also required to install a prescribed metering equipment and failure to comply constitutes an offence and liable to a fine.[145]

7. CONCLUSION AND RECOMMENDATIONS

The article reviewed the licensing regime in the petroleum upstream sector under the newly enacted Petroleum Industry Act 2021. Based on the changes and innovations introduced by the PIA 2021, the article pointed out that the extant law, like the position under the Petroleum Act 1969, has retained the three kinds of upstream licensing regimes though it has replaced the old OEL, OPL and OML with the PEL, PPL and PML. The new law contains a revised and reduction in ministerial roles of the Minister of Petroleum Resources. For instance, the Minister maintains the general supervisory role over petroleum activities but his powers to grant and revoke licences, leases and assignments require recommendations from the Commission. This helps in promoting checks and balances in the licensing regime under the Act and the need to prevent abuse of ministerial powers which were commonplace in the former regime.

It is also commendable that the PIA has legalised the bidding process in the award of licenses and leases. This, as discovered in the study, will encourage transparency, fair competitiveness and accountability in the administration of upstream petroleum resources in Nigeria. However, for mutuality sake and despite the bidding considerations stated in the PIA, where there is an existing bilateral or multi-lateral agreement between Nigeria and another country, the Nigerian government may, for strategic reasons or in exchange for substantial rewards, authorise the Commission to bargain and award a PPL or PML to a qualified investor identified in the agreement or treaty. But the signature bonus payable under such mutuality arrangement must be founded on transparent method for evaluating the acreage.

The study also discovered that while the PIA prohibits gas flaring, it has however created some legitimate conditions where gas flares regime may continue. For example,

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[140] What constitutes a "case of emergency" is not defined in the statute and consequently may be accorded a subjective interpretation to be determined by the licensee or lessee.
[141] PIA, sec. 107.
[142] *Ibid*, sec. 104(1).
[143] *Ibid*, sec. 105. The Commission is authorised to also take free of charge natural gas that is destined for flaring at the flare stack.
[144] *Ibid*, sec. 104(1).
[145] *Ibid*, sec. 106. A person who provides an inaccurate or incomplete flare gas data is liable upon conviction to a fine of ₦50, 000 or imprisonment of a term of not more than 6 months or both- see Flare Gas (Prevention of Waste and Pollution) Regulations 2018, para. 5.

the Act states that gas flaring may be endorsed in a situation of emergency; by exemption granted by the Commission; or as a suitable safety practice under established regulations. Venting of natural gas for a specific duration may similarly be permitted where it is needed for facility start-up or for strategic operational purposes, including testing. The problems with the acceptable excuses are that aside from the Act failing to indicate what constitutes "emergency" case; it also failed to clarify what amounts to "strategic operational reasons" as well as the limitation period permitted for gas flaring where it is needed for facility start-up. With no additional clarifications, the tendency is that such provisions may be abused by licensees and lessees. The absence of a clear gas flare-out date in the Act and the monetisation of gas flaring are also clear reminders of the position under the old regime despite Nigeria's avowed commitments to climate change policies and the outlawing of gas flaring by a court of law as far back as 2015.[146] The implication of this is that the Nigerian government is not seriously committed to putting a halt to gas flaring or venting of natural gas despite its economic waste and environmental costs.

With respect to the development of host communities, the PIA makes detailed provisions for the creation and management of a PHCDTF. The major aim of this development is attributed to the need of creating a framework to support the growth of host communities and the enhancement of harmonious co-existence between host communities and the licence or lease holders. However, this worthy objective seems to be defeated as PIA makes the incorporation of the trusts fund the sole task of the oil companies who also have the dominant role in appointing members of the Board of Trustee of the funds and its other governance compositions. Though the oil companies are required to make the appointments in "consultation" with host communities, but the truth is that the oil companies still have the overriding power regarding the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees. Thus, the BOT members, even where they are indigenous host communities' members, would become more loyal to the oil companies than to the host communities and such may rekindle the old acrimonious relationship between oil companies and the host communities.

In addition, the clause requiring host communities to be responsible for the surveillance and protection of oil facilities in their domains is a resurrection of the old debates between the host communities and operating oil companies whereby the latter used to accuse the former of being responsible for the vandalisation of its oil facilities; an accusation that were repeatedly and vehemently denied by host communities. It is a common knowledge that crude oil theft, bunkering and sabotage of oil facilities are often carried out by armed cartels in active connivance with some military officers and security personnel in the Niger Delta area of Nigeria.[147] Thus, holding the host communities

[146] It may be recalled that in *Jonah Gbemre (For himself and representing Iwherekan Community in Delta State, Nigeria) v. Shell Petroleum Development Company Nigeria Limited & Others* (2005) AHRLR 151, the court restrained the defendants from continuing in flaring of gas in the community as it was held that the continued flaring of gas in the applicant's community amounted to a grave violation of the right to life and a healthy environment.

[147] See Ibunge, B 2022, 'Wike demands redeployment of DPO, NSCDC officer fingered in illegal refinery activities', *This Day Live*, 15 January, viewed 16 January 2022 <https://www.thisdaylive.com/index.php/2022/01/15/wike-demands-redeployment-of-dpo-nscdc-officer-fingered-in-illegal-refinery-activities/>. See also Akasike, C 2019, "Wike accuses GOC of running oil

accountable for acts of third parties and demanding that they forfeit their due entitlements where damages are suffered by oil companies through such illegal activities is most unfair to the host communities. It is therefore, suggested that the responsibility for protecting the oil facilities in the region should be vested on the oil companies that own the facilities and the federal government that has the constitutional duty of providing national security and the exclusive control over the military and other paramilitary agencies rather than on unarmed populace of the Niger Delta.

Another controversial clause in the PIA relates to the contribution of a paltry 3% of the actual operating costs of oil companies to the HCDTF whereas 30% of the profits of the commercially-oriented NNPC Limited is allocated to oil exploration activities in the frontier basins. It is suggested that the 3% assigned to the HCDTF should have been increased to at least 5% having regards to the environmental degradation suffered by the host communities as a result of continued oil exploration and prospecting in the region. As a matter of fact, under the PIB 2008 submitted to the NASS by late President Yar'Adua, 10% was designated for that purpose. Similarly, having regards to the enormous past financial commitments of the government towards unsuccessful search for oil and gas in the frontier basins, it is submitted that setting aside another sum of money representing 30% of the NNPC Limited share of profit amounts to another waste of resources that should have ordinarily accrued to the Federation Account as required under section 162 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). But the question whether the setting aside of the 3% of the actual operating costs of oil companies to the HCDTF and the 30% of NNPC Limited profit for the frontier basins as enjoined by sections 9(4)(5) and 64(c) of the PIA are constitutional may require a judicial interpretation by the Nigerian Supreme Court at the instance of an aggrieved State against the federal government as those provisions run counter to the 1999 Constitution which is recognised as the supreme law of the land and other enactments must not be inconsistent with its provisions. Nonetheless, it is hoped that all these monies would be utilised effectively in order to achieve the intended purposes and would not be misappropriated by government or established Board officials as were the cases of past government interventions. Adequate mechanisms to ensure transparency and accountability in the applications of the funds must therefore, be put in place by the government to prevent mismanagement.

Finally, notwithstanding some of the inherent weaknesses and criticisms against the Act, it is submitted that if the clauses of the PIA are strictly adhered to by all stakeholders in the Nigerian petroleum industry, it would assist in creating a well-organised and effective governing establishments with clear and distinct functions for the petroleum industry which is vital in the promotion of a conducive business environment for petroleum operations in Nigeria.

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